

# Judicial policy diffusion: a model to analyze specialized state courts fighting organized crime in Brazil<sup>1</sup>

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## Abstract

This article examines the judicial specialization process of courts focused on fighting organized crime in Brazilian states. The study describes the policy diffusion, which adopted the mechanisms of learning and emulation, and proposes a theoretical model. The literature reviewed associates the debate on judicial policies, specialization of courts, and public policy diffusion. Specialization of state courts was implemented in Brazil in four different waves throughout the period between the edition of the National Council of Justice Recommendation in 2006, until nowadays. The specialization of courts in the North and Northeast regions of Brazil was carried out to fight organized crime related to drug trafficking and criminal groups. The most recent wave originated as an outcome of the corruption investigation known as Operation Car Wash, apparently associated with political and economic corruption in the Southeast, Central-West, and South regions of the country.

**Keywords:** judicial policy, diffusion, specialized courts, organized crime, state courts.

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## Introduction

**D**ifferent theoretical models are supporting the creation of public policies. Diffusion is one of these models, seeking to explain how to address public problems (Kingdom, 2011). Although little explored in Brazilian academic literature, diffusion is considered a promising model to understand how anti-corruption policies result in similar institutional designs that replicate throughout justice systems, including in cases of federalized systems, with separation between federal and state jurisdictions.

This model appears at various stages of the public policy cycle, from agenda-setting to implementation. It is a multi-faceted process based on external (formal and informal networks of interaction, geographically localized) and internal (political and institutional attributes) determinants. Diffusion adopts mechanisms such as emulation, top-down coercion, political competition, social learning, and action by political entrepreneurs, epistemic communities, professional associations, and transnational networks (Coêlho, 2016). Recent discussions have focused on the circulation and diffusion of ideas (Stone; Oliveira; Pal, 2019).

Among models that explain how institutions and governments create and copy policies, those associated with the activity and interaction of public bureaucracies in the arenas of the political game stand out. The policies led by bureaucracies, when not under the pressure of electoral constraints and circumstances, are carried out by actors who share beliefs about the institutions' roles, associating a mission focused on institutional development and dynamics related to professional careers (Peters, 2010).

Diffusion as a product of social learning includes the process of policy adherence, development, and change. It is a result of learning (acquiring expertise), as well as a product of the actors' discourse (Freeman, 2006). The learning process occurs from the adequacy of policy objectives, the

understanding of the instruments for its best execution, the policy changes due to disputes in the political arena, and from the interactions between state and society in policy networks, which shape or are shaped by different ideas (Hall, 1993).

The theoretical model described above helps to understand the case of anti-corruption policy. The concern with money laundering and organized crime in Brazil is emphasized because of the country's commitment to other nations and international organizations regarding an agenda of fighting corruption. The role of the bureaucracies of the federal criminal justice system, however, has been crucial to promoting the significant changes observed in this field in recent decades.

This article examines the judicial specialization process of courts focused on fighting organized crime in Brazilian states, describing policy diffusion. It aims to build a theoretical model to study the process of judicial policymaking based on the case study of specialized state criminal courts, observing the common elements among them.

The study adopted qualitative analysis to categorize experiences of diffusion of specialization policies. This process is based on mapping characteristics that are common to the experiences analyzed such as, a) in the country: legal norms and role of entrepreneurial agents; and b) in the states: political-institutional context (endogenous and exogenous; actor involved in implementation, type of policy), criminal conjuncture, and motivations to adopt the policy. The cases were separated in these categories, by similarity. Data on the policy profile were collected through document analysis (resolutions and complementary laws, and reports of the experiences disseminated in the media), and content analysis conducted in the interviews with entrepreneurial actors of the federal judicial specialization policy.

The next section presents a theoretical debate on the diffusion of public policies, especially on mechanisms of learning and emulation, followed

by a literature review on the concept of judicial policy and specialization of courts. The third section proposes a model for the analysis of policy diffusion and implementation. The fourth section explores the process of diffusion from the specialization of federal criminal courts to fight corruption, to the specialization of state criminal courts, followed by a section discussing the different patterns of diffusion regarding the specialization of state criminal courts. The sixth and final section presents the articles' final considerations.

## **1 Diffusion of public policies of judicial specialization**

How public policies spread and how certain policies reach countries, states, governments, and municipalities is still a phenomenon of recent analysis, especially in Brazil. The study on policy diffusion can focus on both state macrostructures and government entities, and it can also describe micro-processes led by bureaucracies such as state institutions, and courts. The assumption, in this case, is that agencies and their bureaucracies can create and disseminate public policies. This section presents a theoretical framework to support the study of policy diffusion regarding the specialization of courts in Brazil.

According to the literature, judicial policy is the action of the courts' public policies and their central role in policy-making, emphasizing its characteristics regarding a) the judges' values, goals, motivations, and conscious intention; b) public policies intended scope and impact; and c) the decisions legal and constitutional content (Wells, 1966, p. 289). It is possible to say that the courts' action in formulating and implementing public policies is part of the idea of judicial policy. These policies may be produced internally, dealing with the administration and management of the courts themselves. They are used to changing organizational structures, expanding and reallocating human resources, defining budgets, and other actions that concern their agenda. These actions are motivated by both external demands (such as the adaptation of structures when there are legislative changes) or

when there are judicial choices regarding the mission of these bureaucracies (Peters, 2010).

The process by which policy choices in one unit influence other units can be conceptualized as public policy diffusion (Braun; Gilardi 2006; Simmons *et al.* 2006; Gilardi 2012; Graham *et al.* 2013 *apud* Maggetti; Gilardi, 2015). The process of diffusion is considered gradual adoption of an innovation, with speed and tendency of retraction that resembles, according to Weyland (2005), a “wave.” Rogers (1983) defines diffusion as “the process by which an innovation is communicated through certain channels over time between members of a social system.” An increasing number of public policies originally designed for specific locations have been disseminated elsewhere. The questions are: how does this diffusion occur, what mechanisms and factors explain this process? Why are programs diffused? Furthermore, what is considered diffused?

Innovation, according to Rogers (1983), is an idea, practice, or object that is perceived as new by an individual, or other units whose “novelty” is expressed in terms of knowledge, persuasion, or adoption. Rogers (1983) characterizes diffusion as a) a centralized system, where there are a small number of staff/specialists dealing with such diffusion; or b) a decentralized system, where horizontal networks among “clients” are the main mechanism by which innovations are disseminated.

The literature presents studies with different perspectives regarding the determinant factors in a diffusion process, such as internal and external determinants, learning mechanisms, political competition, coercion and emulation, coordinated and uncoordinated action, and the role of agents and structural factors (Coêlho, 2016, p. 39).

Coêlho (2016) points out another explanation for the phenomenon of diffusion, focused on the role of actors instead of structures. The explanation based on structural factors favors historical policy outcomes and the institutional

apparatus of government used in the implementation of these policies, as well as the geographic proximity to pioneering units. As for the actor-centered explanations, they examine the diffusion from the action of expert agents selling political solutions to social problems. Although apparently opposite, it is essential to understand these intertwined processes: “agents can interpret and change the structure to enable their action” (Coêlho, 2016, p. 43). When structural changes are not possible, “the agent's action is privileged because a set of obstacles is properly resolved over time from prior planning by stakeholders” (Coêlho, 2016, p. 43). In this case, policy diffusion would take place through structures, while the diffusion of models would occur through agents’ actions.

This study applies a view on the micro-process of diffusion among institutions (in this case, judicial policies, but not restricted to them), which explains the decision to describe the mechanisms of learning and emulation since they are the ones with the most explanatory capacity.

Diffusion by learning is a process in which policymakers update beliefs about the effects of a specific policy by observing the experience of others (Meseguer, 2006). Through this mechanism, “the most widespread policies are those that have already been tested by various governments and have achieved satisfactory degrees of social efficiency, efficacy, and effectiveness” (Coêlho, 2016, p. 46).

After learning, bureaucracies can change their conception of best practices regarding their activities and policies. Policy ideas can change in different ways, either because of the actors’ trust in the institutional mission (Wilson, 1989), or the discretion in adapting policy activities to accomplish its goals.

Agency is a central aspect of the study of diffusion by learning because individuals learn while interacting in groups, networks, communities, and organizations. However, it is important to consider that learning occurs under

conditions of complex interdependence, in which thoughts and actions change – and are changed by – contexts or environments, i.e., the process of policy implementation may be reinterpreted (Browne; Wildavsky 1983 *apud* Freeman, 2006).

The mechanism of emulation, on the other hand, can be understood as voluntary (non-coercive) adoption, based on a follow-the-leader logic, in which the ideas are transferred from a group of innovators to the others. These groups of innovators are characterized by their mission of putting ideas into practice (Coêlho, 2016). Through diffusion by emulation, other models can be imitated, symbolically, and normatively. In this process, those that imitate seek the “policy objectives without ideological, geographical or economic influence.” They share “management practices among themselves, which would indicate that the innovation goes through a learning process over time” (Coêlho, 2016, p. 47-48). In the specific case of specialization of courts, understood as judicial policy, the evaluation of the role of diffusion is usually based on the adherence to the policy rather than its effectiveness.

The judicial policy is commonly understood as the process of implementation of Supreme Court judgments by the justice system. Baum (1976) examined the judicial policy as an organizational process, in which a decision that did not follow the same understanding as judged by the Supreme Court, was not considered something abnormal, but part of the independence of lower-court judges who might decide differently depending on local conditions. The study of implementation lies in the analysis of the positive forces that led judges to take actions in agreement with the understanding of superior courts.

For policy implementation to take place along these lines, it is crucial to have clear guidelines from a superior party willing to obtain a specific behavior from subalterns, reducing ambiguities. The congruence between desired policies and the policies implemented in lower courts depends on the

effectiveness of top-down communication in the judicial system. Baum (1976, p. 94), therefore, reinforces that communication represents the main source of potential problems in the implementation process.

The judicial policy, as a courts' choice regarding their action and management, may also be subject to the conditions for implementation described above. When considering that diffusion usually conveys ideas, but also public policy design and implementation models, it is possible to observe that, in the case of judicial policies, the diffusion process may be different according to the actor diffusing, implementation strategy, or motivation around adherence. As for the actor, they can be endogenous (judicial bureaucracy, for instance), or exogenous, by the executive and legislative branches. In the case of the implementation strategy, the diffusion process may be determined by economic and political costs. Finally, regarding the motivation for imitators to adhere, the diffusion may occur because of a social or socioeconomic problem targeted by the public policy.

According to Baum (2011, p. 7), judicial specialization may be understood as the concentration of judges on a limited range of cases, which means an accumulation of expertise; or a concentration of cases regarding a specific area, among a limited number of judges, potentially changing the production of judicial decisions. The idea of judicial specialization is disseminated based on the belief that expertise results in greater efficiency and standardization, receiving support from interest groups, and especially from members of the judiciary, given the institutional gains (such as budgetary efficiency) and career satisfaction (recognition) as well as gains of self-interest and self-image. Specialization usually entails changes in legislation, the general structure of the courts, and in the criteria to select cases and recruit judges.

Among the most important effects observed in the literature, is the influence of interest groups and members of the judiciary in other parts related to the policy (especially in the legislative branch), as players directly

or indirectly involved in the policymaking process (Baum, 2011, p. 42). These interactions are intended to produce the elements necessary to implement the public policy, such as the appropriate legislation, resource allocation, and the definition of objectives, motivations, and design of the judicial policy.

Specialization in criminal justice deserves attention both because of the diffusion of the model, and because of its dissemination as a solution to various problems, usually involving relations between government interests, and expected outcomes of criminal cases. When considering the goal of fighting crime, specialization in criminal justice is normally highly accepted in society, receiving consensus support, especially from elites. The criminal judges also widely accept this model, based on the notion of mission-driven service, which acts as a central justification in the creation of specialized courts (Madeira; Geliski, 2019).

The growth of specialization is usually created by endogenous action of the judiciary, as a result of the judicial autonomy and facilitated by the decentralized structure that allows implementation. It turns judges into entrepreneurs, ensuring the necessary legislative approval. As in other courts, criminal specialization turns out to be extremely attractive to judges because it generates satisfaction, prestige, and power, breaking with the figure of a neutral referee to become the central element of the team (Madeira; Geliski, 2019).

In the case of corruption, specialized courts are created for the same reasons as anti-corruption agencies: insulate corruption cases from existing corrupt systems and build expertise to cope with complex cases. Although agencies are well known in the literature, the creation of specialized anti-corruption courts is an issue little explored in the literature. Among aspects that need clarification are the reason for the creation of such courts and how they work in comparison to other regular or generalist courts (Butt; Schutte, 2014 apud Madeira; Geliski, 2019).

## 2 Specialization as a judicial policy: a model based on the Brazilian case

The formulation and implementation of public policies and diffusion are linked to the same phenomenon, the politics of public policies, i.e., the processes of definition, decision, and implementation of policies (BID, 2007). Policy diffusion is related to the public agenda-setting, debates on policy models, and the decision-making arenas. Based on the perspective of multi-process, the study of policy diffusion of specialized criminal courts must combine the view of mechanisms that influence the dissemination of the policy throughout courts and governments, and the analysis of actors and the context of mobilization to implement such policies. Therefore, this study sought to adopt a two-dimensional approach that addresses policy diffusion and actors' interaction (endogenous or exogenous).

**Table 1 – First dimension – Public policy diffusion**

		Normative (policy model)	
		Yes	No
Mentioning specialized state	Yes	(1)	(2)
	No	(3)	(4)

**Source:** Research data

The first dimension of this model relates to the mechanisms of the diffusion process, a) learning (model-based bureaucracy's and bureaucrats' expertise); and b) emulation (replicating a particular policy adopted by other governments, institutions, and others). In the case of specialization, the indicator of the learning process is said to be based on a diffused model (normative). As for emulation, the process is expressed regarding the policies adopted by other institutions or governments.

The integration between these two mechanisms of diffusion can occur as follows: (1) learning and emulation, when the judicial policy is based on both the normative model and the experiences of other institutions; (2) emulation; (3) learning; and (4) another mechanism. This fourth hypothetical interaction requires analysis of judicial policy based on other elements, such as the context of the implementation of the specialization and which social phenomena it addresses.

From this dimension of the diffusion process, a second analysis focuses on the actor involved in the policy and its diffusion, i.e., on the process of policymaking (formulation and implementation).

**Table 2 – Second dimension – Public policy diffusion**

		Specialization structure	
		Creates	Specializes
Agency	Endogenous	*2	(1)
	Exogenous actors	(2)	(3)

**Source:** research data.

The strategies for adopting the policy of specialized courts, expressed in the second dimension (Table 2), are related to the profile (agency) and the role of policy-makers in policy design (structure), that is, who conceives the policy and what mechanisms are used to its formulation and implementation. Specialization as a policy can be conceived by endogenous (courts) or exogenous (outside the bureaucracy of the judiciary, such as in the executive or legislative branches) actors, and be implemented through the creation of new courts or reorganization (specialization) of existing ones.

<sup>2</sup> The role of the superior courts to create specialized courts through internal resolutions is probably unfeasible, as it involves the creation of a structure that would need further resources instead of using existing means. Therefore, the procedure is conditioned to the budget, i.e., it involves a political arena (executive-legislative).

Thus, three models (Table 2) of interaction during the formulation and implementation phases, theoretically, could be observed: (1) specialization occurs through the courts' resolutions. They implement the policy through the specialization of existing criminal courts (norm – internal recommendation; actor – courts; type of policy – judicial policy; policymaking arena – bureaucratic). (2) The policy stems from an initiative of the legislative or executive branches, through legislation that creates specialized courts, altering the organization of the judiciary with the potential provision of resources (norm – law; actor – executive/legislative; type of policy – state policy; policymaking arena – politics). (3) The specialization is conceived through the creation and use of existing courts. In this interaction, there are two actors (endogenous and exogenous) in the process of conceiving the policy (norm – internal resolution and law; actor – courts and executive/legislative); type of policy – state policy; policymaking arena – political and bureaucratic).

The next sections describe the context of policies to fight organized crimes associated with the specialization of federal and state criminal justice systems.

### **3 From the federal criminal justice specialization to fight corruption to the specialization of state criminal courts fighting organized crime**

Pressure from the international community led governments to adopt anti-corruption packages, which occurred with two main types of responses: legislative reforms and the creation of institutions. The practice in Brazil is to adopt international principles and conventions, expanding the country's participation in international cooperation forums related to criminal issues, taking part in governmental anti-corruption networks. Although the incorporation of social accountability is controversial, it will not be discussed in this work.

A landmark in the country in terms of legislation to respond to the international scenario was the enactment of the first Money Laundering Law (Law 9613/1998). The law addressed the issue of fighting criminal activity related to drug trafficking. However, as indicated in the international literature (Mugarura, 2011), the difficulty of states and national authorities in dealing with money laundering from complex criminal practices has led to changes in legislation.

After the enactment of Law 9613/1998, a research from the Federal Justice Council (CJF) with the participation of authorities of the Federal Police, Federal Prosecutors, and federal judges sought to examine and understand these actors' perceptions about the applicability of Law 9613/1998 before the formal instances of power and, finally, to analyze certain legal institutes provided in the legislation (De Sordi, 2016, p. 52). The research report pointed to weaknesses in the structure of money laundering repression, especially in the dynamics of cooperation between these three groups of actors. Among the outcomes of the CJF's research was the creation of a working group including the main agencies of the network of accountability institutions, which began to work together and to produce institutional suggestions such as the specialization of federal courts to cope first with laundering and then with organized crime.

A minister of the Brazilian Justice Superior Court (STJ) coordinated the creation of the commission and had the idea of bringing together not only the official agencies acting in the justice system but other institutions that worked on this matter, opening a space where these actors could offer suggestions both in terms of legislation and implementation.

The creation of the specialization policy was based on a narrative of institutional learning (social learning). The Federal Justice system currently has 29 specialized courts disseminated across five regional courts. The establishment of these courts represents the end of the first wave in the movement of specialization in Brazil. The courts are focused on fighting

corruption. They are connected to the National Strategy to Fight Corruption and Money Laundering (ENCCLA) led by the Brazilian Ministry of Justice in 2003. The Federal Justice system was responsible for coordinating the interaction and cooperation among the different institutions, fostering legislative changes<sup>3</sup> to ensure criminal prosecution and punishment.

The creation of cooperation spaces within the government was combined with the institutional strengthening of the actors of the justice system, in a process initiated with the judiciary reform (Arantes, 2011a; 2011b). The Federal Justice and other agencies have developed specific sectors to fight money laundering and corruption crimes, such as the Department of Investigation and Combat of Organized Crime (DICOR) of the Federal Police and task-forces of the Federal Prosecutors Office (MPF).

#### **4 State criminal justice specialization through courts fighting organized crime in Brazilian states: different diffusion patterns**

Judicial public policies related to courts' action and management may be diffused through the action of endogenous actors (from inside the court) or exogenous actors (outside the court, working in the executive and legislative branches). Also, these public policies may be diffused through their own implementation strategy (considering the best use of the resources available to promote the policy). Finally, a third element leading to judicial policy diffusion is the reason through which agencies adhere to the policy, i.e., the motivation. Policy diffusion depends on an idea, an innovation to copy. In the case of the policy of specialization of criminal courts in Brazil, the idea was to originate in the Federal Justice and was based on the intention

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<sup>3</sup> Subsequently, other norms were approved following the tendency of expansion in criminal legislation toward drug trafficking (Law 11343/2006), crimes committed by criminal organizations (Law 12850/2013), and an amendment to the law on money laundering (Law 12683/2012), with Resolution 517/2006. CJF's resolutions extended the specialization of courts to deal with crimes of criminal organizations (517/2006); and focused on transnational crimes (273/2013).

intention to disseminate the model to states' criminal justice systems, with the incentive of the National Justice Council (CNJ)). The specialization policy entrepreneurs of the CJF, who occupied prominent positions in superior courts, mobilized actors and agenda to create recommendations that promoted the process of diffusion of state-specialized courts throughout the states, responding to a demand from state judicial actors.

As a result of the positive effects, judicial specialization state courts fighting money laundering and organized crime began to spread around the country. The actors involved with the specialization in federal justice were the same ones that undertook the expansion of the policy, justifying the measure by the need to fight drug trafficking. In this sense, the release of the recommendation appears as a means of diffusion, encouraging specialization in state justice systems.

The initial milestone of criminal justice specialization to fight corruption and organized crime was the CNJ's Recommendation 003, of May 30, 2006. The provision recommended the specialization of courts for the prosecution of such offenses in the federal and state levels. The text of the recommendation points out as fundamentals for editing the normative: the fight against organized crime (motivation – public problem); the legal arrangement of norms that typify the offense; learning based on the specialization experiences of the Brazilian Public Ministry and police; the institutional structure allowing specialization, preparing the Federal Regional Courts and Courts of Justice, so they are able to issue norms to implement the policy.

Also in this regard, the recommendation suggests a specific design for the courts adopting the judicial police: (a) using existing courts specialized in money laundering to encompass criminal organization offenses; (b) providing of human resources to implement the policy, with more than one judge; (c) extension of the courts' jurisdiction in the territories and redistribution of court procedures. The guidelines for policy induction suggest the courts to replicate a model.

A movement of policy diffusion regarding specialized courts in the states emerged from Recommendation 003 of 2006. Based on induction, between 2007 and 2008<sup>4</sup>, there was the first wave of specialization of courts, starting from the states of Pará, Alagoas, Mato Grosso, and Roraima. Currently, in at least fifteen states, Courts of Justice have implemented specialized criminal courts to fight organized crime.

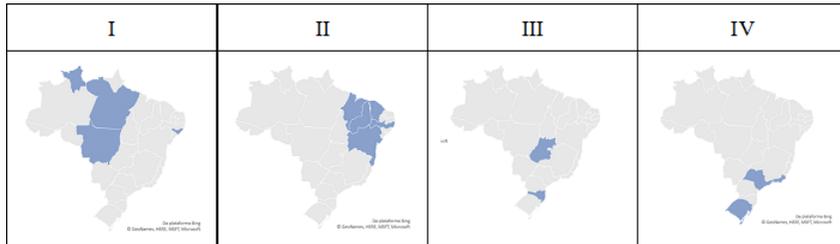
The first wave (I) is, therefore, an outcome of the diffusion of the Federal Justice model, intermediated by the recommendation of the CNJ, to the states. A second wave (II) was the diffusion of the policy in the Northeast and Northern states, inspired by the experience in the state of Alagoas, and as a consequence of the Law on Criminal Organizations (Law 12850/2013). States that adopted the specialized courts in this wave were Bahia, Ceará, Maranhão, and Piauí. The third wave (III) was anchored in the experience of Mato Grosso, inspiring the states of Santa Catarina and Goiás. Finally, the fourth and last wave (IV) is recent, marked by the effects of Operation Car Wash. It presents the same patterns in the states of Acre, Rio Grande do Sul, São Paulo, and Rio de Janeiro.

Except for the third wave, the others show some proximity regarding spatial dissemination, as observed in Figure 1. As detailed below, this pattern seems to correspond to specific criminal movements related to drug trafficking and its consequences, which are subject to judicial intervention and actions from public security forces.

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<sup>4</sup>In the state of Pernambuco, a different type of institution, the 'Judiciary Organization' was created based on Complementary Law 100, from November 22, 2007. In article 74 of this law, the legislation provides on the creation of Jurisdictional Centers, allowing the establishment of Centers to Fight Organized Crime, able to privatively prosecute, judge, and execute cases related to organized crime. In 2018 the media reported the activity of members of the state legislative branch, demanding the establishment of specialized courts to fight organized crime. See <https://jconline.ne10.uol.com.br/canal/politica/pernambuco/noticia/2018/02/20/deputado-propoe-varas-de-combate-ao-crime-organizado-em-pernambuco-328394.php>.

**Figure 1 – Waves of specialization of state criminal courts**



**Source:** Database of specialization of state courts to fight organized crime, elaborated by the authors (2019)

The literature has described the phenomenon of drug trafficking in Brazil and its effects, such as the expansion of violent crime rates in the states. Also, drug trafficking led to “important transformations in recent years, with new forms of criminal involvement, relationships, strategies, revenge episodes, conduct normalization, social control, and domination” (Paiva, 2017, p. 23). The action of criminal groups and the existence of a struggle for territory among them are core elements of these transformations.

In the case examined here, there are different movements linked to the issue of drug trafficking and its effects, and they seem to be related somehow with the adoption of policies for the specialization of courts in the states. These movements are a) the fluctuation of crime rates, in particular, violent and intentional death (VID) rates, which present different patterns in Brazilian regions, and b) the presence of criminal factions with distinct characteristics in each region.

In the period between 2011 and 2018<sup>5</sup>, there was a steady growth of VID rates in the Northern region of Brazil, from 20.5/100,000 inhabitants to

<sup>5</sup> Data referring to violent and intentional death (VID) between 2011 and 2018 was collected from the document “Anuário do FBSP” (2018, p. 20-21). It is worth emphasizing that data from this period involve the second, third, and fourth wave specialization, as there are indicators from the year before the adoption of the policies.

44.1/100,000 inhabitants (variation of 115%)<sup>6</sup>. The rates grew again in 2017 and started to fall in 2018 (from 37.3 to 47.7/100,000 throughout 2017, and falling in 2018 to 41.4/100,000 inhabitants, representing a variation of 11%). In the Central-West region, there was growth until 2014 (from 23.1 to 37.2/100,000 inhabitants) with a drop in subsequent years to 28.4 in 2018 (23% change from 2011 to 2018). The Southeast region<sup>7</sup> showed some stability regarding this indicator, with a variation of VID of -0.9%, maintaining a pattern of decrease already seen in previous years (from 17.8 to 17.6 between 2011 to 2018). In the South<sup>8</sup>, the VID also decreased from 22.8 in 2011 to 19.6 in 2018, with a change of -14.1%.

As for the presence of criminal groups with different characteristics in each region, the literature has described some phenomena that help to understand the different dynamics. Among them, the federalization of factions in the North due to federal prisons; The expansion of criminal groups to the North and Northeast, leading to periods of dispute, agreements between local and national criminal groups and subsequent territorial disputes and, finally, the dominance of drug trafficking by national groups, particularly the Primeiro Comando da Capital (PCC) (Paiva, 2017; Manso; Dias, 2017; 2018; Xavier, 2017). It is worth mentioning that local criminal groups are still prominent in some regions, such as in Rio Grande do Sul, where there are fierce disputes for territory among local factions (Cipriani, 2018).

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<sup>6</sup> The Brazilian state of Pará grew exponentially to a rate of 54.6, which represents a variation of 230.9% from 2011 to 2018. The state of Roraima oscillated, presenting growth in the VID rate from 13 per 100,000 inhabitants in 2011; to 66.6 per 100,000 inhabitants in 2018.

<sup>7</sup> The Southeast Region of Brazil oscillated due to the numbers of the state of Rio de Janeiro. In the states of São Paulo and Minas Gerais, however, the numbers are decreasing since 2014 and 2017, respectively.

<sup>8</sup> Despite the oscillations of the high rates in the state of Rio Grande do Sul (from 17.5 in 2011 to 27.7 in 2017, falling to 21.9 in 2018).

Local news<sup>9</sup> expresses the demand for specialized courts to act in this scenario, emulating experiences from other nearby state courts, a process that was identified by the visits of members of the Ceará's judiciary system to Alagoas to observe that state's experience.

Another aspect, identified in the experience of the specialized federal criminal courts and expressed in the CNJ Recommendation, but which does not directly concern the performance of state criminal justice, is the internationalization criminal groups at the borders, especially in the northern region of the country (Mena, 2017; Manso; Dias, 2017; 2018). From the categories mentioned before (criminal conjuncture, motivation to adopt the policy, political-institutional context, legal norms, and role of entrepreneurial agents) it was possible to separate the specialization cases, as demonstrated in Table 3 and 4. Thus, the next part of this section discusses the different scenarios with the grouped states.

It is possible to say that three different faces of organized crime motivated the specialization of state criminal courts. Pará has specialization motivated by the recommendations of the CNJ, followed in the North by Roraima and recently by Acre. In the Northeast, led by Alagoas (2008), the specialization sought to challenge the disputes among criminal groups, inside and outside the prison facilities. This was the case of Bahia, Ceará, Maranhão, and Piauí. In the Central-West region, Mato Grosso (2008) started the specialization, concerned with political corruption, and it was followed later by the states of Santa Catarina and Goiás. In the case of Santa Catarina, the actors seem to emphasize the issue of public agent's corruption (which occurred after the CNJ's Recommendation). This is important because at the time of the specialization of the court in Mato Grosso, in 2007, and the case of Alagoas, in 2008 – i.e., before Operation Car Wash – the resolutions of other Courts of Justice (TJs) or state laws were not very explicit regarding the specialization focusing on this specific offense.

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<sup>9</sup> <http://www.tjal.jus.br/comunicacao2.php?pag=verNoticia&not=13166>

The fourth and final wave, after Operation Car Wash, seems to have diffused the idea of specialization to states that have distinct characteristics from the scenarios observed in the cases of North and Northeast of Brazil. This wave is characterized by the specializations in courts of the Rio Grande do Sul, Rio de Janeiro, and São Paulo. Since most states seem to specialize because of organized crime committed by criminal groups, the study analyzed some scenarios underlying the processes of state specialization. The existence of criminal groups operating nationwide and the conflicts among them are phenomena identified in most states where the specialization was motivated by the fight against criminal factions (second wave of specialization). The presence of the criminal groups PCC and CV is remarkable in the states of Northeast (AL, RN, and CE), and North (AC, PA, RO, RR, TO).

Among the states that do not have local criminal groups, but it is possible to identify the presence of national factions disputing territory or operating alone (AL, MT, PI, RR, SP), most have courts specialized in organized crime. The state of RS, where the specialization of courts occurred only in the last wave, stands out for not presenting activity of national factions, as well as having the largest number of local criminal groups (seven in total). Regarding how the specialization of courts occurs, the endogenous process is the initiative of the judiciary, where the political creation does not involve expenses and can be done through Resolution – i.e., there is the specialization of existing courts.

As for exogenous processes, the state executive can also transform existing generalist courts into specialized ones through resolutions, which is the case of Pará (2007), Mato Grosso (2008), Acre (2018), Rio Grande do Sul (2019), Rio de Janeiro (2019), and São Paulo (2019). In exogenous processes, the executive and legislative branches take the lead. Besides transforming existing courts, another form of institutionalization of the judicial specialization policy is the creation of new specialized ones. This measure is

taken through complementary law by the states' executive and legislative branches. In this case, there may be both budget increase or simple relocation of the court's organizational structure.

Notwithstanding, the specialization through complementary law implies a greater political and economic costs, particularly when there is the need to increase human resources in the court, changing fixed expenses. Table 3 shows this scenario in state criminal courts.

**Table 3 – Structure and agents in the policy diffusion to specialize state criminal courts**

		Structure	
		Create new courts	Specializes existing courts
Agent	Endogenous (Resolution or provision)		TJPA, TJMT, TJAC, TJRS, TJSP, TJRJ
	Exogenous (Complementary law)	TJAL, TJBA, TJCE, TJPI, TJGO	TJMA

**Obs.:** TJRR and TJSC are an exception because they are initiated by both endogenous and exogenous actors.

**Source:** Database of specialization of state courts to fight organized crime, elaborated by the authors (2019).

Interestingly, most states have chosen to specialize through resolutions, not involving the legislative branch. The specialization made by competence of the legislative branch (enacting complementary law), was the case in Alagoas (2007) during the mandate of Teotonio Vilela Filho (PSDB); Bahia (2015) with Rui Costa (PT); Ceará (2018) with Camilo Sobreira de Santana (PT); Piauí (2017) with José Wellington Barroso de Araújo Dias (PT); Maranhão (2018) with Flávio Dino (PCdoB); and Goiás (2018) with José Elinton de Figuerêdo Júnior (PSDB).

In this type of specialization, the creation and implementation of judicial policy is related to government policy, thus, it is the result of the relationship between the executive and legislative powers. As a government policy, specialization may relate to the political agenda of the ruling political party to reflect a spectrum of the ideological or political views of what the executive and legislative understand as a public problem to be fought, whether in the area of public security or the transparency of public administration.

Although the state executive branch has no direct competence over the issue, an interesting aspect that deserves further consideration is the preponderance of the political parties PSDB and PSD (center/right-wing) in the government when the state focuses on creating specialized courts with the narrative of fighting corruption. It is noteworthy, however, the fact that the legal and institutional structures adopted in these states as a result of policy diffusion originate from the federal government, created during the government of the Workers' Party (PT) (left-wing). Considering the rivalry among these parties and their position in power in the federal and state governments, it is interesting to observe the political competition amongst them based on the narrative around fighting corruption. As for the governments of the group of states that established specialized courts to fight organized crime, the more frequent political parties are PT, PSB, and PCdoB (left-wing).

There are two states in which specialization has taken place both by complementary law and by resolution. In Roraima first by resolution in 2008 and then by complementary law in 2009. Santa Catarina is the other case, where the specialization by complementary law in 2010 was succeeded by two resolutions in 2013, a new complementary law in 2015, and a new resolution in 2018. These dissident cases demonstrate that policies initiated by the judiciary (endogenous) can also enter the political arena by being defined by (exogenous) political actors, legitimizing judicial policy as public policy.

It is noteworthy that the last wave of specialization has been endogenous, with resolutions produced by the judiciary, except in the case of Goiás, where the specialization was carried out by complementary law in 2019. The existence of specialized federal criminal courts in practically all Brazilian states does not explain the diffusion of the policy of specialized state criminal courts. This phenomenon is reinforced as the states that did not have federal justice courts with these specialized criminal courts (Alagoas, Mato Grosso, Roraima, Maranhão, Piauí, and Acre), were among the most important examples of creating specialized courts in their judicial system.

Other factors that may be related to the specialization of state courts are the institutional development of states and the different efforts and degrees of cooperation between different justice institutions. In their own way and time, these institutions specialize in dealing with the same public problem.

Learning and emulation are the two main mechanisms of policy diffusion analyzed in this study. The implementation of the innovation in the states was carried out through a learning mechanism originated in specialized federal courts, using guidelines created by CNJ. Later, the reproduction by other groups was carried out via emulation, with neighboring states seeking to know and copy the state specialized courts, in the form of voluntary and non-coercive diffusion. Table 4 below groups the cases into these two mechanisms. Learning is expressed mentioning the CNJ Resolution, and emulation by mentioning other specialized state criminal courts as model/reference.

This is the case of Alagoas, which after the implementation of the Court of Maceió in 2007, inspired other courts in the Northeast of Brazil, in states such as Piauí in 2007, Bahia in 2016<sup>10</sup>, and Ceará in 2018.

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<sup>10</sup> <http://www5.tjba.jus.br/portal/instalada-vara-dos-feitos-relativos-a-delinquencia-praticados-por-organizacao-criminosa/>

Alagoas created a court specialized in this type of crime. In Ceará, we will create a similar unit. I believe that within six months, it will be up and running. (Jacinta Mota, Coordinator of Criminal Courts of Fortaleza – Capital of the State of Ceará – in an interview to Dicom TJ-AL, on April 11, 2018).

**Table 4 – Mechanisms of diffusion in specialization of state courts**

		Mention the CNJ	
		Mentions	Does not mention
Mentioning other specialized state criminal courts	Yes		TJBA, TJCE, TJPI
	No	TJPA, TJAL, TJMT, TJRR, TJMA, TJAC, TJSP	TJSC, TJRS, TJRJ

**Source:** Database of specialization of state courts to fight organized crime, elaborated by the authors (2019)

In diffusion by learning, as in the case of this study, it is possible to observe that, as demonstrated in the literature, the diffusion processes are not watertight. Lessons learned during the process lead to changes in implementation, as observed in the example of the exchange of experiences among the states in the Northeast of the country, starting from the state of Alagoas. The judge of the specialized court of Maceió, capital of Alagoas, stresses the relevance of the experience exchange to improve the judiciary: “it is a pleasure to share our experience and see it replicated, with occasional adaptations that may even improve and benefit our own model in the future” (Interview with Dicom TJ-AL, April 11, 2018).<sup>11</sup>

<sup>11</sup> <http://www.tjal.jus.br/comunicacao2.php?pag=verNoticia&not=13166>

The study observed two states that followed different patterns in comparison to the format described here. They did not mention the Resolution from the CNJ and did not explicitly copy experiences from neighboring states. It is necessary to deepen the analysis, but there are elements of the experience that potentially explain these cases – such as the publicizing effect of Operation Car Wash. It is the case of the State of Rio de Janeiro, with the specialized court related to the operation and the State of Rio Grande do Sul, in the experience of the Federal Regional Court (TRF4).

A final aspect of being further explored in future research is the role of networks of other institutions of the justice system in producing demands for state criminal judicial specialization. A first analysis shows that in the states of Maranhão, Ceará, Bahia, Rio Grande do Sul, Santa Catarina, and Goiás, during the implementation of the state courts, the news mentioned other specialized actors of the network of accountability institutions, described in the works by Arantes (2011a; 2011b), Power and Taylor (2011) and Da Ros (2019).

## **5 Conclusion**

Judicial specialization has been disseminated in Brazil. Observing movements both from state and federal justice it is possible to state that the Brazilian judiciary has left behind the rule of generalist courts.

While responding to local cases involving drug trafficking, organized crime, criminal groups, the structures of the federal justice system designed to fight corruption were disseminated to the states' justice system. This process occurred through diffusion, using the structures for goals that were different from the ones they had been designed for, which reveals the capability of the specialization policy to adapt to different contexts. In the state courts of many states, corruption, drug trafficking, organized crime, and criminal groups issues that raise concern, alluding to the problem of public security.

In this context, the mechanisms of public policy diffusion and the replicability of proposals and actions come into play. If Arantes (2011a; 2011b) pointed to initial movements taking the fight against corruption from civil or administrative spheres to the penal sphere, the analysis conducted here suggests another movement, taking the fight against corruption back to state justice.

This study recognizes that diffusion usually conveys ideas (and also may disseminate designs and models of public policy implementation), and observed cases of judicial policies to build a model that would understand this process based on categories, such as the differentiation by entrepreneurial actors, implementation strategies, political and institutional contexts, reasons for adherence. It was possible to verify four major waves, two diffusion mechanisms, two large groups regarding the reasons for adhering to a policy of criminal judicial specialization.

The research efforts continue, seeking to expand the understanding about the next waves of diffusion of public policies regarding the specialization of criminal courts, the particularities of organized crime and the actions of other institutions and actors of the states' justice system.

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