
Brazilian Politics on Trial: Corruption & Reform Under Democracy

by Luciano da Ros and Matthew M. Taylor (Reinner, 281 pp., 2022)

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GALILEU - REVISTA DE DIREITO E ECONOMIA · e-ISSN 2184-1845
Volume XXII · 1st January Janeiro – 31st December Dezembro 2022 · pp. 124-130
DOI: <https://doi.org/10.26619/2184-1845.XXII.1/2.01>
Submitted on July 22th, 2022 · Accepted on July 26th, 2022
Submetido em 22 de Julho, 2022 · Aceite a 26 de Julho, 2022

This book analyzes Brazil's complex history of corruption and anticorruption since the return to democracy in 1985, and evaluates its lessons for anticorruption reformers in Brazil and in other large democracies. The authors, an assistant professor of political science at the Federal University of Santa Catarina and an associate professor of international relations at American University in Washington, evaluate the corruption scandals that occurred and the anticorruption reforms that have arisen. The book considers the

conditions whereby anticorruption efforts succeed. The book discusses the debates around *Lava Jato*, the impeachment of Dilma Rousseff, and the election of Jair Bolsonaro.

According to the authors, Brazil's anticorruption development has been unique because its accountability reforms have followed two distinct strategies, one incremental and the other a big push. From 1985 until the 2010s, Brazil had a piecemeal, gradual, small-scale reform strategy. Starting in 2014, Brazil's anticorruption efforts

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underwent dynamic changes as the task force of the *Lava Jato* investigation and many of its allies across government and within civil society, quickly increased the tempo of anticorruption efforts, including investigations and prosecutions of diverse groups of elite figures, public mobilization, and legislative reforms, in a big push for accountability.

Chapter 1 discusses the distinctions between the big push approach to anticorruption, which pushes for quick changes in the equilibrium while the status quo is in flux, as occurred with Vicente Fox in Mexico and incrementalism, whereby small gradual gains are built on top of each other.

Chapter 2 describes the prevalent syndrome of “elite cartel” corruption. The authors discuss four prominent cases of grand corruption that occurred in the pre-*Lava Jato* era. The authors attributed the syndrome to “the perilous combination of coalitional presidentialism³ in a hyper-fragmented party system, a large state with a developmentalist⁴ economic policy infrastructure, and a loose campaign

finance system.”⁵ The cases showed recurring historical patterns of weak accountability, which may have contributed to the emergence of *Lava Jato*.

The book notes that in the *Lava Jato* cases, the operators, *doleiros*, and fixers in the scheme, were prosecuted, but not the economic and political elites involved in these scandals. One of the reasons federal officeholders were not prosecuted is that they can be prosecuted for their crimes only before STF. The specific rules of the STF have been revised to preserve political elites.

Chapter 3 traces Brazil’s incremental progress from a fairly low accountability equilibrium toward a much-improved, if still intermediate, equilibrium during the course of three decades between 1985 and 2014. The chapter evaluates the substantial reforms in the accountability policy that facilitated these improvements, and discusses the reforms that followed.

The authors trace the fact that in the first seven years following the return to democracy in 1985 there was a strengthening of civic engagement and transparency

3 Coalitional presidentialism refers to the “strategy of directly elected minority presidents to build stable majority support in fragmented legislatures, particularly through the coordination of two or more legislative parties by the president”. In this regard, no president’s party since 199 in Brazil has held more than one-fifth of congressional seats. BRAZILIAN POLITICS ON TRIAL, AT 16.

4 The developmental state is the idea that the state can be an engine of long-term development through consciously changing investment conditions, grappling with market failures, and addressing coordination problems. BRAZILIAN POLITICS ON TRIAL, AT 16.

5 Campaign finance in Brazil enables both private individuals and businesses to contribute to candidates with only limitations as a proportion of an individual’s income or a company’s revenue respectively. As a result there is an extreme concentration of donors; Significant parts of the contributions were irregular, unregistered with electoral officials, and were characterized as *caixa dois*, a so-called second registered, meaning they are from a second, off-the-books, illicit source. *Id.*

mechanisms such as increased media coverage and greater citizen access to public information required in a democracy. Overall, the reputational, political, and legal forms of accountability grew in the context of responding to grand corruption.

Endogenous reforms occurred due mainly to agencies responsible for the implementation of anticorruption tasks. They involved innovations at the organizational level, such as training and specialization programs, initiatives for inter-agency coordination, and the development of new technologies and processes. ENCCLA (Strategy for AntiCorruption and Anti-Money Laundering), the proliferation of task forces, and the establishment of courts specializing in financial crimes are examples of the endogenous reforms.

At a grassroots level, new civil society organizations devoted to issues of crime, corruption, voting rights, and improved public sector performance. They included in the anticorruption work Amarríbo, Articulação Brasileira Contra a Corrupção e a Impunidade (ABRACCI), Instituto Ethos de Empresas e Responsabilidade Social, Movimento de Combate à Corrupção Eleitoral (MCCE), Transparencias Brasil, and Observatório Social do Brasil.

Chapter 4 evaluates the big push which occurred in *Lava Jato*. The chapter discusses the contingent and highly contextual factors, and the longer-term institutional changes that had incrementally accumulated over the prior three decades

in Brazil. The authors underscore the various capacities in the accountability institutions in Brazil as a whole, and especially in *Lava Jato's* headquarters in Curitiba. The legal and political strategies used by the task force of prosecutors and investigators to help judicial cases progress are reviewed, as well as the context of severe political gridlock that prevented any credible threat of political interference in the investigations, particularly during the operation's first two years. The chapter underscores how the task force achieved a big push through legal action, a media push, broad public engagement, and a reform effort that tried for ambitious changes in the statutory rules governing corruption prosecutions.

Lava Jato signaled the court's unusual proactivity and its decision to convict powerful political figures, including Lula's former chief of staff, José Dirceu. All the anticorruption investigations, the impeachment of Dilma Rouseff reflected declining popular support by political elites and rising dissatisfaction of the population with political leaders. In 2012 and 2013, Congress enacted three important new laws: (1) the reform of the 1998 Anti-Money laundering Law; (2) the Anti-Corruption Law; and (3) the Organized crime Law. These laws formally instituted plea bargaining, corporate liability for corruption, leniency agreements, and penalties for racketeering. Capacity was increased by technological innovations during *Lava*

Jato. They included the Sislava system permitting shared information system used by prosecutors and the Receita Federal (the Internal Revenue Service) to analyze bank and fiscal records. Online access to bank records was expanded and more than 500 requests for international cooperation occurred involving forty-five countries, producing an abundant amount of information.

Chapter 5 discusses the disintegration of *Lava Jato* and its implications for accountability institutions that had developed prior to the investigation. The impeachment of President Rousseff's in 2016 is discussed, and the effects of political realignment and saturation. The chapter discusses how, starting in 2016 and continuing under the Bolsonaro regime after 2018, new governing coalitions targeted *Lava Jato* and reversed accountability improvements.

Developments resulted in the questioning of the *Lava Jato* task force on several legal, political, and ethical grounds. They reached their apogee with the arrest of former president Lula in April 2018. 35 percent of the population believed Lula received worse treatment than other defendants. The increasing doubts about the case and about the costs of accountability facilitated a reversal of the gains of *Lava Jato* and accountability improvements. The concerns resulted in the shifting of campaign finance cases out of federal criminal courts. In addition,

President Temer replaced the head of the Federal Comptroller's Office (CGU) and most of the top officials in the Justice Ministry. Bolsonaro overruled his justice minister in seeking to replace the head of the Federal Policy in Rio and ultimately the director general of police, resulting in Sergio Moro's resignation. The Brazilian executive also sidelined top officials in the Receita Federal and COAF (the Financial Intelligence Unit) after they criticized the high court or appeared not willing to suppress investigations of Bolsonaro family members.

Chapter 6 considers the broader lessons of Lava Jato from a comparative perspective. One is that judicial pushes, such as Lava Jato, have not succeeded in democracies, as has been showed in examples of Italy and France in the 1990s and Indonesia since the 2000s. The authors discuss the reversion to equilibrium closer to the old status quo ante before Lava Jato. They conclude that big push efforts out of low accountability equilibria can easily lead to a perverse effect whereby the end result is worse than the initial condition. The chapter concludes that the big push approach is especially challenging in large democracies such as Brazil. In a large consolidating democracy like Brazil, big push efforts may threaten the democratic regime by destabilizing the political system without restructuring the underlying incentives of political engagement that triggered the corruption.

Chapter 7 focuses on two bottlenecks to the accountability process in Brazil: (1) the extent to which collusion between political and economic elites enabled them to push back against accountability policies and reduce the effectiveness of reform; (2) and the weakness of the sanctioning process, which is weakened due to administrative lethargy and judicial breakdowns in grand corruption cases. These two bottlenecks have served as obstacles to Brazil's progress and have even contributed to regression.

While Brazil has achieved some gains in transparency, oversight, capacity, and effectiveness, two important obstacles continue: achieving effective sanction, especially for the political elite, and the unique patterns of political dominance in the coalitional presidential system. Brazil has not sustained the early gains it made in accountability. Progress has not been deep insofar as it does not seem that the institutional incentives have changed. The progress was narrow insofar as many of the most concrete gains of recent years in the *Lava Jato* case, as opposed to improved effectiveness of police, prosecutors, and judges in other contemporary cases.

The Brazilian judiciary's inefficiency and uncertainty has continued to protect elites. The politicians have also blocked further anticorruption progress. The operation of campaign finance and the role of the executive branch as a source of patronage and privilege, even for members of

the opposition, make politicians reticent to criticize incumbents for accountability breaches. Most of the accountability changes are due to developments outside the political system, from agencies such as the Federal Police, from autonomous bodies such as the Ministério Público, or from civil society and the media.

Police and prosecutors have been forced to rely on a court system that not only was slow and timid in combating wrongdoing by the political elite, the authors say that the two highest courts, the STF (Supreme Federal Tribunal) and the STJ (Superior Tribunal of Justice) were interlinked with the very political bodies they are asked to control.

The anticorruption improvements in Brazil are the improvement in oversight, with the media, congressional committees of inquiry, and in the 2000s, effective investigation and prosecution, especially in lower court criminal trials and civil cases, even the high courts repeatedly overrode them on procedural grounds and enormous delays. Starting in the 2010s, a problem was that few trials actually led to effective punishment for powerful elites.

The authors conclude that eventually *Lava Jato* "became a victim of its own success. Public exhaustion, self-inflicted wounds, failure to expand more broadly across the judicial system, increasing controversy, and the growing opposition of judicial, political, and economic elites began to slow the progress of anticorruption

tion efforts.” During 2016-2021, the legislative branches reasserted their supremacy over the judiciary and the accountability institutions. As the key actors, such as Judge Sérgio Moro joined the political regime, critics of the anticorruption efforts characterized those efforts as partisan.

As a result, the STF realigned and prioritized more defendants’ rights. President Temer, and Bolsonaro reduced the budgets available to oversight agencies and destabilized the bureaucracy by appointing unsympathetic directors to key agencies. Congress blocked and diluted reforms. Nevertheless, several significant anticorruption laws, such as the Anti-Money Laundering Act of 1998, The Law of Administrative Improbability, the Criminal Organizations Law of 2013 (formalizing plea bargaining) have been enacted.

The authors prioritize four interrelated areas as ripe for incremental reform in the future: revising the incentives within coalitional presidentialism, tightening campaign finance, judicial reforms (reducing the privileges to politicians such as access to the original jurisdiction of the high courts), and improving control and oversight of the expansive developmental state apparatus. The latter gives rise for huge patronage opportunities.

The authors point to important lessons from Brazil’s anticorruption efforts. The Brazilian developments illustrate the benefits of incrementalism over big bang

approaches, especially when the judicial system drives these big pushes; the gains from viewing accountability as a process more than an outcome; and the realization that anticorruption progress can be made by focusing on smaller reforms to each of the components of the accountability regime.

As the authors observe, one of the continuing improvements in anticorruption in Brazil has occurred because civil servants and policymakers developed incremental improvements in the elements of overall accountability: transparency, oversight, sanction, and capacity. They improved audits, enacted laws governing corporate behavior, and improved bureaucratic coordination. In addition, efforts to strengthen oversight agency, prosecutorial independence, and better anti-money laundering laws enabled Brazil to incrementally strengthen accountability. While Brazil’s anticorruption progress has not always been even, it nevertheless has significantly improved. As a result, the authors hold hope for the prospects that Brazil has a much better anticorruption and accountability framework going forward.

An appendix provides tables for Brazil’s major federal corruption scandals during 1985-2021. It considers as “major federal political corruption scandals” those scandals that allegedly involved misconduct by members of Congress or the executive

branch, or both, and that received significant attention from the national media.

The book contains 35 pages of useful references.

Even though only the Brazilian author has a law degree, the discussions focus on the development of anticorruption and accountability institutions and frameworks, including law, legal actors, and the various pressures influencing them.