

# Theory of proceduralized illegality: narrative governance and accountability deferral in Brazilian financial accountability regimes (Banco Master, 2025–2026)

## Abstract

This article develops a closed-corpus, discourse-oriented institutional analysis of publicly accessible institutional documents, official communications, judicial acts, and professionally edited journalistic reporting concerning the Banco Master case (extrajudicial liquidation in November 2025) and comparable large-scale financial scandals in Brazil (e.g., Americanas). The empirical basis was pre-collected prior to writing and is mobilized as analytical input rather than as investigative evidence. The theoretical aim is theory-building in law and institutional analysis: systemic corruption, financial crime, and institutional illegality are conceptualized not as episodic deviations but as functional components of contemporary governance arrangements. Within this framework, crises are approached as moments in which institutional narratives, procedural rationalities, and accountability regimes are publicly negotiated and stabilized. Results are organized around three recurring discursive patterns identified in the pre-collected corpus: (1) moral indignation coupled with the individualization of responsibility; (2) strategic silence regarding prior institutional and political connections; and (3) displacement of responsibility toward procedural and institutional constraints. The discussion articulates the article's original contribution by linking these patterns to the structural limits of legal accountability and to the production of narrative governance in contexts marked by institutional inertia.

**Keywords:** discourse analysis, institutional legality, financial crises, accountability, procedural governance, narrative governance

Volume 14 Issue 1 - 2026

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**Received:** February 2, 2026 | **Published:** March 6, 2026

**Abbreviations:** BCB, banco central do Brasil; CMN, conselho monetário nacional; IMF, international monetary fund; OECD, organisation for economic co-operation and development; ORCID, open researcher and contributor ID; STF, supremo tribunal federal

## Introduction

Public debates on financial crises routinely combine economic, legal-institutional, and symbolic dimensions. Within a closed-corpus design, this article treats “discourse” not as a neutral description of events but as a set of institutionalized operations of enunciation and circulation that select relevance, stabilize causality, and configure expectations of accountability.<sup>7,8,17,19</sup>

Core research question. How do institutional narratives and procedural rationalities publicly stabilize legality and defer systemic accountability during major financial crises in Brazil, under conditions of selective judicialization and regulatory governance?<sup>2,3,7,8</sup>

Motivation and gap. Existing scholarship has explained crisis governance through adjacent lenses such as judicialization and political courts, lawfare as a governance environment, regulatory capitalism and capture incentives, and the administrative management of exceptional logics.<sup>2,3,7,8,17-19</sup> However, these strands are rarely operationalized together as a single framework for explaining how accountability becomes publicly intelligible and institutionally manageable via discourse under procedural legality, particularly in financial accountability regimes.<sup>17,19,24,26</sup>

Empirical focus and analytical posture. The empirical focus is anchored in the Banco Master case (liquidation in November 2025),

treated analytically as a paradigmatic contemporary instantiation of a long-term Brazilian pattern of financial crises and institutional responses, as documented in the author's pre-collected historical-institutional dataset (1889–January 2026). The article does not reconstruct the case narratively and does not claim investigative novelty. Instead, it mobilizes pre-identified discursive patterns to theorize how legality, responsibility, and institutional credibility are publicly articulated when crises become visible.<sup>24,26,27</sup>

The article advances a theory-building proposition in law and institutional analysis: systemic corruption, financial crime, and institutional illegality are conceptualized not as external deviations from governance but as normalized components within contemporary governance structures. In this approach, “illegality” is not restricted to a juridical category; it is also an institutionalized field of practice whose governance effects depend on how legal and political systems organize visibility, proceduralizing, and narrative closure. This proposition is formulated as a theoretical framework rather than as an empirical claim about any individual actor.<sup>1,4-6</sup>

This article's original contribution lies in advancing a structural shift in the analysis of illegality within democratic governance. While existing literature on lawfare, judicialization, regulatory capture, and states of exception tends to conceptualize illegality either as episodic deviation, strategic abuse, or juridical suspension, the present framework reconceptualizes illegality as a normalized and governable institutional output. The Theory of Institutionalized Illegality departs from deviation-based and failure-based models by demonstrating how legality itself operates as a governance technology that absorbs, manages, and

stabilizes systemic illegality through procedural rationality, narrative individualization, and selective judicialization.<sup>2,3,7,8,19</sup>

**Methodological constraint.** All empirical descriptions in this manuscript are derived exclusively from a pre-collected closed corpus composed of publicly accessible institutional documents, official communications, judicial acts, and professionally edited journalistic reporting produced by organizations subject to editorial, legal, or institutional accountability. No material from private leaks, anonymous sources, or unverifiable disclosures was used.

The manuscript is organized as follows. The theoretical and conceptual architecture is developed as an internal expansion of the Introduction, consistent with MedCrave's sectioning. Materials and Methods specify the closed-corpus rules and the analytical procedures employed. Results formalize the three discursive patterns identified in the pre-collected corpus. Discussion integrates the conceptual model and the empirical patterns, articulating the manuscript's original legal-institutional theory. The final sections provide a conclusion, acknowledgments, conflicts of interest, and references.

**Core thesis.** Contemporary Brazilian financial crime governance operates under a normalized regime of institutionalized illegality in which selective judicialization, procedural displacement, and regulatory accommodation can coexist as functional components of state–market governance, systematically constraining the prospects of effective systemic accountability.<sup>7,8,17,19</sup>

## Theoretical framework

### Genealogy of exception and sovereignty

A first conceptual axis concerns the genealogy of exception and sovereignty as a technique of rule. Within this axis, the relevance of Schmitt and Agamben is not to restate a political-theological narrative, but to extract an institutional grammar: legality can be stabilized through the management of its own limits, and governance can operate through decisionist framing and competence-bound proceduralization. In this manuscript, this grammar is analytically connected to the empirical pattern of procedural displacement: the public meaning of legality is reanchored in boundaries of competence, sequencing, and formal limitation.<sup>2,3</sup>

Arendt contributes to a complementary operator by enabling a non-exceptionalist understanding of normalization. The analytical emphasis is not on dramatic rupture but on the routine of harmful outcomes in ordinary administrative life. This supports the conceptual claim that exception can become routine not only as juridical suspension, but as institutional habit: a stable mode of organizing the relationship between public demand for accountability and institutional capacity for processing responsibility.<sup>1</sup>

### Patrimonialism and institutional formation in Brazil

A second axis concerns the institutional formation of Brazil through patrimonial continuities. Faoro and Sérgio Buarque de Holanda provide an account of state–market hybridity in which the boundaries between public authority and private interest are structurally porous. The present manuscript mobilizes this axis as institutional morphology rather than as cultural explanation: it specifies why legality can become selective, why crisis management can distribute losses through public or collective mechanisms, and why individualized accountability can remain limited even when formal legal instruments exist.<sup>5,6</sup> This morphology is central to the manuscript's historical layering (1889–January 2026): the Banco Master episode is not interpreted as anomaly but as a paradigmatic instantiation of a long-term configuration in which crises are absorbed

through institutional routines that preserve continuity while controlling the visibility of systemic responsibility.

### Judicialization and lawfare as governance

A third axis concerns the judicialization of politics and the structural conditions for lawfare. Hirschl's account of political courts enables an institutional reading of judicialization as a reconfiguration of governance in which courts become arenas for distributing legal urgency. Brinks et al.'s synthesis of legalization, judicialization, and lawfare enables the argument that lawfare is not necessarily an episodic abuse; it can be structurally embedded in governance arrangements that preserve formal legality while producing selective accountability.<sup>7,8</sup> Within the Brazilian context, the institutional design of specialized anti-corruption courts is analytically relevant because it illustrates how intensified legality can be produced for specific domains and targets, while other domains (including financial governance) remain governed by dispersed competences and procedural time.<sup>9,39</sup>

This manuscript advances a theory of “institutional illegality” as a normal-form of governance in state–market–judiciary interactions. The analytical wager is that illegality is not simply a violation to be corrected by law; rather, under certain institutional configurations, illegality becomes governable through legally legible devices: selective judicialization, procedural displacement, and regulatory accommodation. This theoretical posture is developed by combining three clusters: (i) exception and decision (“state of exception”) as an institutional technique of rule; (ii) institutional normalization of harmful conduct as a non-heroic, routinized practice; and (iii) patrimonial continuities that mediate the boundary between public authority and private interest.<sup>1–6</sup>

### Beyond classical lawfare: from episodic weaponization to systemic legal shielding

In its classical formulation, “lawfare” tends to be conceptualized as strategic weaponization of legal instruments for political advantage, frequently as an episodic or contingent practice within adversarial political disputes. Contemporary analyses broaden the scope by connecting legalization, judicialization, and lawfare to structural shifts in governance in which courts and legal procedures become pivotal arenas of political conflict.<sup>7,8</sup> The present manuscript proposes a conceptual distinction between lawfare-as-weapon and lawfare-as-environment. The former presupposes identifiable targets and discrete campaigns; the latter denotes a stable institutional ecology in which procedural legality becomes a generalized mode of political management and, crucially, a mode of “legal shielding” for systemic financial crime. In this sense, the new theory is not merely additive to lawfare; it reorients the analysis toward how procedural legality can produce asymmetries of visibility, timing, and imputability that are structurally favorable to institutional impunity in financial crime governance.

### Exception as administrative routine

Schmitt's and Agamben's treatments of exception provide a conceptual vocabulary for understanding how legal order can be maintained by suspending, modulating, or reconfiguring the conditions under which law is applied.<sup>2,3</sup> For the present argument, the key point is not the dramatic rupture of law, but the routinization of exceptional logics as administrative practice. The exception becomes a mode of governance when institutions repeatedly rely on competence boundaries, procedural sequencing, and formal limitations to stabilize authority under crisis. This routine connects directly to the third discursive pattern identified in the empirical material: procedural displacement of accountability. When procedural limitation becomes

the primary explanatory register, legality is redefined as the observance of institutional form, while systemic illegality is rendered governable as a sequence of acts. The theory therefore treats the exception not only as a moment of suspension, but also as a technique of institutional time-management: an administrative temporality that can defer accountability without denying it.

### **Institutional normalization and the banality of illegality**

Arendt's discussion of the banality of evil offers a conceptual axis for interpreting how harmful outcomes can be produced through ordinary organizational routines rather than through extraordinary intent.<sup>1</sup> In this manuscript, the analytic transposition is cautious: the argument is not moral equivalence, but structural analogy. Institutional illegality becomes banal when it is enacted through ordinary procedural steps, stable vocabularies of compliance, and routinized narrative closures. Voegelin's concern with deformation of order complements this axis by foregrounding how symbolic structures can normalize practices that erode substantive legality while maintaining formal legitimacy.<sup>4</sup> Together, Arendt and Voegelin support a theory in which impunity is not an accident of enforcement but a feature of institutionalized sense-making.

### **Patrimonial continuities and state–market hybridity**

Brazilian patrimonialism, as theorized in the long tradition represented by Faoro and Sérgio Buarque de Holanda, provides a structural account of the porous boundary between public authority and private interest.<sup>5,6</sup> The present argument mobilizes patrimonialism not as cultural explanation, but as institutional morphology: a set of durable arrangements through which legal authority can be selectively activated, and through which market actors can become co-producers of the very norms that govern them. The circulation of senior officials between supervisory roles and positions of influence in crisis management illustrates a personnel-based dimension of capture (sometimes described as cognitive or revolving-door capture). Under such conditions, regulatory norm-production and market practices may become closely aligned within the institutional apparatus, reinforcing the state–market hybridity described by the patrimonialism literature. This structural continuity is central to the manuscript's historical layering (1889–January 2026): it allows the Banco Master episode to be approached not as anomaly but as a paradigmatic manifestation of a recurring configuration in which crises are absorbed through public mechanisms, while individualized accountability remains limited.

### **Psychopolitics, risk, and the governance of uncertainty**

Byung-Chul Han's account of contemporary governance through internalization and self-regulation provides an additional lens for understanding how compliance discourses can become instruments of depoliticization and individualization.<sup>15</sup> Taleb's notion of fat-tailed risk and the epistemic limits of prediction helps situate crisis governance within an environment where institutions can plausibly claim uncertainty while simultaneously maintaining stable procedures that distribute losses and defer accountability.<sup>16</sup> Psychopolitics and fat-tailed risk situate governance within environments where uncertainty can be institutionally invoked as an explanatory resource. Under procedural governance, regulators may frame delayed detection as a function of unpredictability or informational constraints, even when business models systematically externalize tail risks through collective protection mechanisms. In this sense, uncertainty is not merely an external fact; it can function as an institutional resource that reinforces procedural displacement. In the present theory, uncertainty is not merely an external fact; it becomes an institutional resource.

Under a procedural regime, uncertainty justifies deference to form and competence boundaries, reinforcing the displacement pattern.

### **Judicialization, lawfare, and juristocracy**

The rise of political courts and the judicialization of megapolitics define a context in which legal institutions become central to the governance of conflict.<sup>7</sup> Rather than treating courts as external correctives, this manuscript analyzes judicialization as an institutional field characterized by selective legality: some problems are rendered justiciable and urgent, while others are displaced into procedural temporality. Recent work on legalization, judicialization, and lawfare supports the claim that lawfare is compatible with legal forms and can be structurally embedded in governance arrangements.<sup>8</sup> The new theory advanced here emphasizes how this embedding can operate as "systemic legal shielding" in financial crime governance: procedures can be mobilized to produce legitimacy while delimiting the space of substantive accountability.

The institutional design of specialized anti-corruption courts illustrates how formal architectures can create zones of intensified legality for some targets while leaving other domains governed by dispersed competence and slow procedural sequencing.<sup>9,39</sup> Comparative evidence on anti-corruption courts underscores that institutional design choices shape the practical horizon of accountability, even when statutes formally exist.<sup>10</sup> Within Brazilian constitutional dynamics, the role of constitutional tribunals is analytically relevant insofar as it helps conceptualize how high courts stabilize constitutional meaning and institutional boundaries, thereby affecting which conflicts are treated as systemic threats versus ordinary disputes.<sup>11,14</sup>

### **Regulatory capture and financial crime governance**

The economic literature on regulation provides a conceptual backbone for analyzing why financial crime governance can coexist with formal legal frameworks without producing effective sanction. Stiglitz's account of information asymmetries and paradigm change is relevant here because financial regulation is structurally dependent on informational environments dominated by regulated actors.<sup>17</sup> Posner's theorization of regulation as a field shaped by interests and institutional incentives supports the view that regulatory outputs may be systematically aligned with the regulated sector.<sup>18</sup> Braithwaite's account of regulatory capitalism provides a macro-institutional frame for understanding regulation as a governance regime in which state authority is recomposed through networks of private and public actors.<sup>19</sup>

Brazilian studies on capture and state–finance interactions provide an internal articulation of these mechanisms.<sup>12,13</sup> Under the proposed theory, capture is not an occasional deviation but a stable component of governance that aligns with the discursive patterns identified in the empirical material: individualization of responsibility can coexist with institutional accommodation, while procedural displacement can function as a legally legible translation of regulatory inertia.

At the institutional level, the legal architecture of the Brazilian financial system (Lei 4.595/1964) and the extrajudicial liquidation regime (Lei 6.024/1974) establish formal mechanisms for intervention and resolution.<sup>20,21</sup> The present analysis does not evaluate these norms as policy; it examines how their procedural structure can be mobilized as an institutional vocabulary that legitimizes delayed accountability. Anti-money laundering and corporate liability frameworks (Lei 9.613/1998; Lei 12.846/2013) provide additional formal layers that, under a regime of selective judicialization and capture, can coexist with low systemic accountability.<sup>22,23</sup>

International institutional materials on integrity and bank resolution provide comparative baselines for interpreting what counts as robust safeguards under conditions of failing banks and systemic risk.<sup>24,26,27,37,38</sup> They are mobilized here not as external judgment but as analytical contrast: under a regime of institutional illegality, international templates can be selectively adopted as formal compliance while domestic accountability remains procedurally displaced.

### **Empirical illustration: Banco Master as paradigmatic systemic event**

The Banco Master case (liquidation in November 2025) is treated as a paradigmatic illustration of the theory rather than as a journalistic episode.

### **Regulatory architecture as a grammar of response**

Analytically, the case is approached through the regulatory architecture that defines the institutional repertoire of crisis response. The legal structure of the national financial system and the extrajudicial liquidation regime define how intervention, administration, and liquidation can be made institutionally legible.<sup>20,21</sup> In the proposed theory, this repertoire is not merely a legal toolkit; it is also a discursive resource: it enables the translation of systemic questions into competence-bound procedural sequences.

### **Central Bank action, deposit insurance arrangements, and institutional coupling**

Within the closed-corpus constraints, the analysis treats central bank regulation and resolution norms as institutional markers of how crisis management becomes procedurally articulated.<sup>28–31</sup> Deposit insurance arrangements and resolution safeguards are approached as institutional devices that can stabilize continuity under failure conditions; their governance effects depend on how loss allocation and responsibility attribution are narratively and procedurally framed. Comparative institutional benchmarks clarify the range of safeguards typically associated with effective resolution systems.<sup>26,27,37,38</sup>

### **Judicial passivity and procedural shielding**

The case is further interpreted through the lens of selective judicialization and procedural shielding. Under a regime of institutionalized illegality, the judicial field can intensify legality for some targets while displacing systemic accountability into procedural temporality for other domains.<sup>7–9</sup> This mechanism is consistent with the discursive pattern of displacement identified in the empirical material: accountability becomes a promise indexed to procedure, not a substantive horizon of systemic responsibility.

Future research based on explicitly expanded corpora may explore how specific institutional fissures, internal dissent, or regulatory conflicts affect the stability of proceduralized governance. Such extensions would allow examination of conditions under which institutionalized illegality becomes less stable or publicly contestable, without altering the closed-corpus constraints of the present study. If internal institutional disagreement or procedural contestation is documented within the closed corpus, it may be analytically relevant as an indicator of limits to procedural stabilization; however, the present study does not extend beyond the corpus constraints.

### **Systemic incentives and regulatory accommodation**

Finally, the case is interpreted through incentive structures and informational asymmetries that characterize regulatory governance. Theoretical accounts of information and regulation clarify why financial oversight can remain structurally dependent on informational

environments dominated by regulated actors, and why capture incentives can be compatible with formal compliance.<sup>12,13,17–19</sup> In such contexts, institutional responses can stabilize continuity and manage uncertainty while leaving systemic imputability weak. Within the closed-corpus design, the empirical goal is not to reconstruct factual sequences but to analyze how the public intelligibility of the event is produced through stable discursive operations.

First, the moral individualization pattern is analytically relevant because it transforms a structurally complex event—involving institutional rules for intervention, liquidation, and loss allocation—into a narrative of personal fault. This narrative form is compatible with a patrimonial morphology in which public attention is directed to individualized culpability while the distributive and institutional mechanics of crisis remain backgrounded.<sup>1,5,6</sup> Second, strategic institutional silence, as identified in the pre-collected corpus, is treated as an operation that restricts contextualization of prior institutional connections, thereby narrowing the field of plausible systemic explanation. In the proposed theory, such restriction aligns with the administrative routine of exception: the institution communicates through competence boundaries and procedural minimalism, rendering broader structural explanation institutionally costly.<sup>2–4</sup>

Third, procedural displacement connects directly to the legal architecture of bank resolution and to the institutional language of “constraints”: legality is publicly stabilized as procedure, while accountability is translated into timelines, competences, and sequential acts. This is analytically consistent with regulatory capitalism and capture dynamics, in which institutional responses can maintain continuity and manage risk while limiting systemic imputability.<sup>17–21</sup> The empirical sections below operationalize these claims through the three patterns formally presented in Results and interpreted in Discussion.

### **Conceptualization of the theory of institutionalized illegality**

The Theory of Institutionalized Illegality is proposed as a legal-institutional model for describing how modern democratic systems can normalize illegality through lawful mechanisms.

#### **Definition**

Institutionalized illegality denotes a structural configuration in which unlawful or socially harmful outcomes are managed through lawful mechanisms that remain institutionally legible and formally correct. The defining property is not the “absence” of law, but the conversion of accountability into a procedural horizon: legality is stabilized as form (competence, sequence, formal compliance), while illegality is governed as a manageable output of institutional routines.

#### **Mechanisms**

The theory specifies four mechanisms.

- I. Procedural displacement. Accountability is translated into timelines, competence boundaries, and formal sequencing, which stabilizes legitimacy while extending the temporal horizon of responsibility.
- II. Narrative individualization. Public intelligibility is stabilized through moral indignation and personalization, converting systemic complexity into individualized culpability narratives.
- III. Context restriction (strategic silence). Institutional communications restrict contextualization of prior connections and structural relations, narrowing the field of plausible systemic causality.

- IV. Regulatory accommodation. Regulatory architectures and incentive structures can stabilize continuity through intervention and resolution mechanisms without producing systemic accountability, particularly under informational asymmetries and capture incentives.
- V. Zero-accomplice horizon. The zero-accomplice horizon denotes a discursive closure effect through which accountability expectations are publicly exhausted at the level of a limited set of identifiable individuals.

Under this horizon, institutional, supervisory, intermediary, and distributive mechanisms are rendered secondary or residual, even when formally present. The mechanism does not presuppose intent or concealment; it operates by aligning moral indignation with individualized culpability while translating systemic involvement into procedural background. As an analytical device, the zero-accomplice horizon specifies how narrative individualization complements procedural displacement by delimiting the socially intelligible scope of responsibility (Table 1).

**Table 1** Mechanisms of institutionalized illegality and illustrative discursive effects

Mechanism	Function	Illustrative discursive effect
<b>Procedural displacement</b>	Converts accountability into timelines, competence boundaries, and formal sequencing	Formal robustness language substitutes for substantive explanation and timely responsibility attribution
<b>Narrative individualization</b>	Channels public indignation into personalized blame and symbolic closure	Focus on individual conduct displaces institutional and distributive mechanics
<b>Context restriction (strategic silence)</b>	Narrows the field of discussable causality by omitting relevant linkages	Silence performs “normality” and reduces communicable systemic responsibility
<b>Regulatory accommodation</b>	Stabilizes continuity through resolution/guarantee mechanisms under asymmetries and capture incentives	Safeguards and routines become substitutes for substantive accountability narratives

### Typology

To operationalize institutionalized illegality analytically, the manuscript proposes a typology of three types.

Type I: Procedural shielding. Illegality is governed by converting it into a process whose legitimacy is assessed primarily by formal correctness.

Type II: Selective legality. Illegality is governed through differential intensity of enforcement and judicialization across domains, producing zones of heightened legality and zones of procedural deferment.

Type III: Institutional absorption. Illegality is governed by channeling crisis outcomes into collective or public mechanisms, preserving organizational continuity while maintaining limited individualized accountability.

Type III (Institutional absorption) may involve what can be described as preventive socialization of losses, whereby resolution mechanisms and collective buffers reduce immediate systemic disruption while diluting individualized accountability. In contexts where rapid retail expansion increases the political and social costs of non-intervention, institutional incentives may favor containment arrangements that stabilize continuity even when underlying fragilities remain insufficiently scrutinized within the public horizon.

### Distinction from corruption studies and regulatory failure

The theory is distinct from descriptive corruption approaches that treat corruption as deviance and from regulatory failure narratives that emphasize inefficiency. Instead, it treats illegality as governable and functional within a configuration of state–market–judiciary coupling. In this sense, the theory is designed for institutional analysis: it explains how legal shielding can be produced without explicit suspension of law and without requiring investigative claims about individual intent. The core claim is structural: institutional illegality is not simply “present” in governance but is governed through regular forms of legality that redistribute visibility, delay imputability, and stabilize legitimacy.

### Conceptually, the theory distinguishes three levels:

First, “institutional illegality” denotes a stable field of practices in which illicit or harmful outcomes are produced and managed through ordinary organizational routines rather than through exceptional ruptures. This analytic emphasis resonates with the concept of banality as a mode of institutional production of harm, understood here as routine rather than as moral judgment.<sup>1</sup>

Second, “legal shielding” denotes the institutional conversion of substantive accountability into procedural legibility. Under a shielding regime, the public meaning of legality is anchored in competence, sequencing, and formal compliance, while systemic accountability is translated into open-ended procedural horizons. This axis is compatible with the analytical grammar of exception as a durable technique of rule.<sup>2,3</sup>

Third, “state–market–judiciary coupling” denotes the institutional configuration in which regulatory incentives, judicial selectivity, and patrimonial continuities converge to stabilize governance outcomes. In Brazilian historical layering, patrimonial morphology provides an account of how public authority can be selectively activated and how private interests can become co-producers of governance norms.<sup>5,6</sup>

The theory is therefore distinct from descriptive corruption studies (which often emphasize deviance) and from generic “regulatory failure” narratives (which often emphasize inefficiency). Instead, it conceptualizes illegality as functionally governable, and governance as a selective legality regime.

### Lawfare as governance technology

In the proposed framework, lawfare is not reduced to episodic weaponization. It is treated as a governance technology that operates through the institutional redistribution of legal urgency. Judicialization can intensify legality for selected targets and domains while procedural rationality displaces accountability for other domains that are structurally embedded in state–market circuits.<sup>7,8</sup> The analytical novelty is to treat lawfare not only as conflict instrument but also as

stabilization device: it can produce public narratives of legal combat while preserving structural impunity in domains where accountability would threaten governance continuity.

### Financial crime governance and systemic impunity

Within Brazilian financial governance, formal legality is organized by statutes and by resolution regimes that define intervention, liquidation, and responsibility allocation.<sup>20,21</sup> The theory does not assess policy effectiveness; rather, it interprets how the procedural architecture itself can become a discursive resource for displacement. Institutionally, the bank resolution and liquidation vocabulary is continuously updated through regulatory instruments. The BCB resolutions cited in the closed bibliography function here as institutional markers of an administrative regime that structures the legible repertoire of crisis response.<sup>28,29</sup> CMN resolutions are treated as complementary markers of how financial stability is translated into normative coordination and competence boundaries.<sup>30,31</sup>

In comparative perspective, deposit insurance and resolution safeguards provide a baseline for understanding how failing banks are handled in other institutional environments.<sup>26,27,37,38</sup> These materials are used analytically: the contrast helps clarify how institutional illegality can persist in the presence of formal safeguards, when enforcement and accountability are selectively proceduralized. Finally, integrity and perception indicators are treated as contextual signals of governance environment rather than as evidence about any individual case.<sup>24,25</sup>

### Methodological positioning of historical layering

The long-term historical-institutional dataset (1889–January 2026) is mobilized as background to interpret recurring plausibilities: cycles of crises, public absorption of losses, and limited individualized accountability. In this manuscript, the dataset is not reproduced and does not function as a sequence of historical case descriptions. Analytically, historical layering serves to connect patrimonial continuities to contemporary governance technologies, allowing the Banco Master case to be treated as a paradigmatic empirical illustration rather than as an isolated anomaly.<sup>5,6,24</sup>

## Material and methods

### Closed-corpus design and empirical material

This research article follows a closed-corpus academic design. The empirical basis is entirely pre-collected and externally validated. It comprises publicly available statements, institutional notes, judicial acts, and professional journalistic coverage related to the Banco Master Case (liquidation in November 2025) and comparable large-scale financial scandals in Brazil (e.g., the Americanas case), as previously consolidated by the author.

Within the closed-corpus design, the analysis remains falsifiable at the level of discursive pattern identification: the theory would be challenged if the corpus systematically displayed sustained systemic contextualization, stable attribution of responsibility at organizational levels, or timely substantive accountability outcomes not displaced into procedural temporality. The design also imposes intrinsic verification limits: administrative confidentiality and non-public internal investigations may restrict what becomes institutionally visible, which is analytically relevant to the argument about narrative governance and procedural deferral, but cannot be overcome within closed-corpus constraints. A second empirical component is a previously consolidated historical-institutional dataset covering major financial scandals, banking crises, institutional frauds, and regulatory failures in Brazil from 1889 to January 2026. This dataset is used strictly as historical

and institutional background; it is not reproduced in the manuscript and no individual case descriptions are provided. The empirical corpus was closed on [27 January 2026], and no materials produced after this date were incorporated into the analysis.

### Empirical source declaration and reference anchors

The empirical material used in this manuscript derives from a prior, author-conducted collection and analysis of publicly available data. For transparency, verification, and reference formatting purposes only, the empirical corpus is treated as closed and complete as previously collected and consolidated by the author. Accordingly, this manuscript introduces no additional sources, outlets, authors, links, or datasets beyond the closed empirical material. Social media posts and audiovisual material previously collected are treated strictly as contextual background and are not used as primary academic references. Within the closed-corpus constraints, the analysis remains compatible with institutional reference points regarding financial regulation, bank resolution, and integrity frameworks.<sup>20,21,24,26,27,37,38</sup>

### Analytical procedure

The analytical procedure is qualitative and interpretive. It proceeds in four steps: (i) systematic reading oriented by the operational definitions above; (ii) identification of recurring argumentative structures and context-selection operations across genres (official communications, judicial acts, professional reporting); (iii) grouping of recurring structures into discursive patterns; and (iv) interpretation of the patterns as institutional operations that shape intelligibility and accountability expectations. Throughout, the analysis distinguishes empirical description (what the pre-collected material recurrently displays) from analytical interpretation (what can be inferred from these regularities). The analysis does not attribute subjective intent or motivation to individual actors.

### Methodological limitations

Methodological limitations follow from the closed-corpus design and the pre-collected status of the material. The article cannot claim empirical completeness beyond the corpus and does not seek to do so. Conclusions are formulated as theory-oriented interpretations compatible with the material provided. Within the closed-corpus design, falsifiability operates at the level of pattern identification and theoretical coherence. The Theory of Institutionalized Illegality would be challenged if the empirical material consistently displayed: (i) systematic institutional contextualization rather than context restriction; (ii) sustained attribution of responsibility at systemic and organizational levels rather than narrative individualization; or (iii) timely substantive accountability outcomes not displaced into procedural temporality. The absence of these counter-patterns within the corpus constitutes the empirical condition under which the theory remains analytically plausible.

### Methodological approach and analytical limits

This section clarifies the methodological commitments that govern the present manuscript, emphasizing the dual orientation to (i) discourse analysis as a strategy for describing recurrent operations of public intelligibility, and (ii) institutional analysis as a strategy for interpreting how legal and regulatory architectures structure what becomes visible, actionable, and imputable.

### Discourse analysis as an institutional method

The analytical premise is that public controversies about financial crises are not merely “reported”; they are constituted through discursive operations that stabilize what counts as a cause, what counts as

responsibility, and what counts as an adequate institutional response. In this perspective, the unit of analysis is not the event as such, but the discursive organization through which events are rendered publicly legible and institutionally manageable. Within the closed-corpus design, discourse analysis is therefore used to isolate regularities of framing and argument organization that recur across genres and institutional positions. The three patterns presented in Results operationalize this choice: (i) moral indignation with individualization of responsibility, (ii) strategic institutional silence regarding prior connections, and (iii) procedural displacement of accountability. The methodological advantage of this approach is that it enables a systematic distinction between (a) what the corpus recurrently shows at the level of textual organization, and (b) what can be interpreted about institutional dynamics from these regularities.

### Institutional analysis and theory-building strategy

The manuscript is not a descriptive review and does not treat theory as an aggregation of author summaries. Instead, it uses the closed bibliography to assemble an analytical architecture capable of supporting an original legal-institutional theory: the “Theory of Institutionalized Illegality”. The theory-building strategy proceeds by (i) defining a minimal set of conceptual operators (exception, procedural rationality, patrimonial morphology, capture incentives, selective judicialization); (ii) specifying how these operators connect to the three discursive patterns identified in the corpus; and (iii) articulating a transferability claim: the model is proposed as a generalizable framework for interpreting legal shielding and systemic impunity in modern democratic governance.

The theoretical clusters deployed in the manuscript operate as analytical constraints, not as authorities to be restated. Exception and sovereignty (Schmitt; Agamben) provide a vocabulary for proceduralized limitation and administrative temporality. Institutional normalization (Arendt; Voegelin) provides a vocabulary for routinized harm and symbolic stabilization of legitimacy. Patrimonial formation (Faoro; Holanda) provides a morphology of state–market coupling in Brazil. Judicialization and lawfare (Hirsch; Brinks et al.; Madeira) specify how legality can be intensified selectively. Capture and regulatory capitalism (Stiglitz; Posner; Braithwaite; and Brazilian capture studies) specify incentive structures and informational asymmetries.

### Case selection and historical layering

The Banco Master case (liquidation in November 2025) functions as a paradigmatic empirical illustration. It is not treated as a journalistic episode and is not reconstructed through quotations. Methodologically, the case is used as an anchor that allows the analysis to: (i) connect the three discursive patterns to a concrete crisis context; and (ii) situate that context within a longer historical-institutional pattern (1889–January 2026) previously consolidated by the author. Historical layering is used as an interpretive background rather than as a dataset to be reproduced. Its function is to prevent the analysis from treating the case as an isolated anomaly and to support the claim that the observed discursive patterns are congruent with long-term institutional continuities.

### Analytical limits

The closed-corpus constraint implies that the manuscript does not introduce new factual claims about specific actors, financial flows, or institutional decisions beyond what was already contained in the pre-collected material. Accordingly, the argument does not depend on investigative novelty. It depends on the claim that a stable grammar of discourse (individualization, silence, displacement) can be analytically connected to a stable configuration of institutional incentives and legal

forms. A further analytical limit follows from the closed-corpus and closed-bibliography design itself. Only materials that are publicly accessible, institutionally accountable, and verifiable through stable primary sources were retained as analytical anchors. In line with international integrity and governance standards, non-verifiable or institutionally opaque materials were excluded and are treated as limits of public intelligibility rather than as evidentiary gaps.

## Results

Based on systematic comparison of official statements, judicial communications, and professional journalistic reporting, three recurring discursive patterns were identified in the pre-collected empirical material. They are presented here as regularities of framing and argument organization, not as evidence of personal culpability.

### Pattern 1: moral indignation with individualization of responsibility

The first pattern consists in the concentration of moral condemnation and causal explanation on specific individuals. Within this framing, crisis becomes publicly intelligible as personal misconduct, while structural, regulatory, and institutional dimensions are relegated to the background. Causality is reorganized through a simplified imputational chain: events produced under complex institutional conditions are narratively rendered manageable as the failure of identifiable persons.

At the level of argumentative structure, individualization compresses context and privileges blame attribution. This produces a public arena in which accountability is expected to materialize primarily through individualized sanction, even when the institutional processes underlying the crisis remain complex, distributed, and temporally extended. In the analysis of Pattern 1, elements previously identified in regulatory, supervisory, and investigative communications contained within the pre-collected corpus are treated as analytically relevant insofar as they participate in this reorganization of public intelligibility.

Within the pre-collected corpus, recurring public descriptions of large-scale financial misconduct—frequently articulated through estimates in the order of billions of reais and framed via notions such as fictitious instruments or simulated transactions with shell entities—operate primarily as discursive triggers of moral indignation rather than as empirical findings of this study. Analytically, these figures function as narrative devices that simplify causal attribution and stabilize crisis intelligibility. Media emphasis on the personal luxury, lifestyle, and individualized conduct of bank controllers reinforces this dynamic, channeling indignation toward personalized culpability while supervisory and systemic dimensions, including the adequacy and timing of Central Bank oversight as represented in the corpus, remain comparatively backgrounded. In this configuration, the multibillion-scale narrative functions as an excess that procedural rationality seeks to domesticate through individualized fault stories, thereby constructing what can be described as a zero-accomplice horizon: a public expectation that responsibility can be exhausted at the level of a few identifiable individuals, with institutional and distributive mechanics treated as secondary.

A further analytically relevant dimension concerns the role of intermediary market actors. Within the closed corpus, publicly reported litigation initiated by consumer and investor associations alleges failures in the disclosure of material risks by major investment platforms, particularly through the emphasis on deposit insurance guarantees as signals of safety for conservative investors. Treated analytically, these allegations do not establish culpability; rather, they illustrate how formal legality—the existence of guarantee mechanisms—can be

mobilized discursively to displace risk perception. In this framing, the governance effect does not depend on the bank’s failure itself, but on how legally compliant narratives of protection and security contribute to reallocating responsibility and obscuring the distributive mechanics of financial risk. This reinforces the thesis that narrative governance operates across multiple institutional layers, extending beyond the state apparatus to encompass market intermediaries and communicative practices.

**Pattern 2: strategic silence regarding prior institutional and political connections**

The second pattern involves systematic omission of contextualization regarding prior institutional and political connections. Official responses tend to limit discourse to denial, procedural clarification, or formal assertions of regularity, without broader structural explanation. Analytically, this restriction functions as a context-management device: by narrowing what is publicly articulated, the institution narrows the field of plausible causality and, consequently, the scope of accountability that can be demanded within the public horizon. This pattern is treated as a discursive regularity rather than as evidence of subjective intent. Its relevance lies in its effects: the less context is publicly articulated, the less communicable systemic accountability becomes.

**Pattern 3: displacement of responsibility to procedural and institutional constraints**

The third pattern is characterized by emphasis on formal limitations, procedural timelines, and institutional boundaries as explanatory devices. Judicial and regulatory actors recurrently articulate competence boundaries, due process constraints, and the temporal sequencing of acts. Within discourse, these references operate as a displacement mechanism: the crisis becomes intelligible as a matter of

procedure and institutional limitation rather than as a matter of systemic accountability. This pattern can coexist with moral individualization, producing a public configuration in which culpability is narratively personalizable while accountability remains procedurally postponed.

**Synthesis**

Taken together, the three patterns form a discursive grammar of crisis governance: (i) individualization provides immediate moral intelligibility; (ii) strategic silence restricts context and stabilizes communicability; and (iii) procedural displacement legitimizes institutional limits and extends the temporal horizon of accountability.

**Discussion**

The discussion consolidates the manuscript’s theoretical contribution by translating the three discursive patterns into a generalizable model—the Theory of Institutionalized Illegality. The central claim is that legality can operate as a governance technology that stabilizes institutional legitimacy while structurally limiting systemic accountability. This does not require a collapse of law; it requires a reallocation of legal meaning from substantive responsibility to procedural legibility.

**Comparative reference points and international standards**

A comparative frame is analytically useful not as external judgment but as a boundary condition for the theory. International materials on integrity, deposit insurance, and crisis management articulate benchmarks for what “effective” safeguards and resolution architectures typically include.<sup>24,26,27,37,38</sup> The present argument is that, even in the presence of formal safeguard instruments, institutionalized illegality can persist when accountability is selectively judicialized and procedurally displaced (Table 2).

**Table 2** Institutional roles in the Master (2025–2026) and Americanas (2023–2026) cases

Actor	Role in master (2025–2026)	Role in Americanas (2023–2026)	Time (T*)	Resources (R*)
Federal Police	Criminal investigation and evidence production; selective activation of urgency and public-agenda setting.	Criminal investigation and coordination with the Federal Prosecution Service (MPF); increased intensity of early-stage investigative actions.	T*	R*
Central Bank of Brazil (BCB)	Supervision, resolution/liquidation, and governance of administrative confidentiality.	Indirect prudential supervision; interface with financial stability and system integrity.	T*	R*
CVM / B3	Market regulation and oversight; enforcement of disclosure, risk governance, and informational responsibility.	Central role in investigating disclosure practices and corporate governance; administrative sanctions and market-adjustment measures.	T*	R*
Judiciary	Management of precautionary measures, jurisdictional boundaries, and procedural tempos; proceduralization of conflict.	Broad judicialization (judicial recovery, corporate disputes, injunctions); stabilization through procedural rites and deadlines.	T*	R*
Civil society	Pressure for accountability; strategic litigation; contestation of interpretive frames.	Pressure for transparency, compensation, and responsibility; mobilization of associations and retail investors.	T*	R*

Table 2: Analytical comparison of institutional roles in Master (2025–2026) and Americanas (2023–2026). The table summarizes role profiles as described in the closed corpus; it does not quantify response time or resource mobilization.

**Theoretical implications and risks of normalization**

The theory implies that the most consequential governance effects can be produced through non-dramatic institutional routines. Under an administrative routine of exception, competence boundaries and procedural sequencing become default explanatory registers.<sup>2,3</sup> Under institutional normalization, harmful outcomes can be produced without

extraordinary intent and without requiring overt suspension of formal legality.<sup>1,4</sup> In this sense, the risk of normalization is not merely political. It is legal-institutional: when legality is stabilized as procedure, the system becomes capable of producing public narratives of compliance while limiting systemic imputability. Patrimonial morphology and capture incentives further stabilize this regime by sustaining state–market coupling and informational asymmetries.<sup>5,6,12,13,17,18</sup>

## Transferability of the model

The Theory of Institutionalized Illegality is designed as a transferable analytical framework. Its transferability does not depend on Brazilian exceptionalism; it depends on identifying the combination of mechanisms (procedural displacement, narrative individualization, context restriction, regulatory accommodation) in other jurisdictions. The comparative literature on judicialization and specialized court design suggests that institutional architectures can produce zones of intensified legality and zones of deferment, which is central to the notion of selective legality.<sup>7,8,10,39</sup> The model therefore enables comparative institutional analysis of financial crime governance in modern democracies: it specifies what to look for (discursive patterns and institutional incentives) and how to connect them (through the concept of legal shielding).

## Banco Master as a paradigmatic case within long-term institutional continuity

Within the closed-corpus design, Banco Master (liquidation in November 2025) is treated as a paradigmatic contemporary manifestation of a long-term structural pattern documented in the historical-institutional dataset (1889–January 2026). The analytical value of the case does not depend on reconstructing its empirical details; it depends on its role as an observation point from which recurring discursive operations can be theorized. The long-term dataset describes cyclical banking crises followed by state intervention or liquidation, recurrent transfer of systemic losses to public or collective mechanisms, weak individual accountability of financial elites, institutional tolerance or delayed regulatory response, and structural continuity of patrimonial practices across political regimes. In this article, these elements are mobilized strictly as background to interpret why certain discursive patterns become plausible and recurrent.

## From discursive patterns to a theory of functional illegality

The proposed theoretical contribution is a model of “functional illegality under procedural governance”. The model does not claim that illegality is intended, nor does it claim that any actor is culpable. Rather, it argues that institutional systems can produce governance effects that make systemic illegality manageable: moral individualization absorbs public indignation into personal culpability narratives; strategic silence restricts the contextual field through which systemic mechanisms could become visible; and procedural displacement translates accountability into a procedural horizon that is institutionally legible but publicly open-ended. In this model, legality and illegality are not external opposites. They are co-produced through institutional discourse: legality is stabilized as the observance of procedure, while illegality is managed as an event that can be processed, individualized, and procedurally displaced. The key analytical claim is that discourse is a governance technology that can transform structural questions into manageable narratives without requiring empirical concealment beyond what the closed corpus already displays.

## Institutional inertia and the production of accountability limits

The interaction of the three patterns reveals an important mechanism: the production of accountability limits is not merely a juridical fact; it is also a discursive accomplishment. Institutional inertia shapes what institutions can say under crisis conditions, and procedural rationality provides a vocabulary that is institutionally legitimate and publicly repeatable. Thus, “accountability” becomes constrained by the communicability of systems. When discourse reduces complexity

to individualized blame, systemic mechanisms are less visible. When official discourse restricts context, linkages that would support systemic explanation become less discussible. When procedure becomes the primary explanatory register, accountability is redefined as waiting for the proper sequence of acts.

## Implications for law and institutional analysis

The implications are strictly analytical. The results suggest that the governance of crises involves a recurrent redistribution of explanatory weight across moral, contextual, and procedural registers. For law and institutional analysis, this indicates that the public life of legality is partly constituted by narrative governance: the institutional capacity to make crisis intelligible in ways compatible with procedural limits. This contribution remains within the boundaries of the closed corpus. It does not introduce new sources, data, or cases. It does not provide normative prescriptions. It offers a conceptual model that can be used, in future work with explicit corpus rules, to analyze how accountability regimes are discursively produced and limited.

As a final methodological note (consistent with a closed corpus), the interpretive scope of the present analysis is bounded by the pre-collected empirical material and by the decision not to reproduce individual documents or case narratives. Future research, if undertaken, should preserve explicit corpus rules and may focus on refining operational categories for genre-specific variations already contained in the corpus, as well as on examining how public temporalities of urgency interact with procedural temporalities of competence, sequencing, and institutional boundaries.<sup>40–50</sup>

## Limitations

This study is constrained by its closed-corpus design and by reliance on publicly accessible, institutionally accountable discourse. It does not reconstruct factual sequences, financial flows, or individual decision-making processes, nor does it assess policy effectiveness. Accordingly, its claims are analytical rather than evidentiary and should be interpreted as theory-oriented interpretations compatible with the material examined.

## Conclusion

This manuscript presented an original legal-institutional theory—the Theory of Institutionalized Illegality—and defended its analytical advantages through a closed-corpus discourse analysis anchored in the Banco Master case (liquidation in November 2025) and interpreted within a long-term historical-institutional background (1889–January 2026). The theory’s central contribution is to show that modern democratic legal systems can structurally normalize illegality through lawful mechanisms. Under this regime, legality operates as a governance technology: accountability is converted into procedural legibility, public narratives are stabilized through individualization, contextual fields are restricted through strategic silence, and regulatory architectures accommodate continuity under informational asymmetry.

Three empirical patterns identified in the pre-collected corpus—moral indignation with individualization of responsibility, strategic institutional silence regarding prior connections, and procedural displacement of accountability—were treated as a discursive grammar of crisis governance. The manuscript demonstrated how this grammar is compatible with patrimonial morphology and with capture incentives, thereby supporting the claim that thereby supporting the claim that structural effectiveness constraints are enabled by incentive architectures. The academic contribution is therefore theory-building: it offers a transferable model for comparative law and institutional

studies that can be applied to other jurisdictions by tracing the same mechanisms and by examining how procedural legality becomes a shield rather than a sanction mechanism.

The analysis is limited by the closed-corpus design and by the closed bibliography. It makes no investigative claims about specific individuals and introduces no sources beyond the pre-collected empirical material. Within these limits, the manuscript opens a research agenda focused on the comparative identification of legal shielding mechanisms, institutional design choices in judicialization, and the governance of crisis through procedural temporality.

## Acknowledgments

The author acknowledges that the empirical material analyzed in this manuscript was previously collected and consolidated by the author and externally validated, as declared in the Materials and Methods section.

## Conflicts of interest

The author declares no conflicts of interest.

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