WORKING PAPER

40º Encontro Anual da Anpocs – *Caxambu (MG), 24 a 28 de outubro de 2016*
SPG14 Instituições políticas: controles democráticos

Tamanho importa na luta contra corrupção?
Controles internos no Legislativo e no Executivo na esfera federal

Does size matter in fighting corruption?
Internal controls in the federal Legislative and Executive branches in Brazil

FERNANDA ODILLA
Brazil Institute, King's College London
fernanda.figueiredo@kcl.ac.uk
feodilla@gmail.com

RESUMO
Este artigo analisa como funciona o controle interno contra a corrupção no Legislativo e no Executivo federais e busca evidências empíricas para a hipótese de que burocratas são mais facilmente penalizados pelos mecanismos de controle interno que políticos. Primeiro, serão comparados resultados de procedimentos administrativos internos contra burocratas, ministros, deputados federais e senadores entre 2003 e 2014, já coletados junto à Controladoria Geral da União, Câmara e Senado. Em seguida, serão agregadas entrevistas semiestruturadas com líderes partidários no Congresso e ministros de pastas ligadas ao combate à corrupção, feitas em 2012. Os resultados apontam para um desequilíbrio no controle interno nessas duas instituições centrais para os processos de accountability requeridos em uma democracia. Reformas administrativas resultaram no aprimoramento de procedimentos e regras, na profissionalização da burocracia e em práticas de transparência e responsabilização contra burocratas, em contraste com os casos de ministros de Estado, deputados e senadores. Em relação aos ministros e congressistas prevalece declaradamente o comportamento corporativista e o desconforto em punir seus próprios pares fazendo com que os controles internos sejam desequilibrados.

ABSTRACT
This paper looks at how the internal control works in the federal Executive and Legislative branches as well as aims to provide empirical evidence of the intuitive agreement that 'small fish' are more likely to be punished by acts of corruption, using Brazil as case study. Based on the assumption that anti-corruption strategies might be more efficient when they focus on highly visible examples, mainly involving both powerful bribe-takers and bribe-payers, it will compare the results of disciplinary procedures and administrative sanctions against federal civil servants and ministers of cabinet in the central government and members of the National Congress in Brazil between 2003 and 2014. As this paper shows, in stark contrast to the treatment of 'big fish', the number of punishments of bureaucrats is indeed fast expanding in the administrative sphere in the country. There was a visible effort to improve bureaucratic administrative checks and balance mechanisms in Brazil, mainly and almost exclusively in the federal Executive branch. However, it does not mean greater accountability or less corruption in the short term. This paper argues that there is a high level of tolerance of corruption and a culture of self-interest and self-preservation, especially among ministers of cabinet and congressional members. In summary, these 'big fish' are still out of water in the internal/administrative unbalanced fight against corruption in Brazil.

1.Introduction

Brazil, a country with a patrimonialistic history, has for a long time been facing widespread corruption scandals at all levels and in all branches of its political system. Accusations of corruption, including bribery, improper use of public funds and of public office, as well as vote buying, have marked, for instance, all six presidential administrations since democracy was restored in 1985, following 21 years of military rule (Power and Taylor 2011). Yet few politicians have been charged and convicted and even fewer have received internal sanctions enforced by their own peers. Even Mr Fernando Collor de Mello: indeed he was impeached by the Senate; and years later he was acquitted by the Supreme Court though.

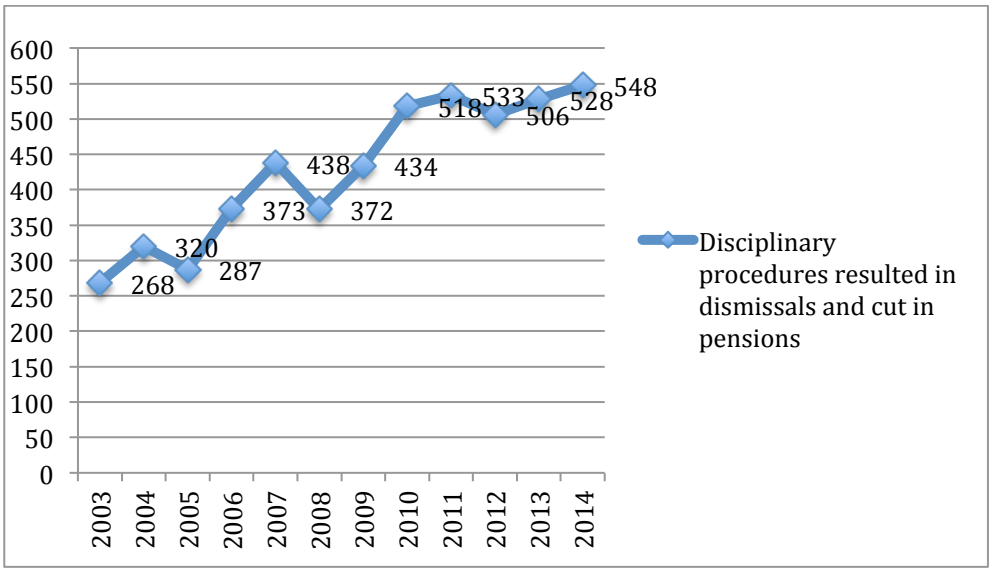
Recent guilty verdicts and arrest warrants against top-level politicians, bankers and businessmen issued in corruption trials show that the country's law is prepared to hold political and economic elites accountable. Nevertheless, firing, punishing administratively, fining and jailing powerful people still seems to be more like an exception on a daily basis in Brazil. In turn, the exposed corruption contributed to increase the perception of corruption within the country among Brazilians. Since Datafolha began investigating Brazilian main concerns in 1996, corruption stood alone as the number one problem for Brazilians for the first time in 2015, leaving behind issues such as unemployment, healthcare, and hunger/poverty (Folha de S. Paulo 2015).

As this paper will demonstrate, in stark contrast to the 'big fish', the number of administrative punishments against federal bureaucrats[1], most of them under corruption accusations, is expanding much faster in the federal executive branch than in the legislative branch. In addition, the national government seems to be increasingly relying on administrative sanctions for corruption against its bureaucrats as a way to circumvent other underperforming institutions at the punishment stage such as the judiciary (Prado et al. 2015). The same strategy, however, has not been adopted in the parliament.

Figure 1 provides an illustration of the significant rise in administrative sanctions imposed against bureaucrats working for the central government, regulatory agencies and foundations within the federal Executive branch.

[1] In this study, the term 'bureaucrats' will be used to refer to the lower position holders as a whole within the Brazilian Federal Executive and Legislative branches in contrast to top-level politicians (congressional representatives and ministers of cabinet) here identified as "big fish" due to their position and power.
[2] Recently renamed the Ministério da Transparência, Fiscalização e Controle (or Ministry of Transparency,

Figure 1 – Number of disciplinary procedures resulting in dismissals and pensions cuts against bureaucrats in the Federal Executive branch between 2003 and 2014



Source: Brazilian Office of the Comptroller General's dismissals report (2014)

As the figure showed, severe sanctions (dismissals, pensions cut and removal from office) against bureaucrats increased by 104% between 2003 and 2014. According to the Office of the Comptroller General (*Controladoria Geral da União*, or CGU in Portuguese[2]) Around 67% of them all are related to acts of corruption. Despite the remarkable growth trend, the number of bureaucrats sanctioned represents less than 1% of the total number of current civil servants (the population of civil servants increased by 26.2%, from 485,980 to 613,639 in the same period).

In contrast, among those with special jurisdiction – in Brazil ministers of cabinet and congressional members can be investigated only with the consent of the Supreme Court that also trials them –, only ten of them were investigated and punished by their own peers despite the fact that hundreds of them were under suspicious or being formally investigated (or even facing trial already) by external control agencies. Between 2003 and 2014 six congressional members were punished by their peers because they broke the Congress Ethic Code during their mandates. Another four were expelled only because of judicial decisions.

Based on the assumption that anti-corruption strategies might be more efficient when they focus on highly visible examples, mainly involving both powerful bribe-takers and bribe-payers, this research compares the results of disciplinary procedures and administrative sanctions imposed against civil servants, cabinet ministers and congressional members in Brazil between 2003 and

[2] Recently renamed the Ministério da Transparência, Fiscalização e Controle (or Ministry of Transparency, Monitoring and Control).

2014. In order to do this, official data regarding administrative procedures and sanctions imposed by the federal legislative and executive branches held by the Office of the Comptroller General and the National Congress were analysed, along with interviews carried out in 2012 with two cabinet ministers directly linked with anti-corruption policies and with five congressional leaders (three members of the opposition and two members of the government coalition).

Using Brazil as case study, this paper aims to fill a gap in the literature, using criminology principles and providing empirical evidence to the intuitive agreement that 'small fish', e.g. bureaucrats quite often with lower wages and ranks, as well as with weaker political ties, are more likely to be punished administratively by acts of corruption than politicians running offices, specially in the federal Legislative. It also asks why top-level authorities (ministers of cabinet and congressional members) can frequently be exempted from internal punishment in Brazil.

This research is also aware that organisations may impose procedures and penalties to inhibit corruption against them or against certain individuals, but the same organisations may not always discourage corruption on their behalf (Ashforth and Anand 2003; Pinto et al. 2008:686), or on the behalf of their 'head chiefs'. In particular, the main goal is to ask whether the fight against corruption can be considered unbalanced within the Brazilian federal sphere and, if so, why top-level authorities seem to be more likely to be exempt from administrative punishment for corrupt behaviour than bureaucrats.

It is, therefore, a research about internal control, focusing on administrative punishment. The structure of the paper will be as follows. Firstly, existing research in the area will be examined as well as the core concept of corruption. The theoretical foundation of this study arises from the seminal work of Gary Becker (1968) and its cost-benefits analysis for crime and punishment under the Rational Choice Theory. As corruption is a complex subject, this research is also sensitive to intervening variables, such as the internal culture of a specific agency as well as personal, moral and political links; however, the main framework (Becker's crime and punishment model) is still very useful as it stresses the importance of a balanced and efficient internal control apparatus to curb and prevent corruption.

Following on from this, it will be shown and discussed briefly how administrative punishments work in the legislative and executive branches. Then, the key findings will be documented and analysed, such as the main figures and tables based on official data regarding the sanctions enforced against bureaucrats and politicians, as well as the interviewees' main topics, with attention being paid to the anti-corruption apparatus, due process and social mobilisation.

In short, this paper points out that the current fight against corruption in Brazil can be considered unbalanced because there is a high cultural toleration of political corruption, more opportunities for rich and powerful people to take advantage of the due-process loopholes, as well

as a political culture of self-interest and self-preservation. At the same time, there is an effort to improve checks-and-balances mechanisms, although they are more effective and visible on the administrative sphere at the federal Executive branch. Under this scenario, I demonstrate that bureaucrats with weak political ties are more likely to be caught than the more powerful politicians.

In summary, 'big fish' are not only still more likely to be out of water in the internal/administrative unbalanced fight against corruption in Brazil but also they are likely to be held by a 'convenient accountability'. However, it is still not clear whether 'frying the big ones' primarily is the most efficient strategy to curb corruption, as Klitgaard (1988, 2008) and Klitgaard, MacLean-Abaroa & Lindsey (2000) had suggested.

2.Does Fish Size Matter? Theory and Evidence

Despite the fact that corruption as a topic has been discussed since the times of the ancient philosophers, such as Aristotle and Plato, the literature on corruption has been informed since the late 1940s by three well-defined waves of systematic academic studies, involving a different range of disciplines such as political science, economics, sociology, criminology and management.

These three moments include:

1) A functionalist perspective, which occurred alongside modernisation theory, and marked the division between those who stated that corruption was harmful (Banfield 1958, 1975; Wraith and Simpkins 1963) and those who considered the possibility of it being beneficial (Leff 1964; Leys 1965; Nye 1967; Huntington 1968; Bayley 1966).

2) An economic approach, which was based on rational-choice assumptions that individuals working as agents act to maximise their self-interest, whereas they are supposed to act on behalf of, as well as be controlled by, their principals (Krueger 1974; Becker and Stigler 1974; Rose-Ackerman 1978; Klintgaard 1988).

3) A collective action approach (or neo-institutionalism approach), which also shares a rational-choice ground. However, it assumes that, in an environment where systemic corruption prevails, acts of corruption are considered normal, or are the expected norm; they are socially acceptable, or even the rule (Mungiu-Pippidi 2011; Bauhr and Nasiritousi 2011; Rothstein 2011; Persson, Rothstein and Teorell 2013; Gingerich et al. 2015; Hellmann 2015).

It is pertinent to question whether corruption in Brazil could be considered as a collective action issue, a principal-agent problem, or even a mixture of both as they are not necessarily mutually exclusive. According to Marquette and Peiffer (2015), it is much more useful to see how these two theoretical contributions can complement one another by thinking about incentives, accountability and anti-corruption measures through a multi-lens approach. This seems to be the

case of Brazil, where there has been built up a *convenient accountability* – concept I have been developing in an attempt to encapsulate and to understand situations when political will and anti-corruption strategies as well as law enforcement can be easily affected or even conveyed by the inevitable pressure of those who want it as well as those who do not want greater accountability (De Figueiredo 2016).

A variety of theoretical frames, models and approaches are raised from these three academic waves. For instance, scholars have extensively discussed the differences between 'collusive' and 'extortive' corruption (Klitgaard 1988; Hindricks et al. 1999; Brunetti and Weder 2003), 'horizontal' and 'vertical' corruption regimes (Hellmann 2015), as well as between 'need' and 'greed' corruption (Bauhr 2012). The same applies with 'individual' and 'organised' corruption (Miller 2003; Skogan and Meares 2004). Pinto et al. (2008), in turn, suggested that organisational corruption can be seen on an individual level as well as from a collective perspective. Accordingly, even within an organisation, corruption can be seen and analysed from the individual, group, organisation, and environmental levels. Indeed, individuals can act alone or in a group primarily for their personal benefit or for the benefit of their organisation.

In all cases, however, there is a common agreement that one of the turning points in the fight against corruption happens by 'frying the big fish' (Klitgaard 1988, 2008; Klitgaard, MacLean-Abaroa and Lindsey 2000; Huther and Shah 2000; Médard 2002; Quah 2011). This view is based on the assumption that anti-corruption strategies might be more efficient when they focus on highly visible examples, mainly involving both powerful bribe-takers and bribe-payers. This perspective not only supports, but also goes further to theoretical frameworks that state that the probability of detection should be inversely related to the frequency of corrupt behaviour.

Indeed, corruption can also be seen as 'high-level' or 'low-level' depending on who is involved: 'big fish', here in this paper identified as top-level such as presidents, governors, ministers of cabinets and their main advisors and Congressional members, or the 'small' ones such as lower-rank civil servants – those selected by formal exams and also those politically appointed. However, there is still a lack of empirical evidence to show that 'fish size' matters when preventing corruption as much as a stable, as well as continuously well-built and well-enforced, anti-corruption apparatus, especially within administrative governmental spheres.

The success of the 'Clean Hands' investigations in the early 1990s in Italy, for instance, proved to be of short duration and did not seem to lead to the moral regeneration of Italian politics (Della Porta and Vanucci 2007:830). Indeed, 872 businessmen, 1,978 heads of town councils, 438 out of 945 elected members of parliament – among them, four former prime ministers – were investigated (Moro 2004). Although ministers and political leaders were initially charged and later arrested for corruption, there were few confirmed sentences due the combination of slowness of the

judiciary and successful obstructionist political tactics, according to Della Porta and Vanucci (2007). In addition, corruption scandals involving politicians, such as the former Prime Minister Silvio Berlusconi, continued and Italy is not necessarily perceived as less corrupt than before.

In fact, the 'Clean Hands' outcome boosted the conflict between the judiciary and the political class, promoting as a consequence a reduction in the independence and the capacity of the former to investigate economic crimes (Della Porta and Vanucci 2007:850). Hong Kong and Colombia, on the other hand, are considered successful examples of countries by scholars such as Robert Klitgaard (2008:4) because they changed the idea that 'big fish will swim free' into impressive actions against the powerful.

Klitgaard (2008) attributes the outcomes in Colombia and Hong Kong to successful leaders who have improved the institutional culture of systemic corruption, sending a strong signal of change by capturing and punishing those who seem to be untouchable and the personification of impunity. Quah (2011:453), in turn, stresses that anti-corruption strategies will be doomed to fail where the rich and famous are protected from punishment for corruption. The scholar supports his statement, questioning whether curbing corruption in Asia is an impossible dream because small fish are more likely to be caught. Quah, however, analyses the Asian anti-corruption agencies separately and limits his observations to specific cases.

Médard (2002), in turn, also states that the main issue of anti-corruption systems is challenging the problem of holding 'big men' accountable and keeping them under effective control. To him, Tanzania is an exception in Africa. On the other hand, to Huther and Shah (2000), frying the big fish is a more efficient strategy, where incidences of corruption are already low and governance quality is considered good; accordingly, only in such cases should 'explicit anti-corruption programs such as anti-corruption agencies; strengthen financial management; raising public and officials' awareness; no-bribery pledges, fry big fish [...]' be priorities. When a corruption incidence is high or medium, the priorities of anti-corruption efforts should focus on other drivers, such as establishing a rule of law, strengthening institutions of participation and accountability, or even focus on results-oriented management and evaluation and the introduction of incentives for competitive public service delivery.

Brazil, for instance, has been dealing with corruption scandals in all government branches and levels since its colonial period, and it is a slight reminder of the lack of significant progress to curb and to punish corruption within the country. There are doubts, however, whether these scandals are becoming visible 'despite' or 'due to' a different range of institutional improvements, new anti-corruption laws and more transparency.

The improvement of internal control in the Executive branch has been made in the context of Brazilian civil service modernisation throughout different administrative reforms. They were

made mainly to attend international pressures and to guarantee greater economy and efficiency following a hybrid of Weberian and New Public Management core concepts and principles (Hood 1991; Osborne and Gaebler 1993; Carvalho 2008; Filgueiras and Aranha 2011; Bresser-Pereira 1996; Abrucio 1998). These major reforms began in the mid-1930s and are separated by intervals of around thirty years each: 1937, 1967, and 1995.

On the other hand, scandals have shown that many professional bureaucrats can still be easily captured by political and corporative interests even with the introduction of the merit system and control mechanisms for both personnel behaviour and public expenditures in the 1930s as well as with their improvement along the years, especially those institutional and legal changes made since Brazil returned to democracy in the 1980s. In addition, political will tends to be immensely susceptible to different pressures from those who do not want greater accountability (De Figueiredo 2015). More recently, however, the country has experienced several corruption scandals involving proper big fish and elite members as well as high-level bureaucrats and politicians are being sentenced to jail.

However, there is still a lack of quantitative and qualitative work that shows that small fish are more likely to be punished, especially in Brazil. Most of the conclusions are brought about by specific cases in certain countries. In one of the few in-depth studies regarding administrative sanctions in Brazil, Ribeiro de Alencar and Gico Jr. (2010) suggested that there is a high incentive for corruption among civil servants in Brazil, since the probability of punishment is one of the most relevant variables in determining the level of criminal activity. Their study attempted to measure the Brazilian judicial system's efficacy against corruption by comparing proven corruption cases punished by administrative committees with criminal and civil judicial performances for the same cases. From 1993 to 2005, they identified 687 dismissed civil servants and searched for all their names on criminal and civil court databases. Their results exposed how high the judiciary ineffectiveness can be; they found that the chances of a federal public servant in Brazil being criminally convicted is around 3%, while the percentage of those being held liable in civil prosecution is less than 2%, even if their acts are already classified as corrupt by administrative committees.

Indeed, in general terms, the judiciary can be considered too slow in addressing corruption in Brazil. Judges are overwhelmed and usually deal with a massive amount as well as a different range of cases every single day. Moreover, there are also variables such as legal manoeuvring and legal loopholes that allow people who can afford good lawyers taking advantage of the due-process to bloc investigations or to appeal multiple times in order to avoid sentences. Accordingly, in countries such as Brazil where the criminal justice system is still far from being efficient,

administrative procedures and punishments can be seen as a way to circumvent the limitations and slowness associated with courts in Brazil (Prado et al. 2015).

However, despite the important contribution of the Brazilian literature on punishment for corruption, Ribeiro de Alencar and Gico Jr. limited their study in comparing the Judiciary reaction to bureaucratic corruption. They did not analyse those punished, nor did they try to evaluate the inefficiencies of the administrative anti-corruption system in comparison with the punishments imposed in other branches. The scholars also did not identify associated probable causes of why the system works the way it does, as this study aims to do.

As the main focus here is on imposed sanctions, this paper borrows Gary Becker's 'crime and punishment' model to analyse acts of corruption and their administrative punishments. This is the same framework used, for instance, by Ribeiro de Alencar and Gico Jr. One of the first scholars to link economic concepts to criminology, Becker suggests that a useful theory of criminal behaviour should consider the economist's usual analysis of choice, as individuals will commit offences based on the idea of 'expected utility'. Therefore, crime can be seen as a choice in order to maximise profits and minimise losses, considering the 'risk of apprehension, the expected punishment, the value of the criminal enterprise, the immediate need for criminal gain' (Siegel 1992:131). For instance, if powerful authorities are not held accountable, or are less likely to be caught, they have incentives to engage in corrupt activities if the benefits seem to be bigger than the risks. Thus, the lack of balanced punishment can be seen as a massive incentive to engage corruption.

Although such rationality is not mandatory among all criminals, it seems to be more common in certain types of crime, such as white-collar, embezzlement and bribery, at least in Brazil. Corruption crimes still seem to have higher monetary and psychological gains compared to the costs of being convicted, losing incomes and serving time in jail, especially for those who have power and money. In short, the greater the perception of the probability of the individual being investigated, prosecuted, arrested and sentenced, the higher the cost of the crime. In the case of corruption, the unbalanced administrative punishment among civil servants and congressional members, for instance, makes the difference in deterrence. Indeed, politicians professedly do not like to punish their own peers. It creates windows of opportunity for politicians and senior bureaucrats, as well as for private players, to commit acts of corruption, especially when other external check and balance mechanisms are not efficient.

In Brazil, the use of criminology principles on corruption prevention has also received little academic attention. In this study, identifying the main targets of administrative sanctions is a key element of analysis and it brings back the discussion of utility and the retributive role of punishment for corruption. It also raises one of the core principles of classical jurisprudence carried out by

Cesare Beccaria (1963), which is that the certainty of formal punishment, especially when it quickly follows the criminal action, is necessary for successful deterrence (De Figueiredo 2012). Therefore, Becker's model on crime and punishment adequately fits the research administrative punishments against civil servants and politicians.

In regards to corruption specifically, Becker later on classified the phenomenon as 'an extreme manifestation of apparently poor enforcement' (Becker and Stigler 1974:5). However, their analysis is limited to an economic perspective. It also takes for granted that monetary sanctions such as fines have greater value in comparison to other punishments. Corruption, in fact, is also about power, influence and pressure.

Thus, corruption here is treated as the illegal 'abuse of a trust, generally one involving public power, for private benefits which often, but by no means always, come in the form of money' (Johnston 2005:11). In terms of definition, it is necessary to be an illegality as this paper focuses on administrative formal punishments. The further analysis, however, will consider formal and informal norms, as well as organisation culture and corporatism, as an act of corruption can be labelled simply as unethical or immoral (Anechiarico and Jacobs 1996).

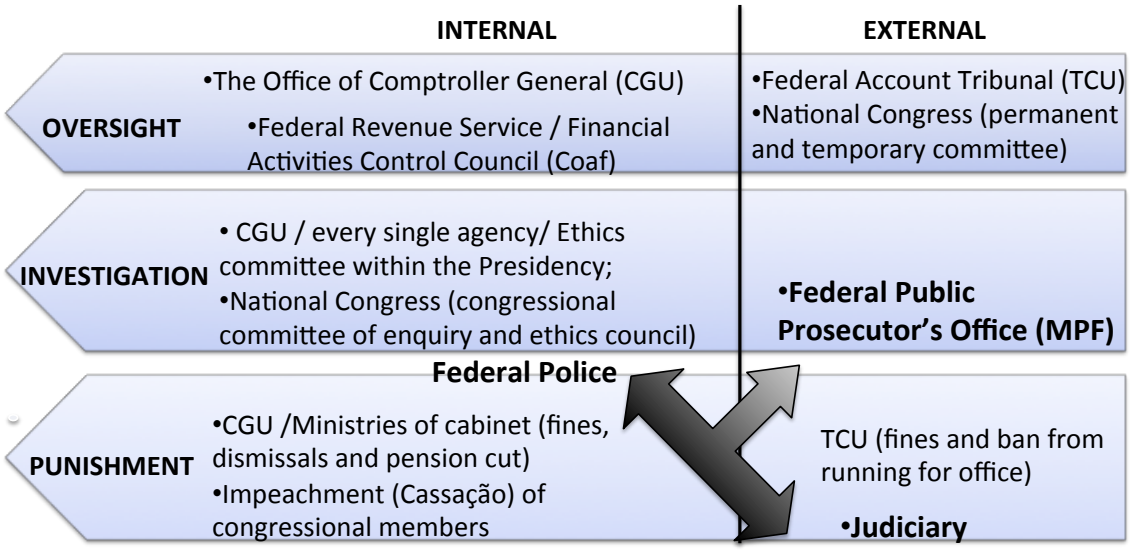
Moreover, it is important to highlight that corruption 'appears in distinct forms, happens in different locations, and can also have various motives and specific remedies' (De Figueiredo 2012:3). Considering these circumstances, it is clear that corruption is experienced not only in developing countries such as Brazil, and it is not exclusively transitory. Thus, it cannot be considered a phase before political and economic maturity (Williams 2000). In addition, it is important to be aware that corruption occurs in the public, private and non-profit sectors.

3.A Power Based Explanation: How Administrative Punishment Works in Brazil

The Brazilian anti-corruption system is, on paper, relatively strong due to a different range of institutional improvements, new laws and more transparency. The improvement of internal control in the executive branch has been made in the context of Brazilian civil service modernisation throughout different administrative reforms. The most remarkable reforms began in the mid-1930s and are separated by intervals of around thirty years each: 1937, 1967, and 1995.

However, it was after the 1988 Constitution that Brazil started building up a multi-institutional accountability system with different public agencies performing three primary roles, as well as compensatory and/or complementary and interdependent checks and balances mechanisms: oversight, investigation and punishment in both administrative and judiciary spheres (Power and Taylor 2011). Figure 2 below summarises this multi-institutional anti-corruption system with different public agencies in the federal sphere.

Figure 2 - The Brazilian Federal multi-institutional anti-corruption system



Source: Author's figures based on De Figueiredo (2015a)

This study looks only at the internal (administrative) control mechanisms and sanctions imposed by the federal executive and legislative branches. In theory, a procedure can be opened by an anonymous report, a functional representation, a piece of news, official representations from other control agencies, or even by other enquiries or investigations. Within the federal executive branch, although the disciplinary procedures are carried out by special commissions in each agency where the alleged wrongdoing took place, the internal control system is coordinated by the Office of the Comptroller General (*Controladoria Geral da União*, or CGU in Portuguese).

Ministers of cabinet, however, cannot be targets of internal disciplinary investigation, although they can be dismissed or forced to resign from their positions. Special permission is required for ministers and federal legislators to be investigated for crimes committed during their time in office. In addition, only the Supreme Court can try them in criminal cases. However, in the National Congress, the 81 members of the Senate and the 513 members of the Lower House (*Câmara dos Deputados* in Portuguese) can investigate themselves through the ethics committee or through committees of enquiries.

In short, both bureaucrats and legislators can be held accountable by their own peers. Federal bureaucrats are internally investigated by other federal bureaucrats from the same or superior rank/position, and federal legislators are internally investigated by other congressional members. In the case of bureaucrats, if there are evidences of wrongdoings, those who investigated them suggest sanctions – from warnings and suspensions, to dismissal and pension cuts in the case of pensioners. The most severe sanctions should be imposed by a minister of cabinet, who is responsible for signing the act to sack the bureaucrat from civil service. Legislators, on the other

hand, can be sacked only after the ethics committee considers it appropriated and the case is voted on and approved by the majority of the house. Supreme Court decisions to sack a congressional member also needs to be voted on and approved by the majority of legislators.

Although the mechanics of disciplinary procedures and punishments were created in 1990, this structure with central authority and internal control offices inside all the ministries, agencies and foundations was designed in 2005. Since then, there has been a clear effort to improve the quality and the efficiency of disciplinary procedures. As De Figueiredo (2012) noted, in order to improve punitive and preventive measures, the anti-corruption agency within the federal executive branch, which was created in 2001 and gained another name and more attributions from 2003 upwards, has not only help to enforce disciplinary sanctions but also:

- Recommended or initiated investigations and disciplinary procedures against public servants as well as representatives in the states and municipalities who misused the federal government's transfers.
- Communicated any signs of illegal activity involving public servants or federal government's money transfers to the judicial authority.
- Implemented the provision of a list of companies involved with irregularities and improper services to ban any contract with the federal government.
- Implemented international conventions.
- Encouraged studies and research on corruption.
- Increased the control of the federal government's direct spending and transfers to states and municipalities.
- Improved the legal framework.
- Improved a merit system of recruitment of public officials.

In Congress, however, it is not possible to point out any specific measure that was implemented, or even encouraged, to increase internal disciplinary sanctions against politicians or their own civil servants. In 2012, the Lower House created a special committee (*Comissão Permanente de Disciplina*) that had 11 civil servants at the end of that year to investigate and punish their own peers, bureaucrats who passed on a formal admission test to occupy their positions. Indeed, there are special committees to investigate congressional members and government officials when there is any suspicion of them being linked with corruption.

However, even with strong evidence of the participation of politicians in any wrongdoing, the possibility of punishing them with impeachment is very small. For instance, there are 49 congressional members who have been officially investigated by the Supreme Court since 2015 for being part of a massive corruption scandal called Operation Car Wash (*Lava Jato* in Portuguese), a multi-billionaire bribery and kickback scandal involving the oil state-controlled company,

Petrobras. Despite this, there is no procedure currently opened in the ethics committee. The only one that had been open in this congressional term (against the speaker of the Lower Chamber Mr Eduardo Cunha) resulted in punishment after 11 months – the longest procedure in the history of Lower Chamber. Regarding this specific corruption scandal, before Mr Cunha, only one congressional member had been sacked (Mr André Vargas in 2014).

As Brazil does not maintain unified records of corruption cases, the triangulation of qualitative (semi-structured interviews) and quantitative official data (descriptive statistical analysis) provided a more complete portrait of peer punishments in the executive and legislative branches in Brazil. Official data, such as dismissal reports and investigative procedures in the federal executive branch against all levels of bureaucrats held by the Office of the Comptroller General and by the National Congress, were also analysed, along with media reports on corruption scandals and their respective outcomes, mainly those related to cabinet ministers and congressional members accused of being involved in acts of corruption. This research is limited to the period between 2003 (when the anti-corruption agency was created) and 2014 in order to compile data without gaps and with the same pattern.

As Table 1 illustrates, the population of federal civil servants increased by 26.2% (from 485,980 to 613,639), but the number of expulsions doubled, rising by 104.1% (from 268 to 547) between 2003 and 2014.

Table 1 - Total population of civil servants and people sacked from the civil service between 2003 and 2014 in the Federal Executive branch

YEAR	TOTAL OF CIVIL SERVANTS WORKING	PEOPLE SACKED FROM CIVIL SERVICE	%
2003	485.980	268	0,055
2004	499.138	319	0,064
2005	508.963	287	0,056
2006	528.124	373	0,071
2007	528.420	438	0,083
2008	539.235	372	0,069
2009	552.893	433	0,078
2010	567.808	513	0,090
2011	571.405	533	0,093
2012	576.138	505	0,088
2013	586.360	531	0,091
2014	613.639	547	0,089

Sources: Ministry of Planning, Budget and Management (2015, January/CGU (2015)
*It includes only civil servants (not military) working for the central government, foundations and authorities except the Central Bank, according to Table 2.4 of the 'statistical bulletin of the staff" (Ministry of Planning, Budget and Management 2015).

Although the number of penalties rose sharply, the number of public servants punished with expulsion penalties is still insignificant – less than 1% of the whole population. In addition, the number of punishments shows at least two different perspectives: the ability to investigate and punish properly, and that certain agencies concentrate on a larger number of wrongdoings regarding

the nature of their activities and the exposure to temptations. The agencies with the largest number of civil servants are not, proportionally, those who punish more civil servants with dismissals, as Table 2 illustrates bellow.

Table 2 – Comparison between the total number of civil servants* currently working for the federal Executive branch and the number of administrative procedures resulting in dismissals and pension cut by ministry from 2003 to 2014

Ministry/Agency[3]	Civil Servants Working		Civil Servants expelled (2003-2014)	
	Number	%	Number	%
Social Security (MPS)	40,275	7.40%	1,318	25.72%
Justice (MJ)	28,475	5.23%	809	15.79%
Education (MEC)	202,502	37.20%	801	15.63%
Health (MS)	102,961	18.91%	541	10.56%
Finance (MF)	31,480	5.78%	551	10.75%
Environment (MMA)	8,983	1.65%	213	4.16%
Labour & Employment (MTE)	7,941	1.46%	150	2.93%
Planning (MPOG)	31,573	5.80%	126	2.46%
Agriculture (MAPA)	11,387	2.09%	110	2.15%
Transports (MT)	5,322	0.98%	101	1.97%
Agrarian Development (MDA)	6,206	1.14%	81	1.58%
Defense (MD)	26,450	4.86%	57	1.11%
Mines and Energy (MME)	2,910	0.53%	45	0.88%
Federal Attorney General (AGU)	7,630	1.40%	47	0.92%
Development, Industry and Foreign Trade (MDIC)	2,824	0.52%	42	0.82%
Presidency of the Republic, Comptroller General, Intelligence Service (PR/CGU/ABIN)	6,572	1.21%	34	0.66%
Culture (MINC)	3,185	0.59%	32	0.62%
National Integration (MI)	2,777	0.51%	19	0.37%
Communications (MC)	2,078	0.38%	19	0.37%
Science & Technology (MCTI)	7,068	1.30%	8	0.16%
Cities (MCID)	447	0.08%	6	0.12%
Fishing and Waterculture (MPA)	586	0.11%	5	0.10%
Sports (ME)	296	0.05%	3	0.06%
Tourism (MTUR)	414	0.08%	6	0.12%
Foreign Relations (MRE)	3,401	0.62%	1	0.02%
Social Development (MDS)	642	0.12%	0	0.00%
Total	**544,385 – 100%**		**5,125 – 100%**	

Source: CGU/2015 - *It includes those civil servants working for the central government, public foundations and regulatory agencies, but not the Army, Nave and Air Force.

[3] Some of these ministries were merged or simply extinct due to ministerial reforms in 2015 and 2016 such as Fishing and Waterculture, Culture, Agrarian Development and Communications.

Table 2 shows that the Ministry of Social Security and Ministry of Justice concentrate on over 40% of the dismissals, although together they have only 13% of the federal workforce. Indeed, Social Security is responsible for analysing cases of temporary and permanent incapacity benefits as well as for paying pensions. It means direct contact with people interested in guaranteeing social benefits. On the other hand, the Federal Police and the Federal Road Police – organisations known for high levels of corrupt institutions across the globe – are under the Ministry of Justice's structure. Indeed, both ministries have civil servants highly exposed to corruption opportunities. However, the police have a high level of expertise in investigation and the Ministry of Social Security has one of the most developed anti-fraud mechanisms – as well as always being under investigation – in order to avoid necessary expenditures.

According to the Brazilian anti-corruption agency within the federal executive branch (the Office of the Comptroller General, CGU in Portuguese), 67.30% of all 5,118 dismissals were related to corruption as Table 3 shows below.

Table 3 – Main reasons for dismissing civil servants between 2003 and 2014

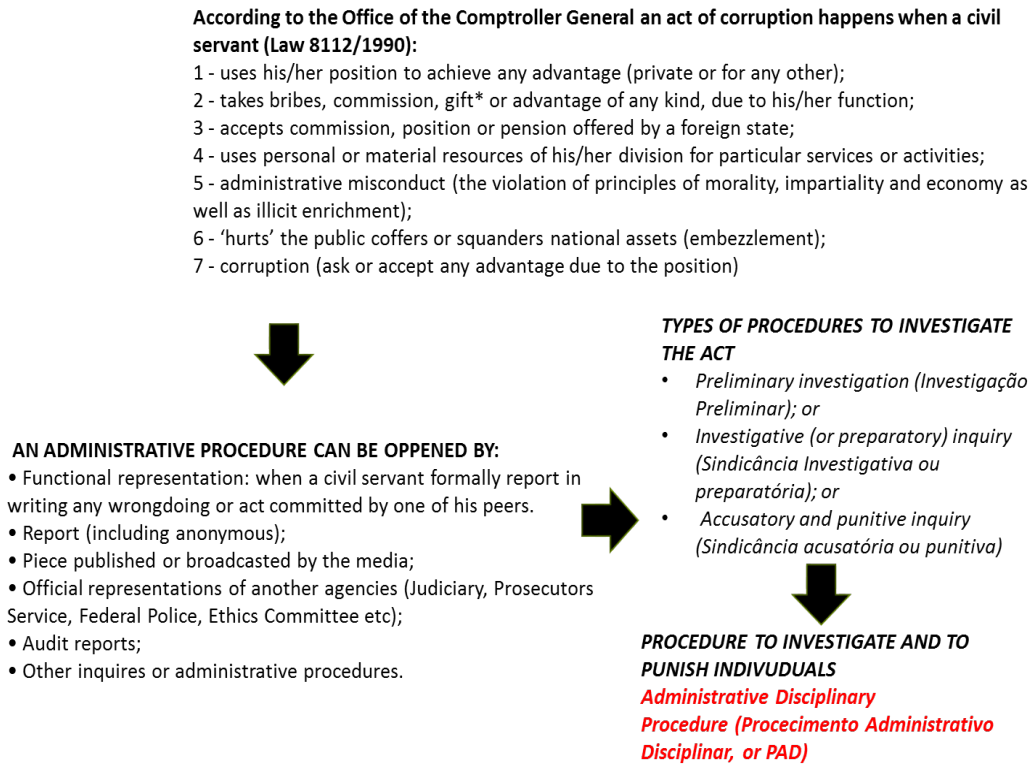
Reason for dismissing	Total of dismissals 2003-2014	%
Corruption	3443	67,3
Job abandonment, days missed without previous notification, illegal accumulation of positions	1150	22,5
Wilfully neglects to perform his duty (Idle Behaviour)	148	2,9
Having an administrator or management position in a private company	54	1,0
Others	323	6,3
Total	**5118**	**100**

It is important to highlight that the investigation of suspect acts of corruption and any other type of wrongdoing is done by a temporary commission within the agency – foundation, special entity or ministry – where it happened. It is up to the place in which the suspicious act had happened to investigate and suggest the proper punishment. The Office of the Comptroller General has a special team that acts only in special or more complicated cases, although it has at least one employee with a degree in law in each ministry working as an internal control secretary to monitor the procedures. Notwithstanding, most of the disciplinary procedures are conducted by civil servants against their own peers in their own agencies. The final reports suggesting punishments or

not, however, need the approval of a permanent commission. If the dismissal is considered appropriate, the final report is sent to cabinet minister, who needs to sign it.

Although the mechanics of disciplinary procedures and punishments were created in 1990, this structure with central authority and internal control offices inside all the ministers and foundations was designed in 2005. Since then, there is a clear effort to improve the quality and the efficiency of disciplinary procedures. For instance, civil servants have been trained to investigate their own peers, an electronic system has been created to organise all internal investigations and a different set of norms and rules has been launched such as an extensive internal manual with around 200 pages and detailed descriptions of procedures and punishments. One important guideline was the Ministerial Order 335, released in 2006, which brings important settings for correctional work, among them the different types of procedures and deadlines summarised by Figure 3 bellow:

Figure 3 – Dynamics of disciplinary procedures against civil servants within the Federal Executive Branch



Source: Authors' figure based on Ministerial Order 335/2006 and CGU's internal manual
* Civil servants can accept gifts up to R$ 100 (around £25)

Although Figure 3 highlights what is considered corruption by the Brazilian legal apparatus, the dynamic is the same for other wrongdoings not necessarily related to acts of corruption. There are many different ways to start a preliminary procedure or a preparatory inquiry

in the Federal Executive branch as Figure 3 showed. However an Administrative Disciplinary Procedure (*Procedimento Administrativo Disciplinar*, or PAD) can only be opened if one or more preliminary procedures conducted by a temporary committee had collected enough evidence that indicates that the act really happened (*Sindicância*). Then, another committee is called in order to identify federal civil servants who have committed the irregularities in the performance of their duties, to point out responsibilities as well as to suggest punishments. Three civil servants are called to do that and they cannot decline, except in cases such as family links, and have up to 120 days to finish the report. Exceptional cases can be prorogued.

In 2009, in order to reduce red tape and accelerate procedures, another type of procedure was created called TCA (*Termo Circunstanciado Administrativo*) to deal with cases involving minor losses or damages. Thus, when the value in question is up to R$ 8,000 (around £1,600), the investigation should be made through this procedure which is faster and less complicated. It applies only when the evidence shows that the wrongdoing was not intentional. The punishment is limited to paying back the amount. However, if the investigation shows the civil servant had the intent, for instance, to embezzle the amount, another procedure (inquiry or PAD) will be open against this person.

In addition, as an attempt to be more preventive than reactive, it was created the Property Inquiry (*Sindicância Patrimonial*), a procedure to investigate the situation of federal employees who have apparently incompatible assets and properties comparing compared with their declared earnings. This procedure seeks for evidence of illicit enrichment, although it has been questioned in the Judiciary. It is confidential and non-punitive. Two or more civil servants are responsible for the analysis and have 30 days to finish it. There are two possible outcomes: close the case or open an Administrative Disciplinary Procedure.

Regarding civil servants working for the Federal Legislative branch, as has already been mentioned, it was only in 2012 that the Lower Chamber created a permanent internal control committee to open and carry out disciplinary procedures against its civil servants. At that time, 15 procedures were concluded and only five of them found enough evidence to punish the civil servants. During the year after, six procedures resulted in punishments, eight cases were closed without punishing anyone and another 65 procedures were finished, waiting for final sanctions. There are 3,372 stable civil servants working for the lower chamber. In the Senate, where 3,087 civil servants who were selected by formal exams were working in 2014, only six procedures were open in order to investigate misconducts. There is no information regarding the acts or the actors.

In contrast to the civil servants, as Table 4 illustrates below, only 10 out of 594 congressional members were investigated and expelled by their peers between 2003 and 2014, despite dozens of corruption allegations against them. Six congressional members were punished by

their peers because they broke the Congress Ethic Code during their mandates. Another four were expelled only because of judicial decisions. Indeed, there is no considerable increase in the number of disciplinary procedures (resulting or not in punishments) within the Legislative branch against both congressional members and civil servants, as we observe in the executive branch between 2003 and 2014, considering the amount of scandals and external procedures opened to check wrongdoings against them. To a congressional member be investigated by their peers it is necessary evidences that the congressional rules of order and of decorum[4] have been broken and one or a group of congressional members should present a formal request the ethics committee within the Senate or the Lower Chamber to open an internal procedure against the person who is under suspicious. Afterwards if the simple majority of committee members agreed there is enough evidence for breaching parliamentary decorum, the case goes to the floor for voting – the most important change has been on the voting procedure.

In November 2013 – after massive street demonstrations against corruption, police brutality, poor public services and excess spending on the Football World Cup – both the Senate and the Lower Chamber decided to ban secret ballot for sacking congressional members. Since its inception, in 2001[5], the Ethics Committee of the Lower Chamber has already analised 128 cases and proposed sacking 22 congressional members, or 17% of cases that were voted. Of these 22, only six were confirmed by the floor. Out of these 128 cases, 59 (46%) were filed without being analised and 40 (31%) received reports to be filed and were closed by the committee. Two members resigned before the procedure had began and there was still a congressional members who received suspended 90 days.

In turn, between 2003 and 2014, 15 ministers of cabinet left their positions under corruption accusations without being investigated by the government. It is important to stress that, as opposed to the internal disciplinary procedures and punishments against civil servants, all ministers resigned only after the media brought corruption scandals and their involvement to the attention of the public without being internally investigated. Indeed, in contrast to what is happening with bureaucrats working for the federal executive branch, there is no increased trend in administrative procedures resulting in punishment against top-level politicians. Instead of investigating these ministers internally, the Executive has chosen to wait for sacking them only after massive scandals exposed by the media. Table 4 illustrates below these main figures.

[4] According to art. 55 II of Republic Constitution of 1988 and to Regimento Interno (bylaw).
[5] Before 2001, the procedures against congressional members were analysed by the Constitution and Justice Committee.

Table 4 – Number of congressional members expelled by their own peers, and cabinet ministers' resignations under corruption scandals between 2003 and 2014

Year	Congressmen expelled by their peers and by the Judiciary	Number of Congress members	Cabinet minister resignations*	Number of cabinet ministers
2003	0	594	0	35
2004	1	594	1	35
2005	5	594	2	35
2006	1	594	2	33
2007	0	594	2	35
2008	0	594	1	35
2009	0	594	0	36
2010	0	594	1	37
2011	0	594	6	38
2012	1	594	1	38
2013	0	594	0	39
2014	2	594	0	39
TOTAL	**10**	**594**	**16**	

Source: Author's calculations based on the Congress statistics and press reports.
*Exclusively due to corruption scandals.
OBS: Mr Antonio Palocci was sacked/resigned twice: in 2006 and 2010.

Among these 15 ministers who resigned between 2003 and 2014, five were congressional members[6]. After they left their cabinets in the federal government, they went back to Congress. Only Mr José Dirceu faced an internal disciplinary measure conducted by their peers. Furthermore, only Dirceu was expelled from the National Congress as well as been sentenced to jail after being convicted by the Brazilian Supreme Court. None of the others 14 ministers of cabinet who resigned have been punished or convicted and there is no information as to whether they are being prosecuted for the scandals in which they were involved when they left their positions.

Turning now to the qualitative data, semi-structured interviews carried out in 2012 with two ministers of cabinet directly linked to the government's fight against corruption in Brazil and five congressional leaders (two among the coalition and three with the opposition, who were kept anonymous) indicate that internal control is not a priority, nor is it regarded as a comfortable subject. The congressional leaders, for instance, not only represent senators or Lower Chamber's members of their own parties, but also are also experienced politicians who often take the most important decisions in the Congress as well in the Brazilian politics scene. Furthermore, each congressman interviewed is from one of the five different geographic regions in Brazil, encompassing possible cultural differences.

[6] Senators Romero Jucá (2005) and Alfredo Nascimento (2011) and the members of the Lower House José Dirceu (2005), Pedro Novaes (2011) and Mário Negromonte (2012).

The key findings from the interviews are:

- All admit they do not feel comfortable punishing their own peers in Congress.
- Opposition and coalition members recognise the effort to punish bureaucrats, enforcing the accountability mechanisms and the internal procedures (to hire and punish public servants); however, the opposition says it is not enough.
- None of the interviewees saw any big difference between corruption in Brazil and other countries.
- The interviewees disagree on whether more laws are necessary to fight corruption, or whether Brazil simply needs to enforce the existing legislation.
- Most interviewees say corruption is widespread in Brazil because of judiciary ineffectiveness in addressing political corruption, or because of rich and powerful people taking advantage of the due-process loopholes.
- Most of the interviewees agree that the growth of a new middle class in Brazil tends to increase the civil-society pressure against corrupt acts.

3.1 - 'Same-same, but different'

Brazil holds many conditions favourable to corruption, such as corporativism, patrimonialism, lack of political loyalty and party discipline, as well as low levels of social mobilisation. Despite all the national particularities, universal characteristics of corruption preponderated among the interviewees' answers to explain the phenomena in the country:

> Thievery and corruption is the same anywhere in the world. There is no difference between Brazil and other countries. The behaviour of those who act illegally is not different from others and I do not think there is more corruption in Brazil than in other countries. … The society is like that: there are corrupt judges, corrupt politicians, journalists who receive 'payola', as well as there are lawyers, priests, pastors, business owners, workers… (*Interviewee 3*[7])

> I think corruption is an aspect of human nature. (*Interviewee 5*)

[7] One of the six politicians interviewed in this study that will be identified from now on by numbers according to the King's College London Law Research Ethics Panel approval.

There was also an attempt to generalise as well as to rationalise the causes and explanations of Brazilian corruption. For instance, most of the interviewees strongly support the idea that corruption is the same the world over and/or everybody can do it. It is possible to suggest that this argument is used as a defence mechanism through which politicians try to escape any personal liability.

However, all the interviewees were questioned about the peculiarities of corruption in Brazil. Impunity and an ineffective judiciary emerged as central themes in an attempt to attribute the problem to weak sanctions or a lack of punishment meted out by the criminal justice system. Thus, there are few references to cultural variables among the answers. There is also no reference to the lack of harmony between the check and balance institutions, nor the weakness of both preventive and investigative processes that are part of any accountability mechanisms:

> The differential in Brazil is the impunity. Impunity encourages corruption and it takes various forms: from small bribes to great misuse of public money. In the executive branch, what prevails is the overbilling for public refurbishments or constructions. ... In the Legislative there are more lobbies. The sectors of the economy that are more organised and with more power to pressure eventually prevail. (*Interviewee 2*)

> I would not point out just one national characteristic that explains why there is corruption in Brazil because there are many of them. Cultural factors, of course, are open windows of the corrupt to the illegality. Hence, the opportunity arises (through the political system/election), and then the ease of committing the act (with little possibility of punishment) completes the triad. No one is corrupt if one of these three elements is absent. (*Interviewee 6*)

Both opposition and coalition leaders interviewed in this study, however, recognised the efforts to punish bureaucrats within the federal executive branch. However, the differences between the 'small fish' and holders of high positions were not highlighted by the interviewees. On the contrary, there was an attempt to underplay the difference between the numbers, as well as the treatment of bureaucrats and politicians accused of, or involved with, criminal acts:

> Punishments are very small in both areas [judicial and administrative] and for both categories [politicians and bureaucrats]. One could get the

> impression that public officials are punished with greater intensity because the population of bureaucrats is bigger than politicians. I am not aware of the proportional numbers, but absolute numbers, scientifically, can lead to erroneous conclusions. **All institutions have difficulty punishing their own peers.** (*Interviewee 6*)

> I would not say that it is easier or more difficult to punish bureaucrats or politicians. Both face different procedures. … It is always bad [punishing their own peers]. **The politician was not elected to expel peers; this is the responsibility of the judiciary. Deciding whether to revoke a mandate or not means that you are exercising a function that is not yours but the judiciary**. **It is always embarrassing when you have to revoke the mandate of a deputy.** It is embarrassing, not because you do not have the conviction that he deserves to be expelled, but because you are not elected to do it. You are elected to make laws, among other things, not to punish peers. There is constraint, of course. (*Interviewee 3*)

Although the interviewees are unwilling to, or cannot, provide justifications for the unbalanced rates of punishments against bureaucrats and politicians, they admit to facing difficulties in punishing their own peers, arguing that they do not feel comfortable expelling Congress members elected by the people. Their responses regarding this awkwardness, however, are generic and circular. Moreover, respondents such as *Interviewees 3 and 6* try to generalise, saying that this protective behaviour occurs amongst all peers from distinct professional bodies.

It is also possible to identify an attempt to shift the focus to the private offenders, who are expected to be part of the corrupt scheme – being extorted or offering bribes. In this case, the hypothesis of the manipulation of political decisions, or the illegal appropriation of public funds to only benefit politicians, is not taken into consideration:

> **There is no corruption without corrupters.** Someone has to pay for [the illegal benefit]. It is like drugs: the cocaine market in the world exists because **there is a demand for it**. (*Interviewee 5*)

> Those who are corrupt have not been charged, and who often corrupts public officials is the private agent. We do not see the same treatment in

> respect of private agents who are involved and fuel the cycle of corruption. (*Interviewee 4*)

Indeed, it was only in January 2014 that Brazil was ready to put into force a legislation (Clean Company Act or Law 12846/2013) to punish administratively private companies engaged in corruption, although no company has yet been punished. However, it is important to emphasise that the interviewees tried to turn the focus away from themselves not only with regards to the criminal acts, but also in opposing them. Only *Interviewee 2* goes straight to the unbalanced fight against corruption in Brazil. As an opposition leader, he highlights the problems of his political adversaries, i.e. the Workers' Party administrations:

> In the current government as well as in the President Lula administration, **the existence of the crime is admitted but not the existence of the criminal**. At best, it is admitted to punish those with supporter roles but not the main agent. That is why public servants are punished and ministers are spared. … [In the Congress] there is a natural constraint linked to the close relationship among politicians. That is why it's important to adopt external procedures to enforce punishments. (*Interview 2*)

Although *Interviewee 1* denies that high-position holders are not being punished with administrative sanctions, he is the only one who highlights that there is a mismatch among what the rule of law should be, what the population expects and what the federal government actually does to fight corruption in Brazil:

> The population expects and demands to see the corrupters in jail. In Brazil, unfortunately, it happens so rarely that it is possible to count on the fingers of one hand. The exception is, in some cases, with local managers and mayors from small towns in which the number of punishments is slightly larger, but is still very small. I usually say that, here in Brazil, the maximum penalty possible is the loss of office [not been jailed or convicted in a criminal court] because **only the administrative punishments are working properly.** (*Interviewee 1*)

From the interviewees' statements, it is possible infer that they are aware that check and balance administrative mechanisms do not work properly in either branches, and that the judiciary

is not able to guarantee external control, therefore increasing the perception of lack of accountability. The risks of getting caught and the expected punishment are still too low, according to those who were interviewed. In fact, they perceive that the immediate gain for any corruption may be bigger than the losses involved.

3.2 - A matter of political will

When questioned over whether there is an unwillingness of the Brazilian Congress to pass anti-corruption bills, *Interviewee 1* did not hesitate in criticising the congressional members who pass laws quickly only under pressure:

> I have no doubt [that there is an unwillingness] because these kind of bills rarely are treated as priorities, unless there is very strong pressure from civil society and public opinion, as there was in two important cases in recent years: the Clean Records Law [*Lei Ficha Limpa*], which was undoubtedly a major step forward, and the Access to Information Law [*Lei de Acesso à Informação*]. Both these laws came out relatively quickly, in less than two years, because there was an intense mobilisation of society, public opinion and the press, which pushed these issues in the Congress. (*Interviewee 1*)

Briefly, the Access to Information Law is a new freedom-of-information enactment that became effective in May 2012. It basically reduces the period of secrecy of state organisations' papers. In addition, it enshrines in the Constitution people's right to request information – for example, on how public bodies use public money – and to receive a prompt response. The Clean Record Law was initially devised in 2008 as a petition to Congress, signed by some 1.6 million citizens and asked for their support in disqualifying politicians who are convicted of violations of electoral statutes or crimes involving the use of public funds from running for office for at least eight years. The Clean Record Law was passed in June 2010; however, after being challenged in the court system, the Brazilian Supreme Court ruled in 2012 that it would not apply to the elections of that year. Thus, candidates involved in corruption schemes and who were initially barred as a result of this law were later allowed to take their positions.

Despite Congress' inefficiency in voting through anti-corruption acts, the respondents in this study disagree on whether more laws are necessary to fight corruption, or whether Brazil just needs to enforce the existing legislation and the internal procedures more effectively:

> **It is not a matter of law. It is a matter of law enforcement** and efficiency in law enforcement. The anti-corruption mechanisms of the Executive branch did not demonstrate effectiveness. In the Congress, supervising and controlling mechanisms did not work as well. (*Interviewee 2*)

> **The legislation framework is quite improved.** We can make few adjustments, but it is more a problem of speed than of law. Trials and judicial decisions should be faster. (*Interviewee 3*)

> Regarding the laws, an area that was discovered is that related to the corruptor. The Senate has recently passed an extension of the anti-money-laundering law. **If you have an effective law against the crime of money laundering, you can attack impunity.** (*Interviewee 5*)

In Brazil, rules are often set by politicians in a way that not only generates ambiguity, but also forces the judiciary courts to fill loopholes, eliminate dubious interpretations or to assign existing norms. The Supreme Court, for instance, is responsible for upholding federal legislation. Moreover, as Taylor (2010) noted, the criminal code itself has been amended for 70 years now and there still remains a great deal of ambiguity. The chances of being punished, then, become significantly reduced, not only because it takes time for one law to be enforced, but because the system is inefficient, overloaded and designed to favour those who can afford good lawyers and who can, in turn, exploit all the due-process weaknesses.

Most of the interviewees say corruption is widespread in Brazil because of judiciary ineffectiveness in addressing corruption cases. They admit that rich and powerful people take advantage of the due process loopholes. The Minister of Justice, Mr. José Eduardo Cardozo,[8] and *Interviewee 1* both explain how the powerful have more of a chance of not getting caught and not being punished by the courts:

> Well-paid lawyers can easily use procedural law manoeuvres to block or delay court rules; therefore, those who hold political power or economic power are much more likely to secure the postponement of judicial

[8] In this paper, quotes from the speech of the then Minister of Justice of Brazil, Mr. Jose Eduardo Cardozo, were also used, as well as from a quick chat during his participation in the seminar 'The Quality of Democracy in Brazil: From the Transition To Democratic Deepening – Comparative and Global Perspectives', at King's College London (on 28 and 29 April 2011).

> sanctions. Almost always there is the prescription that ends up making bigger the sense of impunity. I would say this only arises for those who have economic and political power considering the relation with the judiciary. (Cardozo 2011)

> Brazilian due process is one of the worst in the world in my opinion because it offers a multitude of features and a variety of procedural mechanisms to postpone the final decisions. A competent attorney can prevent sanctions for ten, twenty years. This is our reality. As corrupters can afford the best law firms, the most competent criminal lawyers, they are able to push the process and to not let a sentence be ruled for decades. (*Interviewee 1*)

As Hinton (2005) points out, Brazil has been failing to punish acts of corruption swiftly and effectively, contributing to the perpetuation of illegal practices in public service. Accordingly, the rational choice model is often used as a suitable framework to explain the endemic characteristics of corruption in Brazil. As the model states, the opportunity for a crime is directly related to cost benefits such as risk of detection, available and suitable targets, and a motivated offender, as was highlighted in the 'Literature Review' section.

Though rational choice theory insists that crime pays when offenders calculate costs and risks to gain the maximum benefit, corruption should not be seen only as an individual choice for anti-social and anti-democratic behaviours, motivated only by massive material gains. Thirst for power and desire for prestige are also relevant in the political arena and are part of existing structures.

3.3 - The people v. corruption

The majority of the respondents in this study agree that the growth of a new middle-class in Brazil, as well as the emergence of a generation which is more informed and socially-connected, tend to increase the civil-society pressure against corrupt acts. Moreover, most of them emphasise the need for a free and active media, as *Interviewee 5* highlights:

> Social mobility and social pressure are the major antidotes against corruption. (*Interviewee 5)*

Indeed, the lack of a tradition of popular mobilisation in Brazil is also an important element in understanding both the causes and consequences of corruption. Brazilian independence from Portugal, for instance, was declared in 1822 by the Portuguese prince, Pedro. There was no revolution and all previous attempts at civilian mobilisation for freedom failed. On the other hand, during the third wave of democratisation in the 1980s, the Brazilian *diretas* movement succeeded after occupied streets all over the country called for a new democracy and the end of a military regime. Then, in the early 1990s, people went back to the streets to pressure Congress to impeach the then President Fernando Collor.

In June 2013, however, Brazil saw massive street demonstrations across the country. Thousands of people in different cities protested for better services, new laws and less corruption in a movement that might be seen as both the expression of the traditional middle class complaining with several aspects of national issues, as well as the new proletariats who suffered from low pay, high turnover and poor work conditions (Singer 2013). In a clear response to the wave of what was called the 'June demonstrations', the Brazilian Congress passed different anti-corruption laws. However, these movements are still rare and have not transformed or regenerated the political system, nor have they made the fight against corruption more balanced regarding those who are punished.

4.Conclusion

This paper aimed to explore the various facets of the fight against political corruption in Brazil, where the number of 'big fish' convicted of corruption has not expanded as rapidly as the number of the bureaucrats since 2003. In order to do this, official and secondary data were analysed, and seven qualitative interviews were carried out: two with cabinet ministers involved in anti-corruption measures, and five with congressional leaders. Several main conclusions can be gleaned from this mixed-method research that used the Gary Becker rational-choice model (crime and punishment model).

Under international pressure to improve anti-corruption measures, Brazil needs to show that it is doing something to fight corruption. As a result, it may choose to opt for easy 'token' cases

lower down the pecking order, mainly in the federal executive branch, where there are a higher number of bureaucrats exposed to incentives and a different range of corruption situations. Thus, it does seem that the main target of Brazil's crusade against corruption is to focus on the administrative sphere and to target bureaucrats on the federal executive branch. Bureaucrats are more likely to lose their position and be expelled by the federal government than politicians, despite a long list of scandals involving dozens of congressmen and ministers of cabinet.

Moreover, as politicians have admitted in this study, they feel uncomfortable punishing their own peers in Congress, and believe the judiciary should be the main agency responsible for preventing corruption and for pushing sanctions against politicians. The interviews pointed out a culture of self-interest and self-preservation among politicians. However, the interviewees' justifications can be considered, overall, circular and shallow; it is possible to suppose that they represent an attempt to blame others rather than to point to their own weaknesses. In this case, the obvious 'enemy' or the 'one responsible' is the judiciary or the criminal justice system, which is accountable for all the impunity that boosts corruption. Indeed, the judiciary is so inefficient and weak that the idea of corrupt politicians and some less powerful bureaucrats being, to some extent, immune from accountability has some truth to it.

In short, there has been a visible effort to improve transparency and administrative control in Brazil with new laws, procedures and rules. However, it does not mean greater accountability, nor less corruption in the short time, because the anti-corruption apparatus is more focused on civil servants than on top-level politicians. In addition, there are greater chances for rich and powerful people to take advantage of the due process loopholes, as well as a higher level of tolerance of corruption and a culture of self-interest and self-preservation, especially among top-level politicians.

Although there are limitations to replicating qualitative research and obtaining similar findings, it is essential to address the implications of this study for future research. For instance, further research should also be carried out on a wider range of congressmen and other participants, including the views of public servants and judiciary members. In an attempt to examine whether the fight against corruption within the civil service on the central government is also unbalanced, a research has been already carried out to look at those who have been punished by the internal control apparatus in the federal Executive.

Based on the number of penalties enforced against bureaucrats and the politicians' discourse, the results of this study support the perception of Brazil as having a culture of impunity for the powerful, as well as adding depth to the few existing research studies in this area. In sum, the main findings of this study pointed out that the fight against corruption is more likely to be unbalanced in Brazil, where control mechanisms tend to be more efficient against bureaucrats than

against politicians, thus supporting the common sense that 'fish size' does matter in the fight against corruption. However, it is still inconclusive whether punishing top level politicians is enough to deter acts of corruption.

5.Bibliography

Anechiarico, F., and J. B. Jacobs. (1994), 'Visions of Corruption Control and the Evolution of American Public Administration'. *Public Administration Review* 54 (5): 465–473.

_____. (1996), *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective.* Chicago, IL: University of Chicago Press.

Ashforth, B. E., & Mael, F. 1989. Social identity theory and the organization. *Academy of Management Review***,** 14: 20 –39.

Avritzer, L. and Filgueiras, F. (2011), *Corrupção e o Sistema Político no Brasil.* [Corruption and the Political System in Brazil]. Rio de Janeiro: Editora Civilização Brasileira.

Banfield, Edward C. (1958). *The Moral Basis of Backward Society*. New York: Free Pres.

_____. (1975), 'Corruption as a Feature of Governmental Organization'. *Journal of Law and Economics* 18: 587-605.

Bauhr, M. (2012), 'Need or Greed Corruption' in Sören Holberg and Bo Rothstein *Good Government: The Relevance of Political Science*. Massachusetts: Edward Elgar Publishing.

Bauhr, M., and Nasiritousi, N. (2011). *Why pay bribes? Collective action and anti-corruption efforts*. Gothenburg:The QoG Institute.

Bayley. D.H. (1966). 'The effects of corruption in a developing nation'. *Wesicm Political Quarlerly* 19: 719-732. Reprint in A.J. Heidenheimer. M. Johnston and V.T. LeVine (Eds.). Political corruption: A handbook (1989). Oxford: Transaction Books.

Beccaria, C. (1963), *An Essay on Crimes and Punishments*. Indianapolis: Bobbs-Merrill.

Becker, G. S. (1968), 'Crime and Punishment: An Economic Approach', The Journal of Political Economy, Vol. 76, No. 2. (Mar. - Apr., 1968), pp. 169-217.

_____. (1983), 'A Theory of Competition among Pressure Groups for Political Influence'. Quarterly Journal of Economics 97 (3):371-400.

Becker, G.S. and Stigler, G.J. (1974), 'Law Enforcement, Malfeasance, and the Compensation of Enforcers'. Journal of Legal Studies, III (1974), 1-19.

Bresser-Pereira, L.C. (1996), 'Da Administração Pública Burocrática à Gerencial'. *Revista do Serviço Público*, 47(1) janeiro-abril 1996.

Bresser-Pereira, L.C. and Spink, P. (eds.). (2006), *Reforma do Estado e administração pública gerencial*. 7ed. Rio de Janeiro: Editora FGV.

Brunetti, A. and Weder, B. (2003), 'A free press is bad news for corruption'. *Journal of Public Economics,* 87:1801-24.

Della Porta, D. and Vannucci, A. (1997), 'The "Perverse Effects" of Political Corruption', Political Studies, Volume 45, Issue 3, pages 516-538.

De Figueiredo, F. O.V. (2012) 'Big Fish Out of Water: The Unequal Fight Against Political Corruption in Brazil', presented as final dissertation of the MA Criminology and Criminal Justice. King's College London.

Filgueiras, F. (2008), *Corrupção, Democracia e Legitimidade* [Corruption, Democracy and Legitimacy]. Belo Horizonte: Editora UFMG.

_____. (2010), 'Transparency and Corruption Control in Brazil', at: http://democraciaejustica.org/cienciapolitica3/sites/default/files/transparency_and_corruption_control_in_brazil-_fernando_filgueras_2008_0.pdf (Accessed on 2nd August 2012).

Filgueiras, F. and Aranha, A.L.M. (2011), 'Controle da corrupção e burocracia da linha de frente: regras, discricionariedade e reformas no Brasil [Controlling corruption in frontline civil service: rules, discretionary power, and reforms in Brazil]', *Dados*. vol.54, n.2, pp. 349-387.

Folha de S.Paulo. (2015), 'For the First Time, Brazilians See Corruption as the Biggest Problem' available at http://www1.folha.uol.com.br/internacional/en/brazil/2015/11/1712840-for-the-first-time-brazilians-see-corruption-as-the-biggest-problem.shtml (Accessed on February 24, 2016).

Gingerich, D.; Oliveros, V.; Corbacho, A.; Ruiz-Vega, M. (2015), 'Corruption as a Self-Fulfilling Prophecy: Evidence from a Survey Experiment in Costa Rica'. IDB WORKING PAPER SERIES No. IDB-WP-546.

Gingerich, D. (2006), *Corruption in General Equilibrium: Political Institutions and Bureaucratic Performance in South America*. PhD thesis, Department of Government, Harvard University.

_____. (2007), *Corruption and Political Decay: A Causal Analysis based on the Bolivian Case*. Center for the Study of Democratic Politics Woodrow Wilson School of Public and International Affairs Princeton University. At https://www.princeton.edu/csdp/events/Gingerich051007/Gingerich051007.pdf (accessed on November 17th 2015).

Graham, R. (1990), *Patronage and Politics in Nineteenth-Century: Brazil.* Stanford (CA): Stanford University Press.

Hellmann, O. (2015), 'The Institutionalisation of Corruption: The Neglected Role of Power'. Paper prepared for the *65th PSA Annual International Conference* Sheffield, 30 March – 1 April 2015

Hindricks, J., Keen, M., Muthoo, A. (1999), 'Corruption, extortion and evasion'. *Journal of Public Economics*, 74:395-430.

Hinton, M. (2005), 'A distant reality: Democratic policing in Argentina and Brazil', *Criminal Justice* 2005; 5; 75, at: http://www.uk.sagepub.com/repository/binaries/pdf/wakefield_fleming_pdf/Article-4.pdf (Accessed on 10th May 2012).

_____. (2006), *The State on the Streets: Police and Politics in Argentina and Brazil*. London: Lynne Rienner Publishers.

Huntington, S.P. (1968), *Political Order in Changing Societies* . New Haven, CT: Yale University Press.

Huther, J. and Shah, A. (2000), 'Anti-Corruption Policies and Programs: A Framework for Evaluation'. The World Bank. Policy Research Working Paper 2501.

Johnston, M. (2005), *Syndromes of Corruption: Wealth, Power and Democracy*. Cambridge: Cambridge University Press.

Klitgaard, R. (1988), Controlling Corruption. Berkley: University of California Press.

_____. (2008), 'A Holistic Approach to the Fight against Corruption', available at http://www.cgu.edu/PDFFiles/Presidents%20Office/Holistic_Approach_1-08.pdf: (last visited on 5/1/2016)

Klitgaard, R., Maclean-Abaroa, R., Parris, H.L. (2000), Corrupt Cities: A Practical Guide to Cure and Prevention. Oakland and Washington D.C.: Institute for Contemporary Studies/World Bank Institute.

Krueger, A. (1974), 'The Political Economy of the Rent-Seeking Society' in *The American Economic Review*, Vol. 64, No. 3 (Jun., 1974), pp. 291-303.

Leff, N.H. (1964), 'Economic Development Through Bureaucratic Corruption' in *American Behavioral Scientist* **November 1964** vol. 8 no. 3 **8-14.**

Leys, C. (1965), 'What is the Problem about Corruption?' in *The Journal of Modern African Studies*, Vol. 3, No. 2 (Aug., 1965), pp. 215-230.

Marquette, H. and Peiffer, C. (2015), 'Corruption and Collective Action'. *DLP and U4 Anti-corruption Resource Centre*. Research Paper 32.

Médard, J.F. (2002), 'Corruption in the neo-patrimonial states of sub-Saharan Africa' in Arnold J. Heidenheimer and Michael Johnston (eds.), Political Corruption: Concepts and Contexts. New Brunswick, NJ and London: Transaction, pp.379-402.

Miller, Joel. (2003), *Police Corruption in England and Wales: An Assessment of Current Evidence.* London: Home Office RDS. Home Office Online Report 11/03

Moro, S.F (2004), 'Considerações sobre a Operação Mani Pulite [Considerations about the Operation Mani Pulite]'. *Revista CEJ,* Brasília, n. 26, p. 56-62, jul./sep 2004

Mungiu-Pippidi, A. (2006), 'Corruption: Diagnosis and Treatment'. *Journal of Democracy. 17* (3): 86-99.

_____. (2011), 'Contextual Choices in Fighting Corruption:Lessons Learned', *NORAD Report 4/2011,July 2011*, at www.norad.no/en/tools-and-publications/publications/publication?key=383808

_____. (2013), 'Becoming Denmark: Historical Paths to Control of Corruption'. *APSA 2013 Annual Meeting Paper*; American Political Science Association 2013 Annual Meeting

_____. (2015), *The Quest for Good Governance: How Societies Develop Control of Corruption*. Cambridge: Cambridge University Press.

Nye, J.S. (1967), 'Corruption and Political Development: a Cost-benefit Analysis', *American Political Science Review*. 61 (2):417-427, in Robert Williams, ed., *Explaining Corruption: The Politics of Corruption*. P. 45-55. Gloucestershire: Edward Elgar Publishing Limited.

Office of the Comptroller General of Brazil. (2014, December), 'Relatório de acompanhamento das punições expulsivas aplicadas a estatutários no âmbito da administração pública federal [Monitoring Report of the Expulsions Penalties Enforced by the Federal Government]'. At http://www.cgu.gov.br/assuntos/atividade-disciplinar/relatorios-de-punicoes-expulsivas/arquivos/punicoes-anual.pdf (accessed on 22th August 2015).

Office of the Comptroller General of Brazil. (2010, December), 'Relatório de acompanhamento das punições expulsivas aplicadas a estatutários no âmbito da administração pública federal [Monitoring Report of the Expulsions Penalties Enforced by the Federal Government]'. At http://www.cgu.gov.br/Correicao/Arquivos/Expulsoes_2010_Estatutarios.pdf (accessed on 28th August 2012).

Office of the Comptroller General of Brazil. (2009), *CGU is the Internal Audit Unit and the Anti-Corruption Agency of the Brazilian Federal Government*. Presentation at UNODC Expert Meeting on the Prevention of Corruption. Doha, Qatar 9-11 February 2009.At http://www.cgu.gov.br/english/Apresentacoes/Arquivos/20090211_JorgeHage_Doha.pdf (Accessed on 30th August 2012).

Prado, M.M., Carson, L. and Correa, I. (2015), 'The Brazilian Clean Company Act: Using Institutional Multiplicity for Effective Punishment' in *Osgoode Legal Studies* Research Paper No. 48/2015. Available at SSRN: http://ssrn.com/abstract=2673799 or http://dx.doi.org/10.2139/ssrn.2673799.

Persson, A., Rothstein, B., Teorell, J. (2010), 'The failure of Anti-Corruption Policies: A Theoretical Mischaracterization of the Problem'. QoG WORKING PAPER SERIES 2010:19. June 2010.

Pinto, J., Leana, C.R., & Pil, F.K. (2008): "Corrupt Organizations or Organizations of Corrupt Individuals? Two Types of Organization-Level Corruption." *Academy of Management Review,* 33 (3), 685–709.

Prado, M.M., Carson, L. and Correa, I. (2015), 'The Brazilian Clean Company Act: Using Institutional Multiplicity for Effective Punishment' in *Osgoode Legal Studies* Research Paper No. 48/2015. Available at SSRN: http://ssrn.com/abstract=2673799 or http://dx.doi.org/10.2139/ssrn.2673799.

Power, T. and Taylor, M., (eds.) (2011), *Corruption and Democracy in Brazil: the struggle for accountability*. Notre Dame: University of Notre Dame Press.

Quah, J.S.T. (2011), 'Curbing Corruption in Asian Countries: An Impossible Dream?' in Research in Public Police Analysis and Management. Volume 20. Bingley (UK):Emerald Group.

Rose-Ackerman, S. (1978), *Corruption: A Study in Political Economy.* New York: Academic Press.

Rothstein, Bo and Teorell, Jan. (2012), 'Defining and measuring quality of government' in Soren

Holmberg and Bo Rothstein (eds.) *Good Government: The relevance of political science*. Northampton, MA: Edward Elgar Publishing.

Rothstein, Bo. (2009), 'Anti-Corruption: A Big-Bang Theory' (February 6, 2009). *QoG Working Paper* No. 2007:3.

_____**.** (2011), *The Quality of Government: corruption, social trust, and inequality in international perspective.* Chicago: The University of Chicago Press.

_____**.** (2011a), 'Anti-corruption: the indirect 'big bang' approach'. Review of International Political Economy, 18:2, 228-250.

_____. *(2013),* 'Why Anticorruption Reforms Fail—Systemic Corruption as a Collective Action Problem' *Governance*. Volume 26, Issue 3, pages 449–471, July 2013.

Skogan, W.G. and T.L. Meares. (2004), 'Lawful Policing' in *Annals* AAPSS, 2004, 593: 66–83

Siegel, L. (1992), Criminology. Saint Paul (Minnesota): West Publishing Company.

Singer, A. (2013), 'Brasil, junho de 2013: Classes e ideologias cruzadas [Brazil, June 2013: Classes and cross ideologies]' in *Novos Estudos CEBRAP,* no.97. São Paulo, November 2013.

Taylor, M.M. (2010), 'Brazil: Corruption as Harmless Jeitinho or Threat to Democracy?', in Stephen D. Morris and Charles H. Blake, eds., *Corruption and Politics in Latin America: National and Regional Dynamics*, pp. 89-111. London: Lynne Rienner Publishers.

Taylor, M.M. and Buranelli, V.C. (2007), 'Ending up in pizza: accountability as a problem of institutional arrangement' in *Brazil, Latin American Politics and Society*, 49(1), pp. 59-87

Williams, R. (ed.) (2000), *Explaining Corruption: The Politics of Corruption*. Gloucestershire: Edward Elgar Publishing Limited.

Wraith, R. and Simpkins, E. (1963), *Corruption in Developing Countries*. London: George Allen and Unwin Ltd