



# NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

## THESIS

**CORRUPTION IN BRAZIL AND THE INCENTIVES FOR  
CHANGE**

by

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March 2017

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**CORRUPTION IN BRAZIL AND THE INCENTIVES FOR CHANGE**

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## **ABSTRACT**

The primary question addressed in this thesis is: What changed in Brazil that gave rise to a heightened social and political climate of anticorruption between 2007 and 2017? More specifically, what changes enabled Brazilian judicial empowerment, making it possible to investigate and hold accountable the corrupt among the economic and political elite? This research analyzes governance and democratization theory, and the varied incentives that influence public officials and encourage them to adopt policies to restrict their own corrupt practices. The research identifies a strong link between Brazil's international ambitions and the resultant influence that external forces placed on the nation to enable transformative judicialization with respect to government corruption. These findings have application both in the domestic fight in Brazil against corruption as well as the international effort to promote equity and influence good governance practices abroad.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

BRICS	Brazil, Russia, India, China, South Africa
CELAC	Community of Latin American and Caribbean States
CGU	Comptroller General of the Union
CNI	National Confederation of Industry
CPI	Parliamentary Investigative Committees
FIFA	International Federation of Association Football
IMF	International Monetary Fund
MTMC	Ministry for Transparency, Monitoring, and Control
MP	Public Ministry
OECD	Organization for Economic Co-operation and Development
OPEC	Organization of the Petroleum Exporting Countries
PT	Workers Party
RTE	Regional Electoral Tribunal
STF	Supreme Federal Tribunal
STJ	Superior Justice Tribunal
TCU	Federal Accounting Tribunal
TRE	Tribunal Regional Eleitoral
TSE	Superior Electoral Tribunal
UNASUR	Union of South American Nations
UNCAC	United Nations Convention Against Corruption

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## I. INTRODUCTION

The primary question addressed in this thesis is: What changed in Brazil that gave rise to a heightened social and political climate of anticorruption between 2007 and 2017? More specifically, what changes enabled Brazilian judicial empowerment, making it possible to investigate and hold accountable the corrupt among the economic and political elite? This question acknowledges that corruption is perceived to be endemic in Brazil and that there have been multiple previous anticorruption programs; however, earlier attempts did little to change the political climate of impunity among white collar criminals.

Brazil's judicial system is historically overburdened and full of loopholes, which allow legal proceedings to exceed the statute of limitations and permit implicated politicians and the elite to carry on for years, only minimally affected by the judicial process. Evidence of concrete change emerged during the *mensalão* trials of 2010, when the Brazilian Supreme Court convicted a seated politician for the first time since the return of democracy in 1985.<sup>1</sup> Prior to 2010, corruption investigations may have forced an implicated politician to resign or, at worst, be expelled from office. Since 2015, however, the *lava jato* (car wash) operation has demonstrated a much greater institutional capacity to gather evidence, implicate defendants and prosecute them while also recouping millions of dollars lost in vast money laundering schemes. The intent of this thesis is to identify the key changes that have recently empowered a judiciary that was previously unable to put corrupt politicians and businessmen behind bars. This thesis argues that exogenous forces ultimately enabled the movement towards anticorruption reform in Brazil.

### A. SIGNIFICANCE

Over the past three decades, Brazil has developed economically at an accelerated rate compared to most nations, and stands as an example to the developing world of the progress that can be achieved in poorer regions. As of 2016, Brazil was the world's ninth

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<sup>1</sup> Sergio Praça and Matthew M. Taylor, "Inching Toward Accountability: The Evolution of Brazil's Anticorruption Institutions, 1985–2010," *Latin American Politics and Society* 56, no. 2, (Summer 2014): 41, doi: 10.1111/j.1548-2456.2014.00230.x.

largest economy, after slipping a few places due to the economic retraction that started in 2014.<sup>2</sup> Complicating Brazil's rise has been the vast economic disparity that dates back to its founding in the sixteenth century as an extraction colony to a European empire. The reintroduction of democracy in 1985 and the subsequent economic turnaround Brazil has experienced facilitated the institutional and social developments that have lifted approximately forty million Brazilians out of extreme poverty.<sup>3</sup> Despite the many successes achieved by Brazil, there are many lingering challenges. Economic disparity is still a significant issue, drug and gang related violence is often responded to by police brutality, and the political system is awash with informal institutions, personalist politicians, and corruption, all of which reward the rich and penalize the poor.

In 2004, senior members of the president's Workers Party (PT) were accused of running a vote buying scheme, dubbed the *mensalão*, or big monthly allowance, in which the president's administration was handing out hefty kickbacks to congressional partners in return for political loyalty. It took the case seven years to reach Brazil's highest court, but in the end accomplished something that had not been done before in Brazilian politics: it convicted 25 of the nation's wealthiest and most powerful citizens and sentenced them to prison terms.<sup>4</sup> The scandal transfixed the nation, as the public watched the proceedings on live television, and watched a historically inept judicial system overpower the impunity of white-collar crime.

In 2016, the economy was in the third year of a deep recession, and President Dilma Rousseff was already impeached for illegally masking the economic crisis with funds from the state-run bank prior to her reelection.<sup>5</sup> On top of that, in 2015, a newly empowered judiciary began to unravel another political scandal, labeled *lava jato*, which

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<sup>2</sup> "The World's Top Ten Economies," Investopedia, accessed February 25, 2016, <http://www.investopedia.com/articles/investing/022415/worlds-top-10-economies.asp>.

<sup>3</sup> "Bolsa Família: Changing the Lives of Millions in Brazil," World Bank, accessed January 21, 2017, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21447054~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

<sup>4</sup> Ben Tavener, "Guilty Verdicts for Forming the Mensalão," *Rio Times*, October 23, 2012, <http://riotimesonline.com/brazil-news/front-page/guilty-verdicts-for-forming-mensalao-scheme-in-brazil/>.

<sup>5</sup> Heloisa Mendonca, "Perícia Sobre Pedalada Gera Constrangimento, Mas Não Altera Desfecho do Impeachment," *El Pais*, June 30, 2016, [http://brasil.elpais.com/brasil/2016/06/28/politica/1467141285\\_004935.html](http://brasil.elpais.com/brasil/2016/06/28/politica/1467141285_004935.html).

has surprisingly led to a much more rapid and wide spread prosecution of the political and economic elite. This new scandal has put more elites behind bars in two years than the *mensalão* was able to do in seven. Unfortunately, all of this occurred in the lead up to Brazil hosting the world's two largest international events, the World Cup in soccer and the Olympics. This thesis is significant because it identifies conditions by which Brazil increased its institutional capacity to fight corruption, a problem that exists throughout the world. This analysis extracts lessons from Brazil's tough lessons and how they can be applied to similarly challenged countries.

## **B. DEFINITIONS**

Corruption has a profound impact on state development; it is said that “in the worst cases, it costs lives; short of this, it costs people their freedom, health, or money.”<sup>6</sup> According to Transparency International's Corruption Index, Brazil falls at number 79 out of 176 nations.<sup>7</sup> It is estimated that corruption in Brazil consumes between 2–5 percent of the annual GDP.<sup>8</sup> With implications as severe as these, certainly understanding corruption in one of the world's largest nations can help us understand how to combat similar problems in nations around the world. Understanding the extent of corruption is beyond the scope of this thesis, and as such, the discussion here is based on a basic definition of corruption, which is “the abuse of entrusted power for private gain.”<sup>9</sup> Expanding on this definition, corruption can be observed in many forms, including bribery, kickbacks, extortion, embezzlement, nepotism, illicit enrichment, or public abuse of functions.<sup>10</sup>

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<sup>6</sup> “What Is Corruption?,” Transparency International, accessed August 17, 2016, <https://www.transparency.org/what-is-corruption/#costs-of-corruption>.

<sup>7</sup> “Corruption Perception Index 2016,” Transparency International, accessed February 9, 2017, [http://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](http://www.transparency.org/news/feature/corruption_perceptions_index_2016).

<sup>8</sup> Alfred P. Montero, *Brazil: Reversal of Fortunes* (Malden, MA: Polity Press, 2014), <https://read.amazon.com/>.

<sup>9</sup> “How Do You Define Corruption,” Transparency International, accessed March 3, 2017, <http://www.transparency.org/what-is-corruption/#define>.

<sup>10</sup> Andy Spalding and The University of Richmond Law School Anti-Corruption Team, “Chapter 1: When the Games Transcend the Games: Globalization, Corruption, and the New Olympic Legacy,” Richmond University School of Law, accessed October 15, 2016, [http://law.richmond.edu/olympics/chapters/brazil\\_chapter1.pdf](http://law.richmond.edu/olympics/chapters/brazil_chapter1.pdf).

Brazil is experiencing an important transformation, unfortunately for Brazilians it comes at what would seem a very inopportune time due to the economic downturn. Throughout the challenges it is experiencing, the nation has doubled down on anticorruption reforms and has the ability to emerge a better stronger nation. One piece of evidence comes from the Brazilian definition of corruption that emerged from legislation following nationwide protests against the government in June of 2013. The new law, 12.850, defines organized crime as collaborating with the objective of obtaining, advantages of any nature, either directly or indirectly.<sup>11</sup> The very clarification of corruption enabled the charges of corruption be brought against multiple defendants in the *Petrobras* scandal since its discovery in 2014. Among those accused in the scandal are a former president and the speaker of the lower house and several of their peers.

### **C. POTENTIAL EXPLANATIONS AND HYPOTHESES**

The objective of this thesis is to identify the catalyst that enabled the judiciary to finally convict some of the most powerful individuals in Brazil on crimes of corruption. Information to support the statements in this thesis are drawn from both Brazilian and other sources. These sources include scholarly analyses on the subjects of corruption and governance combined with historical and contemporary accounts that illustrate the context of Brazil's anticorruption reforms. These accounts demonstrate that the anticorruption evolution has occurred through gradual reinforcement of democratic practices as well as by the influence of nongovernment entities. The three primary schools of thought in this paper, contend that the most important influence in Brazil's anticorruption transformation was motivated from either the top-down, bottom-up, or other outside mechanism.

Supporting the top-down model, Brazil's democracy has progressively worked toward consolidation for over thirty years. The state made many incremental improvements to laws and institutions that facilitated a favorable environment for judicial change. Corruption is not a new element in Brazil; what is however, is the sudden ability

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<sup>11</sup> *Organização Criminosa*, Law No. 12.850 (August 2, 2013), [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/112850.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112850.htm).

to do something about it. Brazil's democratization and emerging judicialization is, an important balancing of the state institution against historical networks of personalist politics and a weak party system that thrives on cross-party coalition building, shady networks, lucrative bribes and political appointments. Thus, the efficacy of top-down democratic consolidation to produce transparency is a tenuous argument because it relies on the merits of an already corrupt organization to take action against itself.

Arguing for the power of domestic empowerment is made easily when observing the monumental social and development growth Brazil has achieved since 2000. As a result, Brazil began to provide more in welfare and education programs that have lifted millions out of extreme poverty and substantially improved the education level of the lower quintiles of society.<sup>12</sup> These improvements rapidly expanded the Brazilian middle class, which, in turn, has applied greater pressure on the state to improve overall capacity to serve the public. Additionally, there is a greater awareness of domestic issues, and global norms, facilitated by rapidly growing access to the 24-hour news cycle and social media. Social empowerment is a critical part of this transformation, however the argument here is that the people would not have begun to protest in June of 2013 if the conditions for a social movement had not been created by an outside entity.

Although Brazil had previously begun to make strides against corruption through natural democratic evolution and civic activism, it is argued here that international forces were the key to change. As Brazil grew into one of the world's largest economies and demonstrated sustained progress as a developing nation, it received both international attention and influence. Coincidentally, Brazil's greatest international opportunity to shine overlaps with some of its most trying democratic moments, as a result of the corruption scandals. The first event was in December 2003, when Brazil signed onto the UN Convention against Corruption, then the *mensalão* scandal was uncovered the following year. While the *mensalão* was mulled over for the next several years, Brazil was selected in 2007 to host the World Cup and in 2009 to host the Summer Olympics. A

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<sup>12</sup> Brazil's Bolsa Familia, is a very cost effective Conditional Cash Transfer program that is credited with helping approximately 40 million Brazilians out of extreme poverty. Extreme poverty is considered to be anyone living on less than \$1.50 a day. Brazil's Bolsa Familia costs the government about 0.5 percent of the nation's GDP.

year later in 2010, Brazil began to convict politicians found guilty of corruption. Shortly after these events, Brazil went on to adopt other significant transparency measures that would challenge endemic corruption, such as a new government procurement law (2011), plea-bargaining (2013), and appeals reforms (2015). It is relevant to note that these events and initiatives were not linear and there was significant effort on the part of devoted and loyal citizens to achieve Brazil's anticorruption moment. Yet, this thesis concludes that nongovernment actors encouraged changes to the law, exposing the hidden practices of a corrupt class of politicians and businessmen. The decision to host the Olympics and World Cup applied the needed pressure to send dormant civic discontent into the streets and IGOs and NGOs created a path for the executive and legislative branches to surrender power to the judiciary vis-a-vis corruption.

#### **D. THESIS OVERVIEW**

The following chapters are written so that each is a foundation for subsequent chapters; they also work together to build an overall structure to support the main thesis of this argument. Chapter II provides a brief historical summary of Brazil, to include an introduction to the *lava jato* and *mensalão* investigations. Chapters III, IV, and V cover the three competing theories of reform; democratic consolidation, domestic accountability, and exogenous forces. Each chapter begins by introducing various scholarly insights that are applied within the chapter to evaluate the events and decisions that unfolded to produce transparency in Brazil. It is important to note at the outset, that each of these approaches to reform are also contributing factors to the overall transformation; however, as previously stated this thesis argues that exogenous influences ultimately triggered Brazil's sudden judicial empowerment.

## II. A BRIEF HISTORY OF BRAZIL

Brazil is distinguished by five geographic regions with distinct socio-economic histories, they are depicted in Figure 1. The Southern region is the smallest region but due to its high concentration of European emigrants, it developed differently than the northern regions and it became the second wealthiest region.<sup>13</sup> The Southeast contains the two largest cities, Rio de Janeiro and São Paulo, and remains the nation's industrial heart.<sup>14</sup> The Northeast has survived on the regions rich agricultural capacity, yet it is the poorest region, producing an average income of only two-thirds the national average.<sup>15</sup> The center-west is the agricultural frontier, it is sparsely populated, but since it became the home to the nation's capital, Brasilia, in the 1960s it became the link between the coast and the far reaches of the world's fifth largest nation.<sup>16</sup> The Amazonian north accounts for 60 percent of Brazilian land mass and about one-eighth of the country's population, but like the Northeast, it too is financially behind the southern regions.<sup>17</sup>

By comparison to its Spanish neighbors, Brazil experienced a relatively peaceful transition away from its colonial past. However, in its path to stable democracy, it too has struggled with a patrimonial heritage, and a very small upper class distinguished by a large income gap from the common citizen. Following the nations re-democratization in the mid-1980s, it struggled to shake off pervasive political corruption. Brazil has long struggled with its impressive potential and periods of prosperity that are undermined by poor economic policy, timing, or the selfish pretenses of politicians that are motivated by their own enrichment rather than providing good governance. Alfred Montero stated that

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<sup>13</sup> Michael Reid, *Brazil: The Troubled Rise of a Global Power* (New Haven, CT: Yale University Press, 2014), 12.

<sup>14</sup> Ibid., 13.

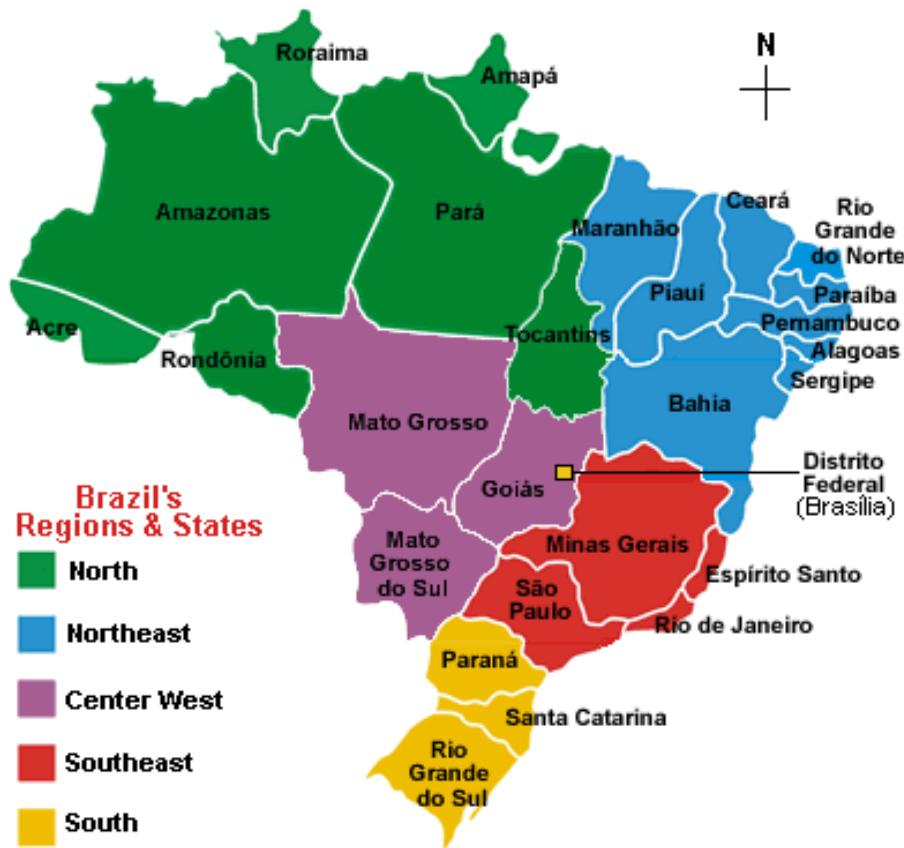
<sup>15</sup> Ibid., 15.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., 16.

clientelism and patronage are endemic in Brazilian politics, and “too much of the oligarchical and authoritarian past lingers.”<sup>18</sup>

Figure 1. Brazil’s Regions and States.<sup>19</sup>



The crux of Brazil’s problem is not its people and their culture, but the incompleteness of its political system that perpetuates corruption through a complex political entanglement between branches of government combined with an absence of both accountability and the power to enforce institutional control measures.<sup>20</sup> One of the primary conduits of endemic corruption in Brazil is the system’s design that permits

<sup>18</sup> Alfred P. Montero, *Brazil: Reversal of Fortune* (Malden, MA: Polity Press, 2014), <https://read.amazon.com/>.

<sup>19</sup> Source: “Mapa do Brasil,” John in Brazil Blog, accessed February 8, 2017, [http://www.johninbrazil.org/wp-content/uploads/2014/12/mapa\\_do\\_brasil.gif](http://www.johninbrazil.org/wp-content/uploads/2014/12/mapa_do_brasil.gif).

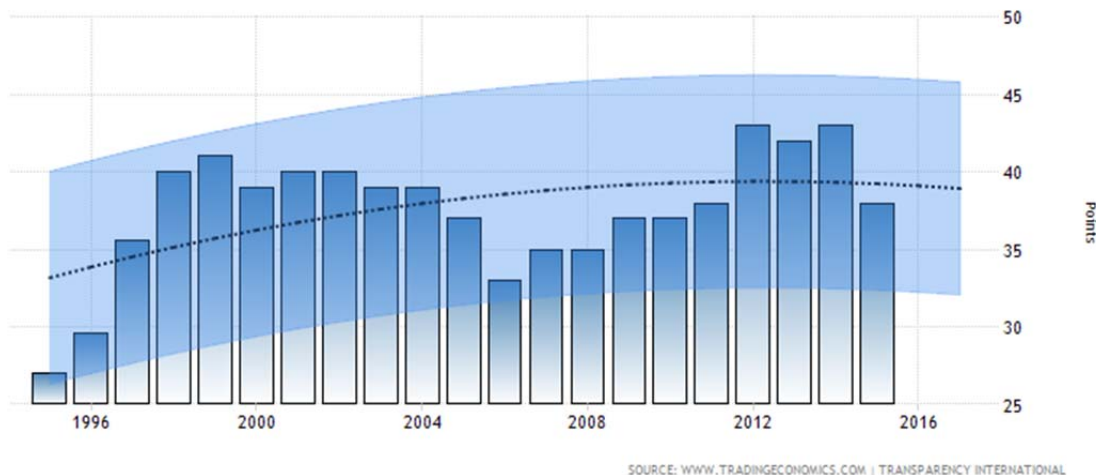
<sup>20</sup> Eduardo Mello and Matias Spektor, “How to Fix Brazil,” *Foreign Affairs* 95, no. 5 (September/October 2016): 104, <https://www.foreignaffairs.com/articles/brazil/how-fix-brazil>.



presidents and elected officials to appoint their allies to “plum jobs” in state-run companies and regulatory agencies.<sup>21</sup> It is through these political networks that illicit money exchanges hands, presumably below the visibility of the public as well as transparency organizations.

Historically, corruption is considered part of Brazil’s “genetic code,” systemic to a “backward society built on inequality and oppression, controlled by a tiny elite.”<sup>22</sup> In Transparency International’s 2016 Corruption Perception Index, Brazil ranked 79 out of 176 counties.<sup>23</sup> Figure 2 shows how Brazil has been observed by Transparency International since 1995. This chapter looks into the history of corruption in Brazil, and it is divided into three main sections, the first summarizes the history prior to 1985, the second is a summary of the current democratization from 1985 to the present, and finally closes with an introduction to the *mensalão* and *lava jato* corruption cases. The history herein provides important context pertinent to the discussions in subsequent chapters.

Figure 2. Brazil Corruption Index<sup>24</sup>



<sup>21</sup> Ibid., 107.

<sup>22</sup> Paulo Sotero, “Brazil’s Rise Against Corruption,” The Wilson Center, May 10, 2016, <https://www.wilsoncenter.org/article/brazilians-rise-against-corruption>.

<sup>23</sup> “Corruption Perception Index 2016.”

<sup>24</sup> Source: “Brazil Corruption Index,” Trading Economics, accessed January 16, 2017, <http://www.tradingeconomics.com/brazil/corruption-index>.

## **A. PRE-1985 DEMOCRATIZATION 1500–1889**

Portugal began colonizing Brazil after its discovery in 1500. The Portuguese sought to exploit whatever wealth they could discover in the new world. Initially, sugar cane was the most abundant and profitable resource, but it required an immense amount of labor. The Portuguese first sought to enslave the natives, to make the colony function, but the indigenous resisted “by waging war, by fleeing, and by refusing to perform forced labor.”<sup>25</sup> To keep up with the demand they resorted to importing slaves from Africa. In total, the Portuguese imported approximately five million slaves to Brazil, more than any other region in the Americas.<sup>26</sup>

In 1808, Napoleon conquered Portugal and Spain, but unlike the Spanish colonies that were temporarily relieved of European control, the Portuguese royal family fled to Rio de Janeiro, where King Joao VI ruled his kingdom until he returned to Portugal in 1821. The period from 1808–1821 is known as the kingdom of Portugal and Brazil. Upon the king’s departure, his son Pedro I was left to manage Brazil. Within one year, however, Pedro declared independence from Portugal, and established a new governing body under a constitutional monarchy making the new Empire of Brazil.<sup>27</sup> In 1833 the British abolished slavery in the Caribbean and began to pressure others to do the same. Slave trading to Brazil ceased in 1850, but was not abolished until 1888.<sup>28</sup> The empire and its early constitution remained intact until Dom Pedro II was deposed and exiled in 1889.<sup>29</sup>

### **1. The Old Republic 1889–1930**

Following the military coup that ended the Empire of Brazil, a new constitution was created in 1891, modeled after the North American republican design.<sup>30</sup> Shortly after

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<sup>25</sup> Boris Fausto, *A Concise History of Brazil* (New York: Cambridge University Press, 1999), 17.

<sup>26</sup> *Ibid.*, 16, 36.

<sup>27</sup> *Ibid.*, 76, 79.

<sup>28</sup> *Ibid.*, 109.

<sup>29</sup> *Ibid.*, 115.

<sup>30</sup> *Ibid.*, 146.

its establishment, the fledgling republic experienced a financial crisis, and a power struggle between the landed elite, the military, and new republicanism. The government was too weak to manage the entire state, so power was dispersed to the lower municipalities making the new republic “federative.”<sup>31</sup> The nation continued to grow and expand relying on rich agriculture and mining. Sao Paulo and Minas Gerais became the backbone financial center of the nation, but when an ideological break divided the elite in the two neighboring states, the original republic collapsed to a revolution led by the reformist candidate Getúlio Vargas after he lost the 1930 election.<sup>32</sup>

## **2. Vargas and the Estado Novo 1930–1945**

Vargas is considered the “Father of Brazil,” and his impact continues until today. His leadership can be broken into three periods prior to 1945: first, as head of the provisional government (1930–1934); second, as president (1933–34); and third, as dictator (1937–1945).<sup>33</sup> Vargas inspired and led a successful revolution for industrialization, and pressed forward in office to suppress the middle class and popular dissent. He engineered a strong centralized government by abolishing the constitution of 1889, dissolving congress, and appointing political cronies to replace previously elected officials.<sup>34</sup> Under his direction, a new constitution was created and in July of 1934 he was indirectly elected president by the constituent assembly.<sup>35</sup> By 1937, he was uncontested but after multiple leftist uprisings, Vargas found motivation for staging a coup to ensure he would stay in power. After stamping out any real or pretended contest to his authority, he shut down the congress and canceled the upcoming elections of 1938, again abolishing the constitution and declaring the *Estado Novo* (new state) and his new dictatorship.

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<sup>31</sup> Ibid., 146.

<sup>32</sup> Ibid., 186.

<sup>33</sup> Ibid., 193.

<sup>34</sup> Reid, *Troubled Rise*, 80.

<sup>35</sup> Fausto, *History of Brazil*, 206.

Vargas retained control of the government by carefully managing his allies and maintaining a close bond with the military. The *Estado Novo* saw the military more than double in size and importance. In 1942 the military budget peaked at 36.5 percent of the national budget.<sup>36</sup> Vargas chose to support the fight for democracy in Europe, and even committed 25,000 troops to fight alongside the Allies in Italy.<sup>37</sup> The irony of his decisions was not lost on his subordinates, dissent began to fracture his support, and the demand for elections grew difficult to ignore. Vargas conceded to elections, and was not short on creativity in doing so. He chose to reinvent himself and the country one more time, permitting elections for congress and the presidency in 1945. Two political parties were created, both led by military officers, anticipating the military was the only vehicle powerful enough to compete with Vargas. After the elections, the army forced him to resign all authority beyond the new elections.

### **3. Second Republic 1945–1964**

The second Brazilian republic was a new era of democratization, and produced another constitution by 1946. Following Vargas' resignation and brief retirement, he returned to politics, emerging as a populist candidate and "leader of the masses," as he called it.<sup>38</sup> Mired by economic challenges, Vargas' final stint as the nation's leader culminated in his suicide, after a failed murder attempt on another politician.<sup>39</sup> Timothy Power remarked that the era between Vargas and the military coup of 1964, was turbulent but demonstrated the enduring legacy of Vargas, noting that all but one of his successors was "forged" during the Vargas administration, and carried on many of his policies.<sup>40</sup>

Following Vargas' death, Juscelino Kubitschek took office and stabilized the nation while making the economy grow again. Kubitschek, a visionary, also pushed to

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<sup>36</sup> Reid, *Troubled Rise*, 84.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 87.

<sup>39</sup> Fausto, *History of Brazil*, 243.

<sup>40</sup> Timothy J. Power, "Brazilian Democracy as a Late Bloomer: Reevaluating the Regime in the Cardoso-Lula Era," *Latin American Research Review*, no. 45 (2010): 221, <http://www.jstor.org/stable/27919220>.

have a new federal city built in the interior, away from Rio. In doing so, he invented a city of politicians built for political intrigue away from public scrutiny, laying the groundwork for an unrestrained breeding ground for corruption.<sup>41</sup> Following Kubitschek, the nation lacked a clear leader that could maintain his level of innovation while balancing the demands of various factions, namely the military, which was experiencing its own infighting. When João Goulart failed to unify the government and the military, he became more radically left and distant from the conservative military leadership. Goulart sealed his fate by supporting an incident of mutiny and insubordination in Rio by a band of junior enlisted troops; this act of infidelity pushed the military to turn on him and within 24 hours the military had seized control of the government.<sup>42</sup>

#### **4. Military Regime 1964–1985**

Many expected that the military intervention was to stabilize the country until the 1965 election, but instead the military began a twenty-year period of bureaucratic authoritarian rule.<sup>43</sup> The new regime began to direct changes and repress the opposition using *Atos Institucionais* (Institutional Acts), under the justification that it was the “constituent power, which is inherent in all revolutions.”<sup>44</sup> The military gave itself power to purge congress and remove leftist politicians but permitted limited democratic institutions to continue. Fearing a return from previous presidents, Goulart and Kubitschek were stripped of their political rights for ten years and all previous parties were abolished and replaced by two new ones created by the regime.<sup>45</sup>

The regime militarized government functions and recruited technocrats to reengineer the economy. During the Emilio Garrastazu Médici administration of 1969–1974, the country experienced a brief economic “miracle,” growing at more than 11

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<sup>41</sup> Reid, *Troubled Rise*, 92.

<sup>42</sup> Ibid., 96.

<sup>43</sup> Guillermo A. O'Donnell, *Modernization and Bureaucratic-Authoritarianism: Studies in South American Politics* (Berkeley, CA: University of California, 1973), 95.

<sup>44</sup> Fausto, *History of Brazil*, 273.

<sup>45</sup> Reid, *Troubled Rise*, 101.

percent over a four-year period, and enabling stabilization of the budget.<sup>46</sup> Later, Ernesto Geisel, represented the turning point of political liberalization, as he began mediating a slow and controlled exit to protect the military from political repercussions later.<sup>47</sup> In 1984, the Brazilian Democratic Movement party gained a majority in the legislatures of the two most important states of Rio and São Paulo, propelling the nation to its first directly elected presidential victory in twenty years.

## **B. RE-DEMOCRATIZATION 1985 TO THE PRESENT**

In 1985 and 1986 Brazil experienced significant growth, in the range of 7 percent to 8 percent annually; however, it did not last as inflation and currency devaluation lead to financial collapse.<sup>48</sup> José Sarney became the first president inaugurated following the untimely illness and death of Tancredo Neves just prior to his planned inauguration on March 14 of 1985. Sarney would go on to oversee the completion of a new constitution in 1988. The document, although completed, demonstrated a number of problems, despite its lengthy 250 articles.

The next president, Fernando Collor de Mello, the first directly elected president since the early 1960s, thrived politically on an image of strong anticorruption rhetoric; however, it proved to be his ironic undoing. The Senate impeached Collor in 1992 following the revelation that his campaign finance manager secured support through bribes in the lead up to Collor's second term. Prior to the Senate's final decision, Collor demonstrated an oft-used political maneuver to step down from office to avoid political sanctions, but the impeachment proceedings continued, resulting in the suspension of his rights to run for political office for eight years. Following the impeachment, he was further implicated in a separate money-laundering scheme with ten members of congress.

The 1980s and early 90s were very difficult economically for the young democracy, inflation accumulated to 13.3 trillion percent by 1994 and the nation

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<sup>46</sup> Fausto, *History of Brazil*, 284.

<sup>47</sup> *Ibid.*, 287.

<sup>48</sup> Power, "Brazilian Democracy," 223.

defaulted three times on its debt.<sup>49</sup> Prior to being elected president, Fernando Henrique Cardoso rose to prominence on the basis of his Real Plan, which he instituted as Finance Minister. The program invigorated the economy with a new currency and slashed inflation. The plan was remarkably successful, considering multiple new currencies were previously unsuccessful. With good policy application, inflation dropped from 5,000 percent in 1994 to just 1.7 percent in 1998.<sup>50</sup> He went on as president to work with congress to institute neoliberal reforms in politics, the economy, and the social environment. Cardoso's election represented a new era of political stability in which only three presidents held the office during a twenty year period.<sup>51</sup>

Waiting in the wings of democracy was Luis Inácio Lula da Silva, the outspoken union leader during the military years and a founding member of the new Workers Party (PT). Lula lost in three presidential elections before softening the extreme socialist image of his party to win in 2002.<sup>52</sup> Lula rose to power as a socialist; however, once in office, he was more of a centrist and by his second term had garnered broad coalitional support in the congress. He retained or modified several of Cardoso's successful policies, capitalizing on good financial times, aided by his own good policies, and focused on extensive social reforms. The most notable of those was the *Bolsa Familia*, which is highly touted for its success at bringing approximately 40 million Brazilians out of extreme poverty. Nearing the end of his second term, Lula was able to stave off associations with the *mensalão* vote-buying scandal that broke open in 2005, but the scandal consumed the two leading candidates perceived to be his successor. He then leaned on a close friend, Dilma Rousseff, his Chief of Staff and former president of the state-run oil firm, Petrobras.

Rousseff won the 2010 election and continued to fight against the growing perception of corruption in the PT and coalition parties. She sacked seven ministers in her first year and pushed for multiple new anticorruption laws following the guilty verdicts in the *mensalão* case. Rousseff struggled to keep the economy growing, and inflation began to

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<sup>49</sup> Reid, *Troubled Rise*, 128.

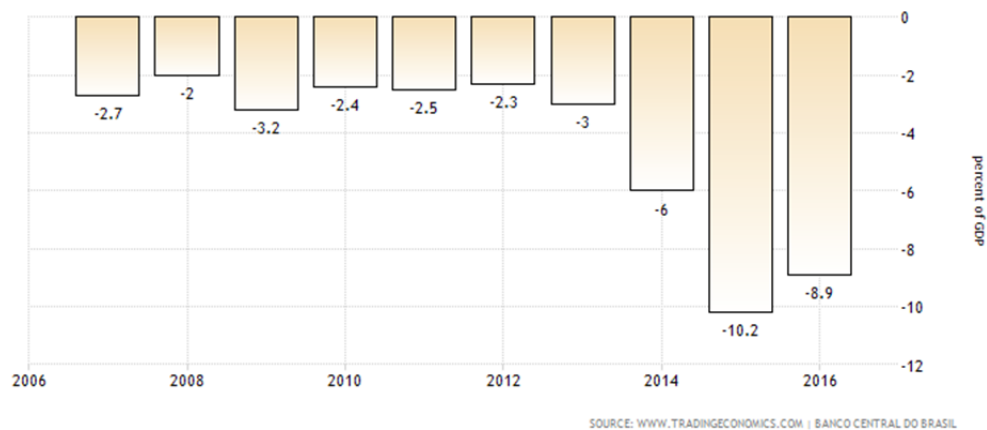
<sup>50</sup> Ibid., 128.

<sup>51</sup> Power, "Brazilian Democracy," 226.

<sup>52</sup> Reid, *Troubled Rise*, 141.

rise. Before the end of her first term, the economy stagnated right as the world was turning their attention to Brazil, to see what Lula declared as a “first-class country” when he lobbied for the opportunity to host the World Cup and the Summer Olympic Games.<sup>53</sup> Complicating the situation, public disappointment burst into uncharacteristically large protests around the country in June of 2013. It started as an objection to public transit fare increases, but boiled over into protests against the government, education, welfare, corruption, and the like. News of a new scandal at Petrobras emerged just before the 2014 elections, but it was still unknown how big it was until after Rousseff’s win. She survived the election but not her second term. She was removed by the Senate for taking out R\$58.7 billion in unauthorized loans from Brazil’s state banks without the approval of congress, an impeachable offense under the Fiscal Responsibility Law established in 2000.<sup>54</sup> The contrived maneuver was intended to deceive voters and other institutions into believing the nation’s balance sheet had a better bottom line than in reality. Figure 3 illustrates the dramatic change in the Brazilian budget leading into Rousseff’s second term.

Figure 3. Brazil’s Government Budget Deficit<sup>55</sup>



<sup>53</sup> Alex Belos, “Brazil’s Politicians Banking on World Cup Victory to Help Soothe Unrest,” *The Guardian*, June 8, 2014, <https://www.theguardian.com/football/2014/jun/08/brazils-politicians-banking-on-world-cup-victory-to-help-soothe-unrest>.

<sup>54</sup> Joe Leahy, “What is Brazil’s President Rousseff Accused of?,” *Financial Times*, May 12, 2016, <https://www.ft.com/content/58401072-167d-11e6-b8d5-4c1fcdbe169f>.

<sup>55</sup> Source: “Brazil Government Budget,” Trading Economics, accessed February 16, 2017, <http://www.tradingeconomics.com/brazil/government-budget>.



### C. CORRUPTION, A LINGERING LEGACY

Brazil stands as an example that free elections and a constitution are no panacea for some of the challenges that face developing nations. Alfred Montero states, “clientelism has survived because of the weakness of electoral and legal forms of elite accountability coupled with persisting social and economic inequalities.”<sup>56</sup> Brazil’s history, gives some small sense of the repetitive challenges good governance faces in this country. On top of those issues there are other complicating factors like racial and gender inequalities, tremendous income maldistribution and the inefficient spread of social benefits. Lack of competitiveness, poor infrastructure, transportation, technology, and untrained labor play a significant role in defining Brazilian priorities for reform. Despite these challenges, policy makers often divert their attention to other political opportunities, where clientelism paces every stage of policymaking, and where nepotism and favoritism enriches a select few. Democracy is hindered, as former President Cardoso stated, by a tolerance of “corporatism, privileges, and clientelism.”<sup>57</sup>

Impunity in Brazil has proven to be another enduring challenge. The historical consequences for a politician accused of wrongdoing in Brazil are void of serious repercussions. President Collor, was impeached, losing his right to run for office for eight years, but returned to politics as of 2017 was serving as a senator. In 1994, a budget scandal resulted in the expulsion of implicated legislators, but none went to jail. In 2001, the president of the Chamber of deputies resigned over extortion charges, but again remained free. According to Timothy Power, “these Brasilia centered scandals are only the tip of the iceberg,” and the subnational level is just as corrupt and a springboard to more serious activities at the national level.<sup>58</sup> What is critical to the reality of impunity in Brazil is that the ultimate decision results in “meaningless outcomes” that do little to coerce politicians to change.<sup>59</sup> The following short narratives of the *mensalão* and

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<sup>56</sup> Montero, *Reversal of Fortune*.

<sup>57</sup> Astrid Hasfura, “How Sergio Moro is Tackling Brazil’s Corruption,” Global Risk Insights, January 18, 2017, <http://globalriskinsights.com/2017/01/power-broker-series-sergio-moro/>.

<sup>58</sup> Power, “Brazilian Democracy,” 235.

<sup>59</sup> Sotero, “Brazil’s Rise.”

Petrobras scandals demonstrate a new era of hope and anticorruption in Brazil, where the rules have changed and the elite are increasingly subject to the rule of law.

## 1. Mensalão

The *Mensalão*, or big monthly allowance, emerged from a network within Lula's Workers Party that managed an array of budgetary transactions to siphon off millions of Brazilian *reais* in a cash-for-votes operation. After Lula's election, he decided to load his cabinet and key assignments with PT party loyalists, forgoing Cardoso's method of spreading the good jobs among coalition parties. By the end of his second term, 21 of the 35 cabinet posts were held by PT members and the remaining seats were split between eight other parties, of which he was generous only to the independents with five seats.<sup>60</sup> The *mensalão* payments were used as a bargaining tactic to maintain coalition loyalty. The monthly stipend was worth approximately R\$30,000.<sup>61</sup> News of the scheme broke out in 2004 when Roberto Jefferson, a disgruntled coalition deputy from the PTB (Brazilian Labor Party), leaked the scheme's details after the coalition failed to protect him from allegations in a separate kickback scheme.<sup>62</sup>

As delays and government interference caused the final decision to drag on, the Brazilian public looked on in disappointment, knowing that the judiciary could "decide whether impunity and all its associated ills—disregard for the law, and citizen cynicism, among the most grievous—will persist."<sup>63</sup> Finally, in October of 2012, after seven years of deliberation, 25 defendants, including 12 senior leaders in the Workers Party, were convicted of crimes including "misappropriation of public funds, mismanagement, money laundering, inter-party corruption, bribery (active corruption), and tax evasion."<sup>64</sup>

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<sup>60</sup> Carlos Pereira, "Brazil's Executive-Legislative Relations Under the Dilma Coalition Government," January 29, 2017, Brookings Institution, [https://www.brookings.edu/wp-content/uploads/2016/06/1110\\_brazil\\_politics\\_pereira.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/1110_brazil_politics_pereira.pdf).

<sup>61</sup> Gregory Michener and Carlos Pereira, "A Great Leap Forward for Democracy and the Rule of Law? Brazil's Mensalão Trial," *Journal of Latin American Studies*, no. 48 (2016): 480, doi: 10.1017/S0022216X000377.

<sup>62</sup> *Ibid.*, 480–81

<sup>63</sup> Lucy Jordan, "Mensalão Corruption Trial Begins in Brazil," *Rio Times*, August 7, 2012, <http://riotimesonline.com/brazil-news/front-page/mensalao-corruption-trial-begins-in-brazil/#>.

<sup>64</sup> Tavener, "Guilty Verdicts."

Judge Celso de Mello, a supreme court judge, concluded, it was “one of the most shameful chapters in the country’s political history.”<sup>65</sup>

## 2. Petrobras

Not long after the *mensalão* moved the headlines, the *lava jato* scheme was played out through the state-run oil giant Petrobras in conjunction with government officials and construction firms. According to the Brazilian public prosecutors (MP), oil executives accepted bribes from a coalition of Brazil’s largest building firms attempting to win government contracts.<sup>66</sup> Petrobras employees would then negotiate the deal with government officials, at which point the contract costs swelled with the expectation that the extra funds would circulate back to Petrobras, the politicians, and their political parties.

The scandal received its name, *lava jato* or car wash, in 2014 after federal police inadvertently caught Alberto Youssef, in a recorded phone conversation with another individual under surveillance at a run-down car wash. Youssef already had a criminal record, and so the police began to investigate him as well. After Youssef linked the suspicious purchase of a Range Rover to a senior official at Petrobras, the *lava jato* investigation was opened. Before Youssef spoke to his lawyers, he warned: “If I speak, the republic is going to fall.”<sup>67</sup> His plea deal and testimony set off a fire storm. The investigations have implicated more than 200 public and private individuals, with multiple convictions.<sup>68</sup>

Sergio Moro, the same federal judge that gained experience as an assistant in the Mensalão case, is leading the *lava jato* investigations, and his cohort is Deltan Dallagnol, the lead prosecutor and Harvard law graduate. The extent of the scheme demoralized the

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<sup>65</sup> Ibid.

<sup>66</sup> “Como Funcionava o Esquema,” Folha de São Paulo, accessed February 9, 2017, <http://arte.folha.uol.com.br/poder/operacao-lava-jato/#capitulo2>.

<sup>67</sup> David Segal, “Petrobras Oil Scandal Leaves Brazilians Lamenting a Lost Dream,” *New York Times* August 7, 2015, [https://www.nytimes.com/2015/08/09/business/international/effects-of-petrobras-scandal-leave-brazilians-lamenting-a-lost-dream.html?\\_r=0](https://www.nytimes.com/2015/08/09/business/international/effects-of-petrobras-scandal-leave-brazilians-lamenting-a-lost-dream.html?_r=0).

<sup>68</sup> Sotero, “Brazil’s Rise.”

Brazilian public in the run-up to the Olympics, an event that in itself exacerbated the public's patience with government spending priorities. The *lava jato* case is the nation's most extensive scandal to date. As of January 2017, approximately 50 politicians are accused of illicit connections to the scheme, but perhaps more alarming is that of Brazil's six living presidents only Cardoso has not been accused of ties to the scandal or in Rousseff's case having interfered in the inquiries.<sup>69</sup>

#### **D. SUMMARY**

Brazil's history provides some clues in understanding why corruption is a deep-rooted problem. Democracy has been intermittent and remains confronted by hereditary patronage, nepotism, and privileged elite that are unwilling to place the needs of the country above personal gains. Democratic change is a gradual process that strengthens over time. This chapter demonstrates that Brazil is still adapting to democracy as a cultural identity, and that the nation is making significant strides to reinforce good governance. This chapter stops short of suggesting that the Brazilian system has arrived, but rather points to the *mensalão* as a historical turning point, where a series of changes culminated in a new era of anticorruption. The *mensalão* was a stepping-stone and the *petrolão* case is an even broader demonstration of the nation's capacity. The following chapters observe the contributing factors that enabled the anticorruption successes of the *Mensalão* and *lava jato*.

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<sup>69</sup> "Os Políticos," *Folha de São Paulo*, accessed February 9, 2017, <http://arte.folha.uol.com.br/poder/operacao-lava-jato/#capitulo6>.

### III. DEMOCRATIC CONSOLIDATION

This chapter demonstrates how it was more than recent changes in democratization that enabled the current spring of anticorruption success in the Brazilian courts. The Brazilian political system today has developed a system of layered checks and balances; some of these transparency and anticorruption mechanisms predated the 1988 constitution, while others were added incrementally with the new constitution and since. The presence of such institutions, procedures, and laws does not, however, necessarily translate into transparency and good governance. As has been demonstrated in many societies, if the architects of such mechanisms lack proper incentives, like public accountability or procedures for accountability and oversight then the result is often superficial and lacks effective punitive and preventative mechanisms. This chapter demonstrates through a review of competing theories on democratic consolidation and an evaluation of Brazil's rapidly expanding anticorruption efforts, that Brazil has iteratively established multiple top down institutional layers of accountability.

As states adopt and institute democratic principles, it is expected that they can develop stability, peace, and prosperity; however, those goals, although common, do not arrive all at once or uniformly throughout state development. On the other hand, as democracies like Brazil are developing structural rigidity for their political institutions, the door is left open for informal institutions and under the table deals to accomplish what otherwise is economically or structurally unreasonable. In Brazil these informal institutions are a common part of daily interactions; so much so, that they are universally referred to as the *jeito Brasileiro*, or the Brazilian way. Brazil has struggled with accountability and effective enforcement mechanisms. There is an old saying in Brazil, “*aos amigos, tudo, aos inimigos a lei*” meaning “for our friends anything, but for our enemies the law.” Brazil's legal, governmental, and employment systems are inherently complicated by layers of red tape and minutia, making them prohibitive for many to navigate and certainly understand. With such challenges, the environment engenders and at times permits the generous application of the Brazilian “*jeito*” where oversight is lacking or masquerades as decorative institutional window dressing. The *jeito* provides

those “in the know” an informal coping mechanism used to circumnavigate administrative layers with the assistance of an expert, provided there is a compensatory side payment.

## **A. DEMOCRATIZATION THEORY**

The first section of this chapter provides a summary of democratization theories and their potential application to Brazil’s development since the 1985 turnover from military rule to open democracy. These themes demonstrate an array of developmental theories, including the impact of domestic approval, structural development, and institutional normalization on democratic consolidation.

### **1. Trust and Counter-majoritarian Empowerment Theory<sup>70</sup>**

Despite the tendency of politicians to create policies that they and the public will often circumvent, the administrative over-watch institutions have over time demonstrated the capacity for institutional learning, and have grown to be more than just window dressing. One of the consequent effects of real democratization is empowerment of the judiciary and other non-elected institutions of accountability. Fernando Filgueiras contends that “the judicialization of politics is the result of a shift in core issues regarding democratic legitimacy, both in the sphere of institution building as well as political culture.”<sup>71</sup> He also explains that public trust is fundamental to the effectiveness of the system. Where trust is low, legitimacy is also low, which is the impetus for institutional change: “the convergence of these two phenomena entails transformations in political representation, and in particular, it allows for the strengthening of counter-majoritarian institutions” or in other words the empowerment of the judiciary.<sup>72</sup> A finding by Filgueiras suggests that, discontent in Brazil did not lead to judicialization, because the umbrella for distrust in Brazil hung over the entire political spectrum, to include the

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<sup>70</sup> The term “counter-majoritarian” refers to entities within democracies that are not elected through a popular or majoritarian vote, but are appointed, such as positions in the judiciary.

<sup>71</sup> Fernando Filgueiras, “Perceptions on Justice, the Judiciary and Democracy,” *The Brazilian Political Science Review* 7, no. 2 (2013): 62, [http://www.bpsr.org.br/newsletter/BPSR\\_V7\\_n2\\_2013\\_completa.pdf](http://www.bpsr.org.br/newsletter/BPSR_V7_n2_2013_completa.pdf).

<sup>72</sup> Ibid.

judiciary.<sup>73</sup> Public distrust in the government did not appear to change until about the time the *mensalão* proceedings were placed transparently before the country on live television.

## **2. Individualism Theory**

Another common argument in the consolidation discussion is rooted in the political incentives for ruling parties to adopt judicial review and other reform measures in the early stages of transition to democracy, especially if public opinion deems the judiciary as adequate post transition. Conversely, in a state with a high potential for political change due to personalist politics, the system leaves a void for the growth of judicial independence. As individuals and fractured alliances grow divided, reliance on the courts as a constricting agent against political foes becomes a valuable tool. Similarly, when there is a high likelihood of turnover each election cycle “governments will tend to restrict de facto judicial independence in countries with party-based electoral systems (low degree of individualism), but will act the opposite when the system is based on candidates (high degree of individualism).”<sup>74</sup> The latter is precisely the situation in Brazil: the political system has more than thirty political parties, very low party discipline, and a high propensity for personalist politics, which is perpetuated by low accountability to the electorate and robust vote buying schemes among the poorer and less educated districts.

## **3. Balancing Versus Building Theory**

Another important perspective on democratization was offered by Thomas Carothers, in his assessment of the “transition paradigm,” he highlights the importance of institutional effectiveness in spite of a political class who are “widely perceived as corrupt, self-interested, dishonest and not serious about working for their country.”<sup>75</sup> He

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<sup>73</sup> Ibid., 64.

<sup>74</sup> Ernani Carvalho and Leon Victor de Queiroz Barbosa, “Electoral Systems and Judicial Review in Developing Countries,” *Brazilian Political Science Review* 9, no. 3 (2015): 170, doi: 10.1590/1981-38212015000300024.

<sup>75</sup> Thomas Carothers, “The End of the Transition Paradigm,” *Journal of Democracy* 13, no. 1 (2002): 10, <http://www.journalofdemocracy.org/sites/default/files/Carothers-13-1.pdf>.

warns that all too often the public grows disaffected despite the appearance of democratic norms. He also criticizes the “technocratic efforts” of democratization for focusing on “redistribution of state power” over “state-building.”<sup>76</sup> Certainly a balance of both powers and building state capacity are important and in fact go hand-in-hand, however, this chapter demonstrates that without an effective rebalancing of power, Brazil would not have been able to break the shackles of a clientelistic and executive dominated government to reverse the trend of corruption.

This rest of this chapter introduces some of the institutions and procedures that have played a significant part in the development of institutional accountability and enforcement mechanisms. Additionally, attention is given to how these organizations have worked together to transform the political environment of endemic corruption in Brazil. Sergio Praça and Mathew Taylor stress that the institutions for accountability at the federal level in Brazil “have not only acted to constrain political actors but also significantly altered and reshaped each other, in incremental fashion.”<sup>77</sup> According to that statement, the following sections first look at the political challenges of multipartism and how Brazilian power politics between the executive and legislative branches have evolved to create an environment of accountability for the political elite. Second, emphasis is given to the fundamental institutions of Brazilian oversight, how they came into being, and what they add to the anticorruption efforts. Finally, these two topics lead to a discussion of how the Judiciary has been the beneficiary of gradual empowerment through institutional balancing with the other two branches of government.

## **B. MULTIPARTISM AND THE CORRUPTION CYCLE**

At the core of Brazilian democratic struggles is its awkward mixture of presidential and parliamentary forms of democracy that requires a strategic balance of alliances to accomplish any measure of productivity. The system is neither presidential nor parliamentary, but shares similarities with both. In doing so, incentives for politicians are misaligned and buried under complexities that challenge the enforceability of good

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<sup>76</sup> Ibid., 17.

<sup>77</sup> Praça and Taylor, “Inching Toward Accountability,” 27.



governance. It is within this construct that politicians have found the freedom to indulge in illicit acts while encircling themselves with likeminded political cronies and business associates, collaborating to avoid the various layers of administrative oversight. Within the Brazilian system there is a triangulation of mutually-reinforcing characteristics that perpetuate personalist politics, clientelism, and patronage, they are imbedded in proportional representation, weak partisanship, and the requisite demand for presidential coalitions in congress.

### **1. Proportional Representation**

Brazil uses a method of open ballot proportional representation to determine how many seats a party earns each election cycle. Candidates are chosen not by the votes cast for them individually, but by party leadership according to the percentage of the total votes the party received from the public.<sup>78</sup> Parties pool their lists of congressional candidates in an effort to win a percentage of the available congressional seats from each state.<sup>79</sup> This means that if three parties evenly split the vote in thirds, and there are nine congressional seats available, each party receives three seats. The Supreme Electoral Tribunal (TSE) currently recognizes thirty-two parties, and each party is permitted to submit dozens of names on each ballot. The voter has the choice to choose from the lengthy list of names or strategically vote for their preferred party. Ultimately, the voter does not directly vote for their preferred candidate but contributes to the overall vote for their particular party; the party is then apportioned a commensurate number of seats in the congress. After apportionment is assigned, the party then selects from their most popular candidates to fill the available seats, a strategy that undercuts the connection between the electorate and the appointed party representative allocated to the national total of 513 seats in the lower house and 81 in the senate.

Each state is permitted a minimum of eight representatives and a maximum of seventy in the lower house, resulting in vastly disproportionate representation of the less

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<sup>78</sup> Mello and Spektor, "Fix Brazil," 105.

<sup>79</sup> David Fleischer, "Attempts at Political Reform: (1985-2015): Still a "Never Ending Story," (speech. 13<sup>th</sup> International Congress of the Brazilian Studies Association. March 31–April 2, 2016), 12, <http://www.brasa.org/wordpress/wp-content/uploads/2015/07/David-Fleischer.pdf>.

populace states while under representing densely populated states like São Paulo and Rio de Janeiro. Essentially, the vote is watered down, and favors rural states and populists who can sway the rural poor through government handouts and sway party leadership to put them at the top of the party ticket. The setup weakens the notion of voter accountability, as voters cannot determine whom they are actually voting for. Furthermore, it encourages politicians to focus on spreading gifts to populous areas like the *favela*, or slums, where pre-election visits are routinely made. Unfortunately, “political organizations in Brazil are typically vacuous, driven by personalist leaders focused on the distribution of material rewards for themselves and for their associates, with little devotion to programmatic government or even consistent ideology.”<sup>80</sup>

## **2. Multipartism**

Brazilians owe their expansive party system to the early years post military rule, when standards were lowered for party establishment in an effort to prevent a single party from securing too much control.<sup>81</sup> Along with an ever growing list of political parties, the current structure makes acquiring a party majority very difficult, if not impossible to achieve; however, it also engenders an open market style of politics referred to as multipartism. There are minimal limitations on party discipline, as demonstrated by the lack of “restrictions on moving among parties, and the existence of few impediments to the creation of new parties.”<sup>82</sup> In the 2016 congressional elections 28 parties received at least one seat in the lower house. There are 32 approved political parties, and there are at least a dozen more waiting to be vetted by the TSE.<sup>83</sup>

Furthermore, with a lack of party loyalty, politicians and parties alike have become adept at following opportunities to stay in politics and in control through strategic party hopping when conditions are favorable. As Montero indicated, “from the

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<sup>80</sup> Montero, *Reversal of Fortune*.

<sup>81</sup> Albert Fishlow, *Starting Over: Brazil Since 1985* (Washington, DC: Brookings, 2013), 1–2.

<sup>82</sup> Montero, *Reversal of Fortune*.

<sup>83</sup> David Fleischer “Brazil Focus; Weekly Report Nov. 19–25 2016,” University of California, International Institute, last modified November 25, 2016, <http://www.international.ucla.edu/media/files/BFDF11252016-1t-cvz.pdf>.

perspective of sitting deputies, those that were *bom de voto* were especially likely to freewheel for pork, using parties as electoral vehicles by switching to organizations that could maximize their re-election and access to patronage.”<sup>84</sup> Additionally, as an example of weak party loyalty, 105 politicians who won in the 2014 elections as PT members, at the state and federal level, left the PT prior to the 2016 elections in the hopes of salvaging their careers.<sup>85</sup>

### 3. Coalitional-Presidentialism

As a developing complement to Brazil’s multipartism, the executive branch has evolved and countered what could have been certain government gridlock. While the constitution apportioned significant political power to the president, the wide spectrum of political parties in congress makes gaining a majority very remote. The president requires 308 votes in the lower house to amend Brazil’s Constitution. In the early years of the new democracy, presidents were met with government gridlock due to their inability to rein in support from the many parties. At the time the president relied on *medidas provisórias* (MP), or executive actions, to pass legislation. The MPs were effective, for lack of a coalition, and the executive took over the origination of 85 percent of legislation after 1988, of which 72 percent was approved by the congress between 1988 and 2006.<sup>86</sup>

Executive dominance of the legislative function was unsustainable due to the over extension of executive authority. Presidential power undermined the house and senate; however, when Cardoso was elected the balance of power began to normalize. The presidential necessity for allies “who all have their own interests and constituencies to please—has led Brazilian presidents to pump vast amounts of pork, patronage, and protection into the system.”<sup>87</sup> This transference of power and money by the executive is referred to as coalition-presidentialism. Table 1 demonstrates how Collor lacked the certainty of a coalitional majority in congress and therefore struggled to overcome his

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<sup>84</sup> Montero, *Reversal of Fortune*.

<sup>85</sup> Plus55, “Main Takes from Brazil’s Municipal Election,” last modified October 2, 2016, <http://plus55.com/brazil-politics/news/2016/10/brazil-2016-municipal-election-results>.

<sup>86</sup> Montero, *Reversal of Fortune*.

<sup>87</sup> Mello and Spektor, “Fix Brazil,” 105–6.

lack of support, while Cardoso garnered a broader alliance and achieved important democratic changes to the system.

Table 1. Participation of Coalition Members within the Collor, Cardoso, and Lula Cabinets.<sup>88</sup>

	Collor				Cardoso				Lula			
Party	Cabinet Posts	% Posts	Coalition Seats	% Seats	Cabinet Posts	% Posts	Coalition Seats	% Seats	Cabinet Posts	% Posts	Coalition Seats	% Seats
PSDB					6	28.57	99	25.98				
PFL	2	20.00	91	37.14	4	19.05	105	27.56				
PMDB	1	10.00	130	53.06	2	9.52	83	21.78	2	5.71	78	24.53
PP					2	9.52	60	15.75				
PPS					1	4.76	3	0.79	1	2.86	20	6.29
PTB					1	4.76	31	8.14	1	2.86	51	16.04
PT									21	60.00	91	28.62
PCdoB									2	5.71	9	2.83
PL									1	2.86	43	13.52
PSB									1	2.86	20	6.29
PV									1	2.86	6	1.89
PRN	1	10.00	24	9.80								
Ind.	6	60.00			5	23.81			5	14.29		
<b>Totals</b>	<b>10</b>	<b>100</b>	<b>245</b>	<b>48.71</b>	<b>21</b>	<b>100</b>	<b>381</b>	<b>74.27</b>	<b>35</b>	<b>100</b>	<b>318</b>	<b>61.99</b>

A critical part of presidential handouts in Brazil is the generous dispersal of some 120,000 political appointments to alliance constituents, more than any other government in the world.<sup>89</sup> On top of that is the known but generally undocumented practice of spreading financial benefits for votes, an act not just committed by the president, but cumulatively is estimated to consume 2–5 percent of Brazil’s annual GDP.<sup>90</sup> The president’s ability to manage their coalition using these methods has proven fundamental to their ability to manage the government. As mentioned in Chapter II, the Lula administration subsidized the coalition through the *mensalão* payments. Some have

<sup>88</sup> Source: Pereira, “Executive-Legislative Relations.”

<sup>89</sup> Montero, *Reversal of Fortune*.

<sup>90</sup> Ibid., 1810.

suggested that Rousseff may have ultimately been undone because of her poor management of the coalition that ultimately dissolved and helped to impeach her.<sup>91</sup>

### C. INSTITUTIONALIZATION

One of Brazil's deepest challenges has been the ability to establish good governance and institute policies with the necessary incentives to deter corruption among those holding power. What is more, is that Brazil has often vacillated between models of governance as one faction or individual increases to take hold of power, showering favors and benefits to friends and support groups before the next rallies sufficient support to start a new coalition of patronage. Brazil has teetered between "a centralization of power that gives rise to corruption, and a decentralization that reduces the temptations of corruption but also reduces the capacity to govern."<sup>92</sup> According to Alfred Montero, after free elections were held in 1985 and a new constitution emerged, "the political system seemed to manifest all of the maladies scholars feared."<sup>93</sup> The government remained elite-dominated, economic reform was only successful sporadically, and government services were minimal in a country of growing disparity. As for good governance, some mechanisms were in place but authority and capacity were not inherently granted and "where enforcement authority is distributed among various agencies and levels of government, no one authority may wield a sufficiently large stick to deter wrongdoing."<sup>94</sup>

Despite the inequalities and lack of "accountability," a word that does not have a direct translation in the Portuguese language, politicians still had to be elected and some measure of recourse for accountability to the constituency had to be demonstrated. As such, government accountability is evidenced not only through free and fair elections, but also, the existence of autonomous or semi-autonomous agencies dedicated to the purpose

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<sup>91</sup> Anthony Boadle, "Brazil's Biggest Party Quits Ruling Coalition, Rousseff Isolated," Reuters, March 30, 2016, <http://www.reuters.com/article/us-brazil-politics-idUSKCN0WU1AC>.

<sup>92</sup> Andy Spalding and The University of Richmond Law School Anti-Corruption Team, "Chapter 2: Olympic Anti-Corruption Report: Brazil and the Rio 2016 Summer Games," Richmond University School of Law, accessed October 15, 2016, 2, [http://law.richmond.edu/olympics/chapters/brazil\\_chapter2.pdf](http://law.richmond.edu/olympics/chapters/brazil_chapter2.pdf).

<sup>93</sup> Montero, *Reversal of Fortune*.

<sup>94</sup> Spalding and Richmond University, "Olympic Anti-Corruption," 8.

of monitoring and reviewing government power and resources. This responsibility for oversight in Brazil is spread out through multiple agencies across all levels of government that have, over time, matured into a capable network of accountability measures. Some of these agencies preceded the 1988 constitution, while others have emerged through institutional necessity. The three pillars of institutional accountability are the *Tribunal de Contas da União* (TCU), the *Comissão Parlamentar de Inquérito* (CPI), and the *Controladoria Geral da União*, (CGU).

In Brazil, the leading government agency for audits is the Federal Accounting Tribunal (TCU). Its origins predate the constitution. It is the legislative branch's auditing control over the executive; it assesses "program design, sound management, internal control mechanisms, and their impact on society."<sup>95</sup> The TCU is a bookkeeping organization that investigates cases involving presidential and congressional spending.<sup>96</sup> The TCU is also the primary entity for generating reform proposals as well as punishing fiscal wrongdoing.

Another supplementary process is performed by the Parliamentary Investigative Committees (CPI) they were built into the 1988 constitutional mechanisms for oversight. CPIs were intended to work alongside the Public Ministry (Ministério Público, MP) to investigate and report on possible illegal government activities. The impact of multi-party coalitions on the CPI has reduced the effectiveness of CPIs and diluted their intended purpose, "except in cases in which scandal pressures the government to take the initiative," and more frequently, they are used as bargaining chips by opposition parties.<sup>97</sup>

The Comptroller General of the Union (CGU) is the watchdog organization for the executive branch and all of its subordinate organizations, it was established in 2001. The CGU is responsible for "auditing, transparency and anti-corruption, public servants,

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<sup>95</sup> Bruno W. Speck, "Auditing Institutions," in *Corruption and Democracy in Brazil; The Struggle for Accountability*, ed. Timothy J. Power and Matthew M. Taylor (Notre Dame, IN: University of Notre Dame Press, 2011), 139.

<sup>96</sup> Montero, *Reversal of Fortune*, 1915.

<sup>97</sup> *Ibid.*, 1890.

and ombudsman's office.”<sup>98</sup> The CGU focuses primarily at the state and municipal levels, and facilitates transparency by periodically publishing information acquired through routine audits, bridging both national and sub-national governments. Since its inception, the CGU has been an important part in the anticorruption effort by spotlighting the official misuses of tax payer money. Accordingly, the CGU removed more than 500 government workers in 2016, of which 65 percent were removed on the grounds of corruption.<sup>99</sup> Following the extensive corruption revelations associated to the *lava jato* and the impeachment of President Rousseff, her successor, Michael Temer, made an act of government cleansing, replacing the CGU in May of 2016 with the Ministry for Transparency, Monitoring and Control (*Ministério da Transparência, fiscalização e Controladoria-geral MTMC*).

#### **D. JUDICIALIZATION**

The final building block of democratic consolidation is judicial empowerment. The Judiciary is one of the fundamental pillars of oversight and accountability; however, to be effective, the judicial system must have the power and autonomy to interpret and enforce the rule of law. According to Matthew Taylor, punishing political misconduct is essential for two main reasons; it has a “punitive effect on implicated politicians and a deterrent effect on their colleagues.”<sup>100</sup> Historically, however, the judicial system has not been able to achieve such a culture of accountability, instead “officials were able to shrug off corruption investigations by relying on a lenient justice system, a weak congressional ethics committee, and a public that seemed inured to graft.”<sup>101</sup>

The courts are inherently reactive due to the complicated and burdensome nature of judicial code and the lingering perception that the courts are subordinate to the executive. As such, the courts have demonstrated weak accountability and the same

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<sup>98</sup> “Olympic Anti-Corruption,” Spalding and Richmond University, 13.

<sup>99</sup> “Governo Federal Expulsa 550 Servidores em 2016 por Práticas Ilícitas,” Ministério da Transparência, last modified January 9, 2017, <http://www.cgu.gov.br/noticias/2017/01/governo-federal-expulsa-550-servidores-em-2016-por-praticas-ilicitas>.

<sup>100</sup> Taylor, “The Federal Judiciary and Electoral Courts,” 162.

<sup>101</sup> Mello and Spektor, “Fix Brazil,” 109.

susceptibility to bribes and scandal as the other branches of government. As a result of this lack of judicial effectiveness, the courts have an inconsistent record against corruption, and until the decisions in the *mensalão* case it had no impact on seated politicians. It was common place for a politician to avoid jail time by relinquishing their position, even if convicted of a crime.<sup>102</sup>

## **1. The Courts and Prosecutorial Framework**

Now, having explored some of Brazil's institutional weaknesses, this section turns to explore the judiciary and some of the important changes that have occurred from the *mensalão* and *lava jato* cases. These examples demonstrate how institutional learning helped enable the empowerment of the judiciary against corruption. This section first looks at an overview of the Judicial framework that works to combat corruption, followed by a review of judicial and legal decisions that have helped to empower Brazil's judiciary.

At the federal level there are two primary courts, the Supreme Federal Tribunal (STF), the highest court of appeal much like the U.S. Supreme Court, and the Superior Justice Tribunal (STJ), which acts as the superior appeals court. One of the primary challenges for the Brazilian judiciary is the extensive work load, the average judge sees more than 5,000 cases which causes the courts to operate at a "glacial pace," furthermore, "decisions can take years to be rendered and then spend years more on appeal."<sup>103</sup> The STF cannot control what issues it reviews, but rather must review all cases presented. Additionally, legal precedent does not function like in the United States, where a decision can be made based on the decisions of previous court rulings. Therefore, the Brazilian system requires that a judge make a thorough review and decision on all cases even upon seemingly routine charges.

The Public Ministry (MP), or public prosecutor, was created as part of the 1988 constitution, and is a semi-autonomous law enforcement agency in the Brazilian

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<sup>102</sup> Maria Lopez Conde, "STF Reviews Mensalão Sentences," *The Rio Times*, last modified September 10, 2013, <http://riotimesonline.com/brazil-news/front-page/supreme-court-reviews-mensalao-sentences/>.

<sup>103</sup> Power, *Brazilian Democracy*, 234.



government. The MP in Brazil has prosecutors at both the federal and state levels, and directs oversight and investigative functions autonomously from other state agencies that may be suspected of internal corruption. Becoming a public prosecutor is a prestigious but rigorous task that can include a year of tests and interviews with a very small chance of accession.<sup>104</sup> The Federal Police are complementary to the MP, providing a policing arm for the judiciary and can facilitate overt arrests or even covert activities such as wiretappings.

Another important element in Brazil's anticorruption scaffolding is the electoral courts, the highest is the previously mentioned Superior Electoral Tribunal (TSE) and the lower is the Regional Electoral Tribunal (RTE). The electoral courts are responsible for managing candidate lists and monitoring campaign spending. They are also responsible for adjudicating electoral misconduct, and have emerged as an important prevention mechanism in the cycle of impunity.

## **2. Judicial Empowerment**

Brazil is in the middle of what appears to be a cultural shift; the *mensalão* case has not only elevated "the profile of the country's STF to an anti-corruption agent in the eyes of the public" but it has also empowered the entire system and the people of Brazil to look differently upon the corrupt politicians and their negative impact on the nation.<sup>105</sup> This was evident in an interview with the head of the Federal Police who, following the arrest of former President Lula, explained that even though the Federal Police are subordinate to the administrative jurisdiction of the Ministry of Justice, it is his organization's responsibility to "investigate facts, not people," and "where those facts take us is a consequence of the investigation itself, as painful as it may be."<sup>106</sup> This stands as a particularly high point demonstration of the level of institutional and perhaps cultural reform that has taken hold in Brazil, validating a paradigm shift away from

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<sup>104</sup> Fishlow, *Starting Over*, 279.

<sup>105</sup> Conde, "STF Reviews Mensalão."

<sup>106</sup> Sotero, "Brazil's Rise."

clientelism and the willingness of individuals to act indiscriminately in favor of sound laws and justice.

### **3. Plea Bargaining**

Perhaps the most crucial piece of legislation in Brazil's anticorruption arsenal was the adoption of plea bargaining as a part of the Organized Crime Law that was hastily pushed forward in the aftermath of the 2013 protests around the country. The law not only defined organized crime but also established the means to prosecute its perpetrators.<sup>107</sup> Implicated personnel are being arrested and allowed to fester on their actions in some of Brazil's most feared jails. When they emerge, many are more than willing to accept a plea deal to rat out their cohorts. Provided the prosecutors can validate the details of the allegations the defendant can receive a much reduced sentence.

The timely implementation of the new organized crime law enabled the *lava jato* prosecutors in November of 2014 to begin hearing the first plea bargaining testimony associated with the Petrobras scandal. Two years later, the *lava jato* case had expanded to 37 separate search and seizure operations to expose deeper layers of the Petrobras crime ring. The continued investigations and prosecutions have resulted in the sentencing of at least 53, including federal deputies, senators and governors, with dozens more under investigation.<sup>108</sup>

### **4. Ending the Appeals Loophole**

One year after the *mensalão* verdicts, not one of the twenty-five convicted were in jail, and the *mensalão* case was already pushed to the STF twice. While this delay tactic was short lived in the case of the *mensalão*, it may represent one of the last times the elite were able to use a classic loophole to keep themselves out of jail. That loophole was the process of employing expensive lawyers to conjure up a myriad of excuses to incessantly return their defendants case to the appeals courts and delay convictions for years. In

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<sup>107</sup> Andy Spalding and The University of Richmond Law School Anti-Corruption Team, "Chapter 4: The Four Pillars of Brazil's Governance Legacy," *Richmond University School of Law*, Accessed October 15, 2016, 23, <http://law.richmond.edu/olympics/chapters/brazil-chapter4.pdf>.

<sup>108</sup> "Operação Lava Jato," *Folha de Sao Paulo*, accessed January 20, 2016, <http://arte.folha.uol.com.br/poder/operacao-lava-jato/#capitulo1>.

September of 2013 the attempt was no different, the purpose of these appeals was over the length of prison sentences and the specific kind of sentences.<sup>109</sup> It resulted in a few of the earlier decisions being reduced, but those convicted began their sentences within a few weeks.

In October of 2016, the STF convened a hearing to consider the end of the incessant appeals process, concluding in a six to five vote that would curtail the abuse of the legal loophole.<sup>110</sup> The decision clarified that the defendant retains the right to appeal, but, upon a second confirmation of the original guilty decision, the appellate court can close the case and order the defendant to prison. This decision has multiple implications on the Brazilian judiciary, most notably for this discussion, it speeds up the process of convicting criminals, and greatly alleviates the workload on the courts.

## **5. Clean Records Law**

Since 2001, the Parliamentary Investigative Committees (CPIs) and state and municipal auditors from the CGU have investigated official malfeasance and where necessary notified public ministers, however, these actions did little to impede corrupt politicians.<sup>111</sup> In June of 2010, however, the congress passed the Clean Record Law (*Lei Ficha Limpa*), which now bars politicians with “dirty records” from running for public office.<sup>112</sup> This important addition has equipped the TSE and RTE with the authority not only to monitor and manage the growing list of corrupt politicians that have been stripped of their political office, but also prevent them from running for office, even if they step down before formally expelled from office.

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<sup>109</sup> Renan Ramalho, “Supremo Mantém Possibilidade de Prisão a Condenados em 2ª Instância,” *O Globo*, last modified October 5, 2016, <http://g1.globo.com/politica/noticia/2016/10/supremo-mantem-prisao-apos-condenacao-em-segunda-instancia.html>; Conde, “Mensalão Sentences.”

<sup>110</sup> Ibid.

<sup>111</sup> Montero, *Reversal of Fortune*.

<sup>112</sup> Fleischer, “Never Ending Story,” 19.

## E. SUMMARY

Brazil is currently experiencing a cultural change and empowerment that is swelling across all branches of government and the wider bureaucracy. The degree to which this movement continues throughout the nation can be seen by taking a small sampling of the various events that occurred throughout Brazil during November 2016. First, former Governor and third place presidential candidate in the 2002 election, Anthony Garotinho, was arrested as a part of Operation Chequinho, or little payment. Garotinho was responsible for liberally signing up thousands of residents in a conditional cash transfer program in order to buy votes to ensure his wife's mayoral election in October 2016.<sup>113</sup> During the arrest, he attempted to bribe a federal prosecutor with R\$5 million. Another example comes from the Federal police, when they revealed that they had tracked and detained Rodrigo Tacla Duran after emerging from hiding. He was seized in Spain with the use of an Interpol arrest warrant, demonstrating state reach and international cooperation.<sup>114</sup> Duran was a corporate lawyer for Petrobras and is thought to be the mastermind behind the scheme that coordinated the elaborate "payment of commissions in the awarding of private and public works in Brazil and abroad."<sup>115</sup> Finally, the Senate approved much needed legislation to stem the tide of ever increasing political parties. The legislation applies to deputies and city councils, but demonstrates a first step toward constraining the system as a whole. The new law, if approved by the lower house, requires a threshold minimum equivalent to 2 percent of the national vote beginning in 2018, and would increase to 3 percent in 2022.<sup>116</sup> While the stories behind the first two examples demonstrate the costly and pervasive nature of corruption in

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<sup>113</sup> Fabiana Paiva e Pedro Zuazo, "Garotinho é Preso Pela Polícia Federal no Flamengo, na Zona Sul do Rio," *O Globo*, last modified November 16, 2016, <http://extra.globo.com/noticias/rio/garotinho-presopela-policia-federal-no-flamengo-na-zona-sul-do-rio-20472209.html>.

<sup>114</sup> "Financial Mastermind Behind Brazil's Petrobras Scandal Captured in Spain," Organized Crime and Corruption Reporting Project, last modified November 23, 2016, <https://www.occrp.org/en/daily/5841-financial-mastermind-behind-brazil-s-petrobras-scandal-captured>.

<sup>115</sup> Ibid.

<sup>116</sup> Debora Alvares, "Senado Aprova Reforma Política que pode Reduzir Número de Partidos," *Folha de São Paulo*, November 23, 2016, <http://www1.folha.uol.com.br/poder/2016/11/1834946-senado-aprova-reforma-politica-que-pode-reduzir-numero-de-partidos.shtml>.

political institutions in Brazil, they each stand as an example of the rapid change that continues to unfold throughout Brazil.

Alfred Montero commended Brazil for its layering “of incremental changes in formal and informal rules, norms, and practices that in the aggregate set the stage for larger, transformative shifts.”<sup>117</sup> The reforms that led to the results in the *mensalão* and *lava jato* operations did not occur over night; rather, they have evolved over time as the Brazilian democracy has begun to cut its teeth. The 1988 constitution proved to be “an incomplete political and judicial framework for accountability.”<sup>118</sup> Yet, legislators, persistent judges, and oversight organizations have been able to string together institutional powers that have begun to erode political immunity.

Matthew Taylor said of Brazil’s gains, “we have seen enormous institutional gains in Brazil in the last thirty years, enormous legislative gains, in terms of new laws to combat corruption. If we could now see the condemnation and removal of the corrupt from the political system, Brazil could enter a new positive cycle.”<sup>119</sup> Recent evolutions in Brazil’s democracy have demonstrated that this new cycle may be opening, and although there is still much work to be done and many more corrupt politicians to remove, there is reason for confidence in the country’s capacity to begin a new era of transparency.

Now, having evaluated the institutional construct of the Brazilian democracy and considered the various modifications that have begun to transform its political culture there is still an important question left unanswered. The question is why did the political class empower the agencies and tools of anticorruption to limit what has proven to be a very lucrative occupation for those that know how to manage the system? There are several possible answers, however, the first to be eliminated is the ideological aspiration that the politicians would either grow a conscience or that enough of the opposition

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<sup>117</sup> Montero, *Reversal of Fortune*.

<sup>118</sup> Praça and Taylor, “Toward Accountability,” 30.

<sup>119</sup> Alessandra Correa, “O que Torna o Estado Brasileiro Vulnerável à Corrupção?,” BBC Brasil, last modified March 19, 2015, [http://www.bbc.com/portuguese/noticias/2015/03/150319\\_brasil\\_corrupcao\\_vulneravel\\_ac](http://www.bbc.com/portuguese/noticias/2015/03/150319_brasil_corrupcao_vulneravel_ac).

forces would combine to rein in the controlling coalition within the legislature. The first is quite simply a bit far-fetched, and the latter unlikely due to the fractured nature of Brazilian multipartism. It is however, possible that the ruling parties made notional changes knowingly, as a nod to transparency but with the expectation that they would never acquire the power and authority to truly make an impact. That then leaves the possibility for a ground up argument for social revolution and an outsider argument for the influence of international organizations. The next two chapters pursue these further, first the social aspect of civil revolt in Chapter IV, and Chapter V evaluates the possible implications of exogenous organizations to explain why Brazil is experiencing this dramatic change.

#### **IV. DOMESTIC ACCOUNTABILITY**

One of the inherent goals of neoliberal democracy is to not only govern, but to govern well as an agent of the people. The idea of good governance assumes that the administration provides a stable economy and public services for the people and in return the public supports the administration through popular participation. As such, a healthy democratic system of governance produces a reinforcing cycle where public officials are responsible for managing public policy, the economy, foreign affairs, and the like. The degree to which the populace is satisfied with the governing regime, it engenders public approval. This reinforcing mechanism then adds to the structural rigidity of a growing or stable democracy. So far as the system is held in equilibrium through good governance and public satisfaction, the system remains healthy. On the other hand, if the system is held together through lesser means, such as coercive authoritarianism or populist promises and handouts, then the system is unsound and susceptible to destabilizing alternatives such as a coup, usurpation, or revolution.

An important measure of state development is often gauged in terms of the state's capacity to cultivate institutions and policies that in turn generate a productive working environment for domestic growth and commerce. The result of persistent growth and increased state capacity lays the foundation for an exponential increase in state capital, health and living standards, educational capacity, and overall productivity. Development then produces a healthier, happier, more satisfied people, with one important catch; the growth mechanisms must be long term and sustainable. The down side for regimes that fail to maintain good governance and effective growth is a demanding populace that understands the good times are at an end, and someone must be to blame.

This chapter presents the context for Brazil's social development and how the people have turned their circumstance into political leverage in the form of social accountability. As a result of the exponential growth rates and social improvements for the middle class, the environment continues to change, particularly the demand for government productivity as a return on public investment. This new environment, for the time being, appears to be more demanding of the elected leadership and certainly less

forgiving. This chapter looks to the protests of June 2013, as the flashpoint for change. It was the 20-cent fare increase that sparked a bevy of complaints and three years of uncharacteristic social activism that ended with a presidential impeachment and reforms that ultimately empowered the judiciary.

## **A. ACTIVISM THEORY**

This section introduces some of the leading arguments in relation to state development and social movements. There are a variety of discussions and potential applications, some with more broad and lasting consequences, while others are less developed. Particularly important to understand in the nature of this discussion is the fluid environment in Brazil, and the means by which these arguments are and may continue to be contested. Multiple theories are presented and reviewed; however, the complexity of the social environment likely remains incompletely appreciated in the near-term.

### **1. Development Theory**

Many theorists agree that civic activism is often a byproduct of state development, arguing that as a state grows and expands its economy and the state's ability to provide for the basic needs of its people, social reforms and services often empower a growing middle class. A successful democracy is dependent upon government officials being accountable to the citizenry. On the contrary, where there is limited accountability and limited capacity for the populace to punish politicians at the ballot box, there is little incentive for officials to apply legal restraints on their own corrupt practices. Not only must there be popular support among a segment of the population, but there must be additional motivations for the governing party to "cede real power and resources to the citizenry" or other institutions for that matter.<sup>120</sup>

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<sup>120</sup> Serena Verdenicci and Dan Hough, "People Power and Anti-corruption; Demystifying Citizen – Centred Approaches," *Crime Law and Social Change* 64, no.1 (2015): 32, <http://link.springer.com/article/10.1007/s10611-015-9585-3>.



Thomas Carothers argues that without real public participation, democracy is not effectual.<sup>121</sup> He further elaborates that recurring elections are not a sufficient measure of political participation. Recurring elections are of negligible importance without political freedom, government legitimacy, deepening political participation, and democratic accountability.<sup>122</sup> Latin America in general is beset by hundreds of years of poor institutional performance, government accountability and wide economic disparity. Carothers points out that “the wide gulf between political elites and citizens in many of these countries turns out to be rooted in structural conditions, such as the concentration of wealth or certain sociocultural traditions that elections themselves do not overcome.”<sup>123</sup> Brazil’s popular participation is often misinterpreted as robust based on voter participation, yet these reports do not always acknowledge that Brazil has compulsory voting laws for literate individuals between the ages of 18 and 70.<sup>124</sup> Although the legal consequences are minor, compulsory voting inflates the appearance of popular support and the notion of good governance.

Building upon the development theory, it is worth noting there are many studies on civic activism and factors that drive mobilization. Robert Bonifacio and Rafael Paulino identified in their study of Latin America that the most prevalent factor that increased political participation was increased education, declaring; “schooling always raises the propensity to participate.”<sup>125</sup> Barbara Geddes takes this suggestion one step further, suggesting that “increasing education, equality, urbanization, experience of working in factories, and the weakening of traditional loyalties to tribe and village—all

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<sup>121</sup> Carothers, “Transition Paradigm,” 10.

<sup>122</sup> Ibid., 15.

<sup>123</sup> Ibid.

<sup>124</sup> “Faltam 26 Dias, Voto e Obrigatorio para Brasileiros de 18 a 70 Anos,” *Tribunal Superior Eleitoral*, accessed November 25, 2017, <http://www.tse.jus.br/imprensa/noticias-tse/2014/Setembro/faltam-26-dias-voto-e-obrigatorio-para-brasileiros-de-18-a-70-anos>.

<sup>125</sup> Robert Bonifacio and Rafael Paulino, “Corruption and Politics in the Americas and the Caribbean,” *The Brazil Political Science Review* 9, no. 2 (2015): 73, doi: 10.1590/1981-38212014000200011.

correlates of economic development-would result in citizens with more tolerant and participatory attitudes who would demand a say in government.”<sup>126</sup>

## **2. Government Legitimacy Theory**

According to Paul Collier, “states need a critical mass of educated people in order to work out and implement a reform strategy,” thus incentivizing the government to produce more productive social capital.<sup>127</sup> The state produces social capital through educational, health, and social improvements. The relationship between the state and the citizen then becomes a crucial indicator of state legitimacy and a measure of political restraint. Samuel Huntington warned that a state’s “sustained inability to provide welfare, prosperity, equity, justice, domestic order, or external security could over time undermine the legitimacy” of democratic governments.<sup>128</sup> He further cautioned, that like earlier waves of democratization around the globe, loss of legitimacy in late democratizing states leaves them susceptible to democratic reversal.

If corruption is a mechanism of weak institutional capacity, then democratic stability is critical to enduring democracies. Huntington argues that there were several weaknesses shared among states that backtracked away from democracy into authoritarian or leftist regimes. He listed seven notable challenges: weak democratic values among the elite, severe economic setbacks, social and political polarization, exclusion of populist and leftist movements, breakdown of law and order, foreign intervention, and “reverse snowballing” or regressing away from democracy.<sup>129</sup> Historically, when Brazil’s political and economic systems fail to provide for the nation’s growing needs, the military has stepped in to moderate. Nevertheless, given that democratic processes have made it this far without intervention, it suggests that

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<sup>126</sup> Barbara Geddes, “What Causes Democratization?,” in *The Oxford Handbook of Comparative Politics*, ed. Carles Boix and Susan C. Stokes (Oxford University Press, 2009), 331, doi: 10.1093/oxfordhb/9780199566020.003.0014.

<sup>127</sup> Paul Collier, *Bottom Billion, Why the Poorest Countries Are Failing and What Can Be Done About It* (New York, NY: Oxford University Press, 2007), 71.

<sup>128</sup> Samuel P. Huntington, “Democracy’s Third Wave,” *Journal of Democracy* 2, no.2 (1991): 19, doi: 10.1354/job1991.0016.

<sup>129</sup> *Ibid.*, 17–18.

democratization may have reached a level of effectiveness to prevent such a reversal, despite popular dissent.

### **3. Transparency Theory**

Another important theory in the anticorruption toolset is the transparency argument that rests on the availability of information accessible to the public. Not just government released information, but also the unwanted information divulged through media sources. It is widely accepted that the availability of information regarding government activities encourages good conduct and can produce social change if public perception is otherwise. With that same understanding, there are important factors that can dramatically impact the effect of transparent information. Eliza Katzarova states that public information is especially useful when the citizens are not only discerning of the information, but also - and perhaps more importantly - willing to “take on the role of public regulators.”<sup>130</sup> This down flow of information is generally made available first by the governing body, and then through the media. Important to the effectiveness of transparency mechanisms is the ability to apply pressure on the government to produce unfiltered information and then for the media and the public to effectively interpret the meaning of the available information.<sup>131</sup>

Furthermore, for transparency to be effectual information must be widely available and perceived as accurate; incidentally, the government generally has control of both of these qualifiers. The 1990s initiated a new era of anticorruption around the world, it produced a number of high profile discussions and crusades to eradicate international and domestic bribery, rent-seeking, and gains taking at the expense of an unknowing public. The media became a critical part of what Moises Naim labeled the “corruption eruption.”<sup>132</sup> With every new revelation of misdeeds the public watched in dismay and curiosity, demanding answers and fixes and the media acted as the filter and expositor of

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<sup>130</sup> Elitza Katzarova, “Corruption in the Public Eye: From Transparency to Publicity,” in *Handbook of Research on Public Activism in the Information Age*, ed. Ashu M. G. Solo (Hershey, PA: IGI Global, 2014): 259, doi: 10.4018/978-1-4666-6066-3.

<sup>131</sup> Ibid., 261.

<sup>132</sup> Moisés Naím, “Corruption Eruption,” *Carnegie*, June 01, 1995, <http://carnegieendowment.org/1995/06/01/corruption-eruption-pub-648>.

the untold truth. The world's new affinity for transparency also resulted in an increased awareness of corruption and a higher propensity for whistleblowing and adoption of transparency mechanisms.

Today social media adds a new dynamic to public information and social activism. Social media embodies the information age, but also magnifies media availability through personalized networks of homogenous ideological groupings. Social media enables individuals to connect and share ideas through the many growing webs of connectivity where information is gathered, interpreted, and personalized in real time and spread like wildfire around the globe in an instant.

The availability of information to a judicious public facilitates public accountability. The media effect on government transparency depends on the strength of the institution and the incentives to change. Low-impact transparency is top-down dissemination, where the government cherry picks the quantity and quality of the information distributed. Alternatively, high-impact transparency is produced from the bottom-up, where the public through social activism drives an agenda of reform and transparency. One limiting downside to high-impact transparency is the reliance on third parties to equitably respond and interpret available information. Ultimately, it remains that only the citizen is capable of fact checking the fact checkers to avoid being misled.<sup>133</sup>

## **B. THE BRAZILIAN DEVELOPMENT PLAN**

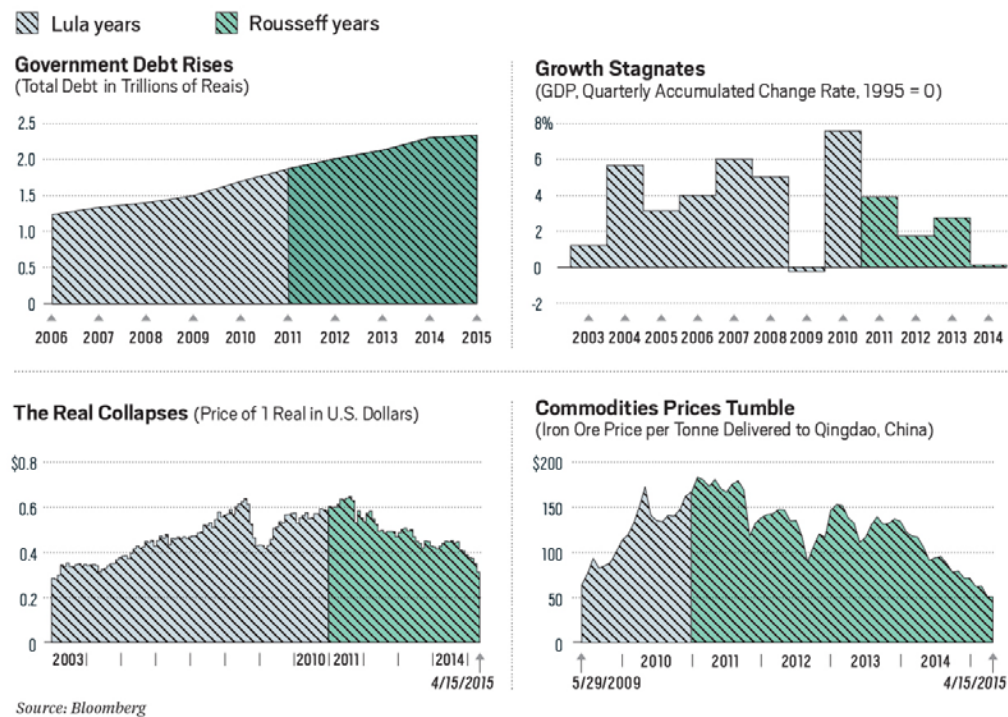
Throughout the 1970s and 80s, Brazil struggled with economic disparity and prolonged state-led import substitution and industrialization programs, causing hyperinflation and recession. Brazil's *favelas* (shantytowns) ballooned with families living below or near the poverty line. In the mid-1990s however, Brazil began to liberalize, introducing open market reforms that put it on a path of economic turnaround. The primary architect of the reversal was the finance minister turned president, Fernando Henrique Cardoso under the Real Plan. As president, he continued to add liberalization and free market policies that enabled the economy to surge at the right time. The world

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<sup>133</sup> Ibid., 261.

was growing, East Asia in particular, driving a global commodity boom. Brazil was able to harness some of the untapped capital and resources of the world's fifth largest country, and one of the most richly endowed. This new era of liberalization ushered in great hope and expectations for a country that has frequently flirted with prosperity, but has often fallen short. The tremendous growth enabled expansion of social reforms that catapulted millions from poverty into contributing social capital. Figure 4 illustrates Brazil's growth in the early 2000s before stagnating after 2010.

Figure 4. Brazil's Economic Stagnation.<sup>134</sup>



## 1. Social Welfare

At the turn of the century, Brazil had stabilized and had begun to implement social policies to alleviate the inordinate number of extremely poor scattered on the periphery of big cities and especially the north and northeastern states. Cardoso's

<sup>134</sup> Source: Michael Smith, Sabrina Valle, and Blake Schmidt, "The Betrayal of Brazil," Bloomberg, last modified May 7, 2015, <https://www.bloomberg.com/news/features/2015-05-08/brazil-s-massive-corruption-scandal-has-bitterness-replacing-hope>.

programs were experimental, targeted at issues effecting the poorest of society. The *Bolsa Escola* (education grant), was a conditional program targeted at encouraging the poor communities to attend school. Another was *Auxilio Gas* (gas assistance), intended to ensure the poor could still get cooking fuel after state subsidies were discontinued. The results of these programs were limited but well intended. Cardoso's second term election competition would be his successor, Lula Inacio da Silva who was and is the figurehead of the socialist PT. Lula, a former union worker and 'every man,' promised more social reforms that would reach farther than the previous administrations. The PT experimented with a few options with little success; the complexities of the nation's needs and its available resources pushed Lula to rethink the application of these programs. Lula settled on a new strategy that would combine what worked from the Cardoso period with his own *Cartão Alimentação* (food card) under one system. The result was the *Programa Bolsa Família* (PBF, Family Grant Program), it "pooled four distinct cash-transfer programs (education, cooking gas, nutrition, and anti-hunger)" into one program that could be adapted to the needs of any family.<sup>135</sup>

Lula's commitment to the *Bolsa Família* gave immediate assistance to Brazil's poorest families while also making an investment in the nation's future. The conditional-cash-transfer program was created in just a way to help lift but not to the point it might encourage an individual to stop seeking employment. A qualifying recipient must have an income below approximately R\$76, and receives a cash transfer via bankcard for an amount between R\$22 and R\$306 *reais* per month based on income and the number of children.<sup>136</sup> The bankcard and funds are strategically allocated to the mother, since many households in Brazil are managed by single parent mothers, and they are more likely to use the money judiciously.<sup>137</sup>

In order for a family to qualify for a month's stipend, it is required that the children, ages six to seventeen, must attend a minimum of 85 percent of their classes, and

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<sup>135</sup> Montero, *Reversal of Fortune*.

<sup>136</sup> Reid, *Troubled Rise*, 156, 168.

<sup>137</sup> *Ibid.*, 169.

the children must also receive routine medical checks and mandatory vaccines.<sup>138</sup> By enforcing these standards, the program reinforces the importance of education and bolsters school attendance for the poor who otherwise have low incentive to attend and might more easily find themselves caught up in unfavorable social networks that perpetuate the poverty cycle rather than improve it. Additionally, the medical checks ensure access to routine care and vaccines that have had profound effect on infant and youth mortality rates.

The long term impacts of the *Bolsa Família* are promising, approximately twelve million families receive funds annually for basic subsistence, while children benefit from better health and an education that supports their family and bolsters the Brazilian economy for the future.<sup>139</sup> The impact of the program is estimated to have alleviated more than forty million Brazilians from extreme poverty, a number that continues to grow.<sup>140</sup> One of the exceptional qualities of the program is its very low impact on a highly burdened national budget. The annual cost of the *Bolsa Família* hovers around 0.4 percent of GDP, making it a very low cost high reward program.<sup>141</sup> Not only has the program brought wide success in Brazil, but it has also set the standard for social welfare programs around the globe.

## **2. Education**

Looking beyond the *Bolsa Família*'s objective to alleviate poverty, the program boasts a much more robust package of benefits to the state than what it costs in operate. By applying a small amount of money into livelihood, health and education, Brazil has amplified the output of its human capital. Studies confirm that after nearly two decades of social welfare injections, the average workers education has expanded from approximately 6.1 years of schooling in 1995 to nine years in 2012, with most of that increase coming

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<sup>138</sup> Montero, *Reversal of Fortune*.

<sup>139</sup> Reid, *Troubled Rise*, 168.

<sup>140</sup> "Bolsa Familia: Changing the Lives of Millions in Brazil," World Bank, accessed January 21, 2017, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21447054~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

<sup>141</sup> Montero, *Reversal of Fortune*.

from the last half decade.<sup>142</sup> Furthermore, in the northeast of Brazil, the area with the most wide spread poverty, the program created an influx of children into the schools and overwhelmed an under-funded segment of Brazil's hidden potential. As a result, the government had to address the disproportionate wages and low quality of schools in the region.

There is much praise that can be given for the successes, present and future, that should be attributed to the *Bolsa Família*; however, the clientelistic nature of the program should not be overlooked, particularly in consideration of the impacts the program has had on the country. In addition to the impact on social improvement, Lula's policies aimed at poverty elimination have likely played a significant role in generating voter loyalty. It should also be noted the design of the program is such that the responsibility for distribution of funds is decentralized, propagating the role of benefactor to the municipal level. In a country with compulsory voting laws and an enormous base of low-income beneficiaries, the program likely played a significant role in Lula's "rock star" like favorability, and floated the party's longevity through President Rouseff's reelection in 2014.<sup>143</sup>

### C. RISING EXPECTATIONS

Francis Fukuyama and Sanjay Marwah argued that institutional effectiveness is central to the equation of progress, and that during development institutional administrators must not only be highly competent, but also "free of any personal corruption."<sup>144</sup> They further maintain that one of the primary factors for instability in Brazil, and most Latin American countries, is due to the unequal distribution of mechanisms for growth, which resulted in a "narrow, well-educated elite at the top of society but has left a large majority of the population either as impoverished rural

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<sup>142</sup> Reid, *Troubled Rise*, 169; Mason Mosley and Matthew Layton, "Prosperity and Protest in Brazil: The Wave of the Future for Latin America?," *AmericasBarometer Insights*, no. 93, <http://www.vanderbilt.edu/lapop/insights/IO893en.pdf>.

<sup>143</sup> Reid, *Troubled Rise*, 169.

<sup>144</sup> Francis Fukuyama and Sanjay Marwah, "Dimensions of Development," *Journal of Democracy* 11, no. 4 (2000): 86, doi: 10.1353/jod.2000.0076.



peasants or as an urban underclass.”<sup>145</sup> As demonstrated through the *Bolsa Família*, that dynamic is beginning to change. Provided that the state can make enduring institutional reforms for progress and reduce inequality it inherently produces a more productive society in dimensions of health, education, and productivity which in turn develops a broader middle class.

Latin America, by inheritance, is plagued by a history of strong centralized governments and state-directed economies, which traditionally have not incentivized the ruling elite to prioritize institutional effectiveness.<sup>146</sup> Nevertheless, in line with the activism theories of Geddes and Carothers, Brazil’s socio-economic transformation may be rendering its most important dividends in the form of citizen accountability. According to an annual survey conducted by Brazil’s National Confederation of Industry (CNI), corruption is the biggest problem affecting the country, and has been climbing the priority list every year since the *mensalão* verdict in 2012.<sup>147</sup> This rebirth of accountability and voter justice was demonstrated in the 2016 municipal elections, as the PT suffered dramatic losses as a part of the *lava jato* fallout, winning a total of 254 mayoralities as compared to 635 in 2012.<sup>148</sup>

An examination of political transformation in Brazil would be incomplete without considering the likelihood of civil demand for military intervention. A common fear among neoliberals, when watching unrest in Latin America, is the potential return to authoritarian rule, just as Samuel Huntington cautioned. Since redemocratizing, Brazil has probably never been closer to that reality than between the Spring of 2015 and summer of 2016, when public disgust for the government reached its boiling point and millions again gathered in protest across the country. According to data retrieved in the AmericasBarometer surveys, respondents exhibited a growing belief that military

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<sup>145</sup> Ibid., 90.

<sup>146</sup> Ibid., 86.

<sup>147</sup> Mariana Flores, “Para Brasileiro, Corrupcao e o Prinsipal Problema do Pais,” Portal Da Industria, accessed January 26, 2016, <http://www.portaldaindustria.com.br/cni/imprensa/2016/01/1,80475/para-brasileiro-corrupcao-e-o-principal-problema-do-pais.html>.

<sup>148</sup> Luisa Leme, “Update: Five Lessons for Brazil’s Future from Local Election Results,” Americas Society Council of the Americas, accessed November 3, 2016, <http://www.as-coa.org/articles/update-five-lessons-brazils-future-local-election-results>.

intervention was justifiable under conditions of extreme corruption. Intervention favorability spiked from 36 percent of respondents in 2012 to 47 percent in 2014.<sup>149</sup> It is worth noting that prior to 2012 the response to this same question was relatively stable; however, the change may have been triggered by the down turn in the economy and the *mensalão* trials that concluded in October of 2013. The disturbing trend however is not necessarily indicative of the potential for a military coup, but more an expression of Brazilian culture and a perception of acceptable alternatives to counter corruption. The report also noted that respondents in favor of military intervention was supported nearly as much by those in favor of the Rousseff administration as those that opposed it.<sup>150</sup> These findings are illustrated in Figures 5 and 6. While the likelihood of military intervention remains untested, reports during street protests indicated calls for the military remained a minority among the crowds.<sup>151</sup> Additionally, it is worth mentioning that although Rousseff referred to her impeachment as a coup, the decision was carried out democratically in both houses of the congress and there was not any overt interference by the military.

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<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

Figure 5. Percent Who Believe a Military Coup Is Justifiable Under High Corruption in Brazil, 2007–2014.<sup>152</sup>

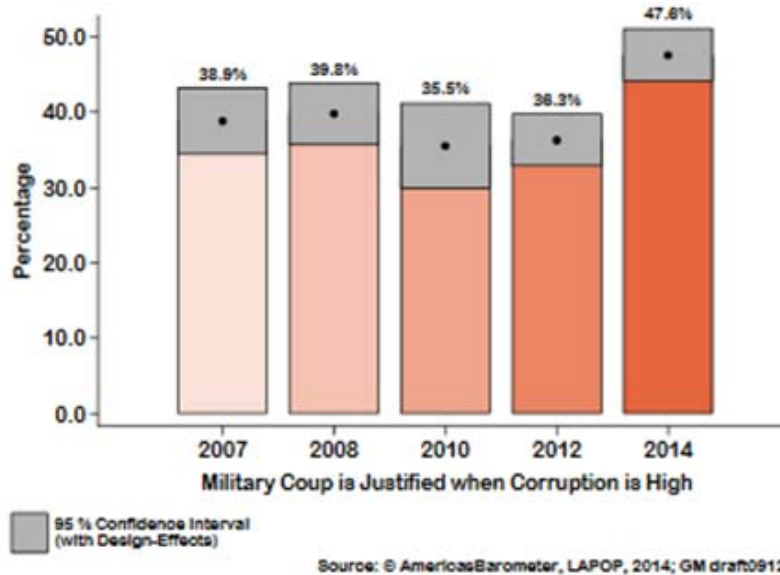
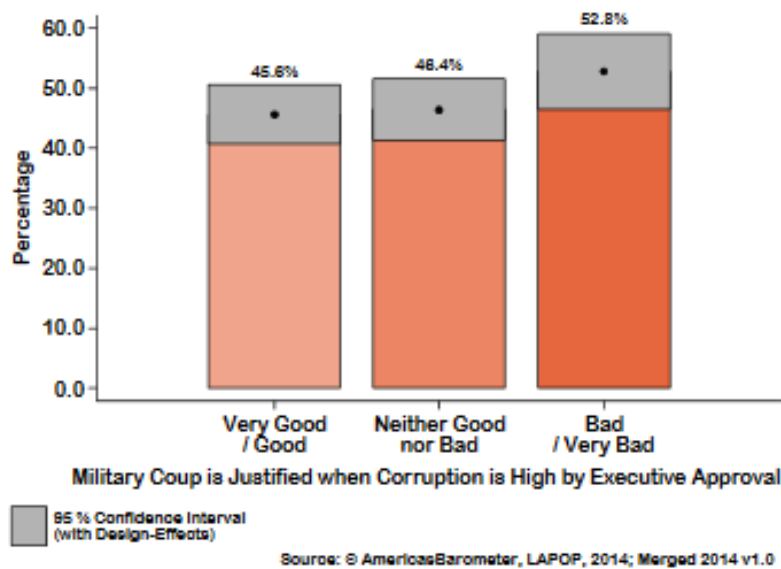


Figure 6. Percent Who Believe a Military Coup Is Justifiable Under High Corruption by Level of Approval of Brazil’s President, 2014.<sup>153</sup>



<sup>152</sup> Adapted from Guilherme Russo, “AmericasBarometer: Topical Brief Amid Brazil’s Protests, a Troubling Surge in Support for Military Intervention,” AmericasBarometer Insights, March 23, 2015, <http://www.vanderbilt.edu/lapop/insights/ITB019en.pdf>.

<sup>153</sup> Ibid.

This section addresses three specific examples of social activism to demonstrate how Brazilian frustration with the government and corruption in general eliminated passivity and led to progressively stronger social movements. This section also highlights the linkages to previously annotated theories, and how they apply in Brazil. The importance of the Brazilian public in facilitating an environment of anticorruption should not be overlooked. The role of the public in democracy is to apply pressure on politicians in pursuit of accountability. Brazilian grievances are fractured, but this section sets out to prove that the path to transparency gained momentum through the success of the *Mensalão*, which was further amplified as the economy and government services deteriorated under changing economic conditions domestically and globally. Mounting discontent for institutional inefficiencies and mismanagement pushed the public beyond its limit, and resulted in an emboldened public with that realized it could hold the government in check.

### **1. Public Consent for Judicial Activism**

One of the earliest examples of public empowerment came in July of 2006 in the run up to the elections in Rio de Janeiro. At the time the state elections court of Rio the (*Tribunal Regional Eleitoral*, TRE) took the initiative to cancel the candidacies of all politicians with *fichas sujas* (dirty records).<sup>154</sup> The decision was later overturned by the higher electoral court, on a technicality in the decision, but not until after the names of all the *fichas sujas* were blasted across local news outlets for weeks. The city took note and in a turn of political justice, the public validated the TREs leap of faith, and not one of the implicated candidates was elected.

Although the unconventional wisdom of the TRE was thwarted it was only temporary, and in 2010 a national *fichas Limpas* law (clean records) was created at the behest of the public.<sup>155</sup> This transitional event stands as evidence in favor of Fernando Filgueiras counter-majoritarian empowerment theory presented in Chapter III, which argues that public discontent with government leads to empowerment of the judiciary.

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<sup>154</sup> Fleischer, "Never Ending Story."

<sup>155</sup> *Ibid.*, 19.

The TRE was justified by an immediate positive public reaction, reinforcing the idea that corrupt politicians may not be able to overcome transparency. This was again validated following the *mensalão* decisions in 2012, as “the verdicts appear to have been generally welcomed by Brazilians, particularly judging by responses on social networks where the news was met with jubilation and Praise for the STF judges.”<sup>156</sup> Interestingly, Public distrust in the judiciary was equal to that of the other branches until the decision was made to permit Brazil and the world to see the *mensalão* proceedings on public television.

## **2. The 20-Cent Revolution**

The motivation for what became known as the vinegar or 20-cent revolution in 2013 is attributed to public discontent over taxation without representation. Brazilians know they pay much higher taxes than most. At approximately 35 percent of GDP it is on par with many first world European welfare states, yet, their return on investment does not add up.<sup>157</sup> Part of this is likely due to the size of the informal economy, yet the point remains that a lot of money is going into the system but there is not much to show for it and so Brazilians have moved their grievances to the streets. As the World Cup loomed on the horizon, Brazilians had the perception that their money was being put into stadiums to create a façade to the world while citizens were going hungry. Public frustration spiked in June of 2013 in response to a 20-cent hike in bus and subway fares in Sao Paulo. After a violent response by police, protests spread, sending millions into the streets around the countries major cities and onto the doorstep of the federal capital. As the crowds expanded, so did the list of grievances, which included health care, education, corruption, and waste, particularly for the World Cup and the Olympics.

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<sup>156</sup> Tavener, “Guilty Verdicts.”

<sup>157</sup> Thomas C. Bruneau, “The Impeachment of President Dilma Rousseff: Old Politics Meets New Standards in Brazil,” Presidential Power, accessed June 13, 2016, <http://presidential-power.com/?p=5031>.

Public ministers were unable to depart Brasilia, so Rousseff organized urgent discussions to address the public complaints and stem the tide of growing frustrations.<sup>158</sup> After about two weeks of public demonstration, Rousseff addressed the public, and in her message she listed five urgent issues; fiscal responsibility, political reform, healthcare, public transportation and education.<sup>159</sup> She stated, “the streets are telling us that the country wants quality public services and more efficient mechanisms to combat corruption.”<sup>160</sup> While the address appeared to be lip service to many, the government followed through with its public mandate and pushed through the Organized Crime and Clean Companies laws a few months later. Both of these laws soon had a significant impact on the *lava jato* case that was exposed the following year.

### 3. Lava Jato

The 2013 protests became a springboard for further demonstrations. The public did not need convincing that their government was corrupt, but in March of 2014 the *lava jato* scheme was discovered, with implications of money laundering organized through the state-run oil firm, Petrobras.<sup>161</sup> The extent of the Petrobras scandal took time to develop as the prosecution weeded through plea deals and layers of bureaucratic impediments. Simultaneously, Rousseff’s reelection campaign narrowly succeeded before allegations emerged that the Petrobras deals may have financed her campaign. Although she achieved reelection, her path was only downhill from there; her approval rating sank to 8 percent in August of 2015, her coalition in congress failed, and impeachment was being considered.<sup>162</sup>

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<sup>158</sup> “Protestos pelo País têm 1,25 Milhão de Pessoas, Um Morto e Confrontos,” *O Globo*, last modified June 21, 2013, <http://g1.globo.com/brasil/noticia/2013/06/protestos-pelo-pais-tem-125-milhao-de-pessoas-um-morto-e-confrontos.html>.

<sup>159</sup> Mariano Castillo, “Rousseff Proposes Referendum for Brazil Political Reforms,” CNN, last modified June 26, 2013, <http://www.cnn.com/2013/06/25/world/americas/brazil-protests/>.

<sup>160</sup> Ibid.

<sup>161</sup> “Operacao Lava Jato,” *Folha de Sao Paulo*, accessed January 15, 2017, <http://arte.folha.uol.com.br/poder/operacao-lava-jato/#capitulo3>.

<sup>162</sup> Rogerio Jelmayer, “Brazilian Presidents Approval Rating Hits Record Low,” *Wall Street Journal*, last modified August 6, 2015, <https://www.wsj.com/articles/brazilian-presidents-approval-rating-hits-record-low-1438856390>.

On Sunday March 13, 2016, approximately 3.4 million Brazilians took to the streets again throughout the country; frustrated by the growing *lava jato* case, government waste, and lack of public services. Remarkably, the enormous outpouring of emotion and anxiety may have been the largest anticorruption demonstration in history.<sup>163</sup> This protest, however, was different from Brazil's earlier ones because the public could no longer see a way forward without changes at the top. The protests of 2013 "were mostly about irrational government spending, [this was] specifically to protest official corruption."<sup>164</sup> The results enabled the prosecution with the previously mentioned Clean Companies and Organized Crime Laws. With more than 200 defendants and serious repercussions for Petrobras as well as Odebrecht, the nation's largest contracting company, the evidence confirms the power of the public to hold politicians accountable.

#### **4. The Media**

Each of the events indicated is a testament to how Brazilian dissatisfaction with their government amplified rapidly, but the critical link between each of them was the accessibility of media coverage. An important step in making the media shift possible took place in 1995. In an effort to liberalize the country, a constitutional amendment was approved to open up the state-run telecommunications system to the public.<sup>165</sup> Within a fifteen-year period of privatization, Brazil's media penetration expanded from 13 million land lines to 43 million and 180 million mobile phones.<sup>166</sup> Today, Brazil is the world's fourth largest user per capita of the Internet and third largest user of Facebook.<sup>167</sup> These demographics are important because they are indicative of the rapid absorption of media in a state that had relatively low penetration only two decades ago. It also demonstrates the importance of social media in the Brazilian lifestyle. In the previously referenced

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<sup>163</sup> Sotero, "Brazil's Rise."

<sup>164</sup> Mello and Spektor, "Fix Brazil," 109.

<sup>165</sup> Power, "Brazilian Democracy," 225.

<sup>166</sup> *Ibid.*, 225.

<sup>167</sup> "Top 20 Countries with the Highest Number of Internet Users," Internet World Stats, accessed January 24, 2017, <http://www.internetworldstats.com/top20.htm>.

AmericasBarometer report, the authors revealed that the probability a Brazilian making a public protest is most likely if the individual is active in the community, has political interest, and is willing to share political information through social media.<sup>168</sup> In line with Katarova's transparency theory, presented earlier, the mixture of public awareness, education, and discontent led many Brazilians to take on the trending anticorruption initiative.

As public awareness and discussion of corruption increased, it produced an intolerable environment toward illicit and unethical practices by public servants. All who cared about their country and the deplorable state of corruption engaged the reality of the situation. The effect on Brazilians was transformative; the social acceptability of robust waste and self-indulgence was no longer acceptable. Ultimately frustration led to networking and speaking out, and speaking out led to acting out, which enabled a national movement. Previously, the phrase "*roba mas faz*" expressed the Brazilian acceptance of corrupt politicians who although "crooks" were tolerated because they "got things done." In the future, that phrase may be an ignominious reference to the old ways, when political elite could get away with irresponsible behavior.

#### **D. SUMMARY**

This chapter has presented several arguments and examples to illustrate the conditions under which the Brazilian state could adopt new measures of reform that empowered the people to demand accountability and justify judicialization for the purpose of balancing democracy. Stopping short of closing the book on Brazilian reform, the reality of reform is that it must be enduring, and it begins with the people. Public officials lack sufficient motivations to step in front of hundreds of years' worth of patrimonialism and corruption. That being the case, as much as the public must rise up and demand reform, the actual power lies in the hands of politicians. It is still early to assess the long term impact of what is unfolding in Brazil, yet the changes appear to have broad impact and staying power. The public and the judiciary demonstrated the willingness and ability to punish corruption through the ballot box and the rule of law.

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<sup>168</sup> Mosley and Layton, "Prosperity and Protest," 5.



Although the judiciary appears to be Brazil's new moderating force, this chapter was intended to demonstrate that it would not have occurred if not for broad public support.

In short, Brazil has exhibited a productive evolution of state capacity and public services; namely the broader education and welfare of the population. The Brazilian middle class grew rapidly over a very short period and so did the appetite and the demands of an informed people. As the good times deteriorated, "the combustible mix of rising unemployment, public frustration, and growing scandals" led to dramatic political changes.<sup>169</sup> Although this chapter has considered some of the primary internal motives for change, Chapter V presents some of the external factors that ultimately prepared the nation for reform and applied the pressures to instigate the afore mentioned social movement.

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<sup>169</sup> Mello and Spektor, "Fix Brazil," 108.

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## V. EXOGENOUS FORCES

It is often said of Brazil, that the country is at a crossroads; it has the potential to contribute to global issues and go beyond being a middle power to bridge the gap between under developed and developed nations. For nearly a century, Brazil has maintained aspirations of achieving parity with contemporary global powers, and by the numbers, Brazil is certainly a likely candidate. Brazil is the world's fifth largest country in land mass and population, and as of 2015 was the ninth largest economy in the world.<sup>170</sup> The reality, however, is much different which is why Harold Trinkunas states that "a major power is characterized by more than size, population, and economic achievement. It is distinguished by its intentions regarding its role in the international system."<sup>171</sup> Trinkunas further suggests that a rising power is identifiable by its ability to "successfully participate in shaping the rules and forming the regimes that govern the international order."<sup>172</sup>

In its rise to prominence, Brazil has failed to demonstrate sustained socio-economic success and international clout to achieve its lofty goals. Brazil has distinguished itself as a global middle power with the ability to lead within its region and on key global initiatives, but with substantial political and economic challenges at home, and inconsistent action toward political and economic issues abroad, Brazil's efforts to project itself as a major power have fallen short. Despite these shortcomings, the nation's leaders did not cease to look outward and upward, perhaps reaching its apex during the Lula administration, encompassing the years of 2003 to 2010. Due to this outward orientation, trying to be a top tier member of the international community, Brazil inadvertently invited international influences that eventually changed its domestic affairs in a more dramatic fashion than Brazil changed the international agenda.

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<sup>170</sup> Reid, *Troubled Rise*, 15. World Bank, "Gross Domestic Product 2015," accessed February 28, 2017, <http://databank.worldbank.org/data/download/GDP.pdf>.

<sup>171</sup> Harold Trinkunas, "Brazil's Rise: Seeking Influence on Global Governance," Brookings, April 2014, 2, <https://www.brookings.edu/wp-content/uploads/2016/06/Trinkunas-Brazils-Rise.pdf>. Trinkunas has produced additional works on this subject, co-authoring the book *Aspirational Power: Brazil on the Long Road to Global Influence* with David R. Mares, published in 2016 by the Brookings Institute.

<sup>172</sup> Ibid.

Brazil's major international projection culminated in its bid to host the 2014 World Cup and the 2016 Summer Olympics. In the lead up to the world's two biggest international events, Brazil was iteratively primed for a corruption transformation. The need for change had been there for centuries and the capacity to do so had a foundation in the growing democracy, but the motivation to change was missing its spark. That is until the weight of the world's greatest spectacles were placed upon an overburdened and under privileged people. Brazil's showcase to the world turned into the cataclysmic undoing of elite ambitions, and finally ignited the flames of domestic frustration, tipping the balance of power in favor of the judiciary in the fight against corruption.

## **A. INFLUENCE THEORY**

There are many theories on international relations that focus on addressing the need for domestic accountability and how to encourage good governance. This section addresses some of the most relevant theories, to include broad international influence theory, complex interdependence theory, and international balancing theory.

### **1. International Influence Theory**

Serena Verdenicci and Dan Hough argue that there are three basic pillars for combating corruption: government self-regulation, citizen accountability, and external pressures applied through NGOs and IGOs.<sup>173</sup> There are, however, varying opinions regarding the application and effectiveness of each of these pillars. One common theme that emerges, in response to these criticisms is the concern that external or foreign influences may overburden an already weak institution, destabilizing a nations ability to self-govern. Katherine Bersch adds that "ambitious reforms aimed at increasing transparency and enhancing accountability, paradoxically, can weaken institutions over time."<sup>174</sup>

On the contrary, there is the school of thought that contends that international organizations and third party watchdog groups are most effective in anticorruption

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<sup>173</sup> Verdenicci and Hough, "People Power," 23.

<sup>174</sup> Katherine Bersch, "The Merits of Problem-Solving over Powering: Governance Reforms in Brazil and Argentina," *Comparative Politics* 48, no. 2 (2016): 222, doi: 10.5129/001041516817037727.

reform, as they are able to investigate and openly publicize the existence of corruption and its effects on society. As states interact with global players and seek alliances, trade, and investment, they are faced by other states and organizations that are increasingly aware of unfair corrupt practices and the devastating impact on populations. As such, organizations including the World Bank, IMF, OECD, UN, and the like, have assisted in the anticorruption effort by requiring preconditions be met in order for states to receive access to aid or association.

## **2. Complex Interdependence Theory**

Today's globalized world generally requires layers of multilateral linkages between international players, which elevates the complexity of prior alliances and partners to global economic and strategic organizations of interdependence. This modern reliance on intermingling with foreign entities exposes domestic ambitions to potentially incongruous international incentives. Peter Gourevitch explains that the interdependence of states in modern society "severely constrains the freedom of action of governments" and can even lead to the reshaping of domestic institutions.<sup>175</sup> From the perspective of external entities, this is seen as a non-invasive method for shaping domestic policies to achieve a certain international objective. On the other hand, for sovereign states, it suggests that participation in the international arena comes at a cost to domestic will, unless that state has the ability not to take directions but to dictate them.

Robert Keohane and Joseph Nye describe the modern web of political, social, and economic international alliances as a "complex interdependence" in which multiple actors contribute to a rebalancing of domestic and international powers in which "the line between domestic policy and foreign policy becomes blurred."<sup>176</sup> The international playing field is, however, dominated by the strong and their agendas, predominantly early democratizing liberal capitalist states. The West has dictated the rules of the game for

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<sup>175</sup> Peter Gourevitch, "The Second Image Reversed: The International Sources of Domestic politics," *International Organization* 32, no. 4 (Autumn, 1978), 892, [https://www.jstor.org/stable/2706180?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/2706180?seq=1#page_scan_tab_contents).

<sup>176</sup> Robert O. Keohane and Joseph S. Nye, "Complex Interdependence and the Role of Force," in *Power and Interdependence, Third ed*, ed Robert O. Keohane and Joseph S. Nye (New York: Longman, 2001), 211.

centuries, to the detriment of late comers and their sovereignty. Barbara Geddes argues that late democratization was a result of the 1980s debt crisis which forced developing nations to adopt capitalist policies in order to attract international investment.<sup>177</sup> Consequently, institutions concerned with the unknown risks associated with providing aid to this new diverse group of political and economic institutions drove investors to make their aid and loans “conditional on the undertaking of good governance reforms.”<sup>178</sup>

### **3. International Balancing Theory**

Contrary to the theories already presented that predominantly suggest that despite the loss of sovereignty to international cooperation, the overall impact of interdependence is mutually beneficial; Henry Veltmeyer and James Petras contend that the forces of interdependence are inherently predatory. They argue that neoliberalism is inherently dysfunctional and “profoundly exclusionary” which results in “antisystemic social movements.”<sup>179</sup> Veltmeyer and Petras go on to question the perceived unpretentious nature of IGOs and NGOs when assisting developing nations, suggesting that it is not genuine, but rather a method to douse the fires of revolution and “antisystemic politics.”<sup>180</sup> Accordingly, the agenda of world powers is to use international organizations as puppet mediators to protect the status quo and the global social order.

## **B. BRAZILIAN GLOBAL IMAGE**

Brazil has been a great power pretender since its creation, it has never been an agenda setter or significant factor in global politics. This is historically due to the nation’s lack of military power as a tool for managing international disputes. Today, the modern international forum is diverse and inclusive of non-military states, giving Brazil and other developing nations an alternative path to shaping the international debate. This section

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<sup>177</sup> Geddes, “What Causes Democratization?,” 331.

<sup>178</sup> Paul Heywood, “Corruption,” in *The Sage Handbook of Comparative Politics*, ed. Todd Landman and Neil Robinson (London: Sage Publishing Ltd, 2009), 375, doi: 10.4135/9780857021083.

<sup>179</sup> Veltmeyer and Petras, “Good Governments,” 9.

<sup>180</sup> Ibid.

introduces some of Brazil's efforts to propel the nation into international great power relevancy.

Trinkunas states that "a state is recognized as attempting to rise when it seeks membership in a major power institution."<sup>181</sup> If great powers were determined primarily by their land mass and population size Brazil would be a top tier nation, but when history and all of the other indicators of power are brought to bear, Brazil's influence is limited. Juxtaposed against the nation's great size and potential, it is understandable why the nation clings to the hope of being the "land of the future."<sup>182</sup> Using Trinkunas' statement as a measure of Brazil's upward trajectory, the nation began to signal its perception of peer status following the First and Second World Wars. After joining the United States and its allies in both campaigns, Brazil actively sought a permanent seat at the table of decision makers in the League of Nations and the United Nations Security Council.<sup>183</sup> On both occasions, some of the major powers did not consider Brazil credible for the position and the invitation to become a permanent member of the council was never extended.

Disappointed by the decision, despite American support to the contrary, Brazil began to distance itself from the new post-war order, but retained ambitions for inclusion. In the post-war era, Brazil began to assert itself in discussions and on topics differing from the United States and the west. Brazil's foreign policy morphed into advocacy for everyone outside the inner circle of early-modernized states, those that industrialized prior to the twentieth century, it became a policy of "universalism, based on receptiveness toward all countries."<sup>184</sup> In the 1960s and 70s under military control, defensive power became a priority, as did nuclear ambitions, as an outside chance at gaining military clout regardless of the nation's historically passive foreign policy. Brazil's nuclear ambitions demonstrated a continued pursuit of power, even if its

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<sup>181</sup> Trinkunas, "Brazil's Rise," 5.

<sup>182</sup> Fishlow, *Starting Over*.

<sup>183</sup> Ibid.

<sup>184</sup> Miriam Gomes Saraiva, "The Brazilian Soft Power Tradition," *Current History* 113, no. 760 (February 2014): 64. <http://www.currenthistory.com/Article.php?ID=1125>.

methods deviated from the international norm. Further demonstrating its willingness not to conform, Brazil refused to sign the Nuclear Non-Proliferation Treaty; holding out until 1998, well after the military regime fell.<sup>185</sup> It is also worth noting that Brazil still refuses to sign the additional protocol which would allow international inspectors additional measures of access to inspect state nuclear programs.<sup>186</sup>

For Brazilian leadership, it became clear that power was not to be attained through military might and economic advantage, thus, an alternative path of soft power would have to be Brazil's way to garner partnerships and spread the agenda of universal inclusion. This power play would lay the foundation for non-traditional alliances and additional nonconforming policies. Following the military regime, the Lula administration was possibly the most ambitious for Brazilian power politics. Trinkunas described one of Lula's primary initiatives as the desire to be "representative and spokesperson for 'the rest'...as a middle man between developing and developed countries."<sup>187</sup> His predecessor, Henrique Cardoso, a social democrat and proponent of the free market, laid the groundwork for Lula's successes through sound fiscal policies that got the economy on track after years of hyperinflation.<sup>188</sup> Lula on the other hand, was not as interested in just joining the global forum as a compliant rubber stamp, his objective was to be an agenda setter and counterbalance to the occidental powers.

Examples of Lula's pursuit of alternative power platforms include the monumental formation of the BRICS following the global economic crisis of 2008. Brazil joined with Russia, India, China, and South Africa to create an alternative geopolitical power source to offset the west. Additionally, after discovering large deposits of oil off Brazil's coast, there were initial flirtations with joining OPEC, the mega

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<sup>185</sup> Trinkunas, "Brazil's Rise," 10.

<sup>186</sup> "Status of the Additional Protocol; Status as of 7 October 2016," International Atomic Energy Association, accessed March 10, 2017, <https://www.iaea.org/safeguards/safeguards-legal-framework/additional-protocol/status-of-additional-protocol>.

<sup>187</sup> Trinkunas, "Brazil's Rise," 10.

<sup>188</sup> Gomes Saraiva, "Brazilian Soft Power," 65.



international oil cartel.<sup>189</sup> A year later, Lula backed away from that decision, stating it was “not at all in [Brazil’s] interest to participate in OPEC.”<sup>190</sup>

One of Lula’s boldest efforts was to challenge U.S. and western ideology by negotiating a nuclear enrichment deal between Iran and Turkey in 2010.<sup>191</sup> The Iranian nuclear agenda was one of the era’s most controversial strategic issues. The U.S. and western powers had struggled for years to restrain the Iranian agenda. This self-assertion by Brazil to interpose into major international affairs was a clear statement that Brazil had finally assumed its “responsibilities in a multi-polar world,” as stated by Antonio Patriota, Brazil’s deputy foreign minister.<sup>192</sup> Lula departed Tehran the triumphant negotiator, but before he landed in Brazil, Tehran reneged on the bargain, declaring it would continue enriching its own uranium. Despite the diplomatic failure, Brazil attempted to stay the course in support of Tehran when, as a non-permanent member of the UN security council, Brazil went against all five permanent members in their decision to increase sanctions against Iran for its nuclear ambitions.<sup>193</sup> Alfred Montero suggests that Brazil’s defiance on international nuclear policy was not centered in an “ambitious motivation” to change the debate, but to “resist” the dominant capitalist powers on key foreign policy issues.<sup>194</sup>

More recently, Brazil has sought out alternative regional alliances demonstrating its desire to lead in the south as well as promote soft power globally. Brazil made a significant contribution to establishing organizations like the Latin American trade groups Mercosul (Common Market of the South), UNASUR (Union of South American Nations), and CELAC (Community of Latin American and Caribbean States), in which it has exercised its leadership and ability to add stability in the region. With many of these

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<sup>189</sup> “We Want to Join OPEC and Make Oil Cheaper,” Spiegel, May 10, 2008, <http://www.spiegel.de/international/world/spiegel-interview-with-brazilian-president-lula-we-want-to-join-opec-and-make-oil-cheaper-a-552900.html>.

<sup>190</sup> Reuters, “Lula Says Not in Brazil’s Interest to Join OPEC,” September 6, 2009, <http://www.reuters.com/article/us-brazil-lula-opec-idUSTRE58517Y20090906>.

<sup>191</sup> Montero, *Reversal of Fortunes*.

<sup>192</sup> Reid, *Troubled Rise*, 239.

<sup>193</sup> Ibid., 240.

<sup>194</sup> Montero, *Reversal of Fortunes*.

programs, like previous international alliances, their longevity is challenged by a lack of funding, manpower, and prioritization due to Brazil's evolving domestic priorities. Brazil has however, taken the initiative to lead on other pertinent global discussions, on which it has seen great domestic success, such as the fight against HIV/AIDS, climate change, and poverty reduction. All of these examples regardless of their success demonstrate the Brazilian ambition to lead in the region and the world, whether or not those policies are congruous with global norms.

### **C. NGO AND IGO INITIATED REFORMS**

After World War I, when Brazil first began to engage in extra-regional international affairs, the nation invited political and economic partnerships and investment to Brazil. These outward ventures opened the door for external demand internal political and business reform. At approximately the same time Brazil was gaining control of its economy in the mid-1990s, the globe was reactively assessing the impact of political corruption. IGOs and third party NGOs emerged as the forum for international debate and a platform for encouraging states to adopt reforms in exchange for inclusion and various means of economic support. As the corruption debate grew, attention focused on promoting good governance and macro-level initiatives to, as Paul Heywood suggested, "limit opportunities for corruption," and build a strong network of accountability to dampen the effects and the frequency of corruption around the globe.<sup>195</sup> As a result of Brazil's desire to be a major power in the world it pursued international acceptance and participatory inclusion; however, it may not have anticipated the symptomatic effects of inclusion. Ultimately, increased associations would gradually erode the barriers to transparency that for years had masked hidden agendas, bribery, and favoritism that had become the norm in politics and business. This section presents some of the major initiatives that have contributed to Brazil's anticorruption movement.

One of Brazil's earliest deliberate engagements with an organization committed to transparency began in the early-1990s with the Organization for Economic Cooperation

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<sup>195</sup> Heywood, "Corruption," 12.

and Development, (OECD).<sup>196</sup> Although not a member of the OECD, Brazil began to adhere to many OECD standards, with aspirations of receiving an invitation to the exclusive group. In 1997, under the Cardoso administration, Brazil attended and later committed to the OECD's Convention on Combating Bribery of Foreign Public Officials.<sup>197</sup> By joining the convention, Brazil agreed to extensive international scrutiny of domestic laws and regulations, as well as the nation's enforcement and deterrence mechanisms to combat bribery. Each state that committed to the organization agreed to promote "cleaner foreign investment" and "sustainable long-term growth" through openness in their domestic economies.<sup>198</sup> As of February 2017, Brazil has undergone five periodic investigations as part of the convention, in which lengthy reports and recommendations were made to facilitate the goal of full compliance the original charter.<sup>199</sup>

Brazil doubled down on its commitment to anticorruption early in the Lula administration, when in 2003 it became a member of the United Nations Convention Against Corruption (UNCAC). The convention, adopted at the 2003 UN General Assembly, signified the international community's collective resolve and cooperation in the fight to eliminate corruption. As a part of the agreement process, participating nations agreed to partake in a broad international review of domestic anticorruption measures, and to then demonstrate resolve in applying the identified reform suggestions.<sup>200</sup> In

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<sup>196</sup> "Active with Brazil," Organization for Economic Co-operation and Development, November 2015, 3, <https://www.oecd.org/brazil/Brazil%20brochureWEB.pdf>.

<sup>197</sup> "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions," Organization for Economic Co-operation and Development, accessed February 28, 2017, <http://www.oecd.org/corruption/oecdantibriberyconvention.htm>.

<sup>198</sup> "Issues Paper on Corruption and Economic Growth," Organization for Economic Co-operation and Development, accessed February 27, 2017, 33, <https://www.oecd.org/g20/topics/anti-corruption/Issue-Paper-Corruption-and-Economic-Growth.pdf>.

<sup>199</sup> "Brazil—OECD Anti-Bribery Convention," Organization for Economic Co-operation and Development, accessed February 28, 2017, <http://www.oecd.org/daf/anti-bribery/brazil-oecdanti-briberyconvention.htm>.

<sup>200</sup> "Implementation Review Group, Executive Summary, Brazil," United Nations, August 17, 2015, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1505820e.pdf>.

response to the critical assessment, Brazil committed to prepare legislation that would entrust the justice system with administrative anticorruption mechanisms.<sup>201</sup>

As a result of cooperation in organizations like the UNCAC and OECD Convention Brazil made an effort to begin conforming to the international recommendations. In reports as recently as February of 2017, action is still needed to be in full compliance.<sup>202</sup> Changing national laws is no doubt an arduous task, but perhaps more so when state officials are uninterested in changing the laws that would curtail their financial benefits. In situations like this, additional incentives are required that go beyond external forces that garner modest support in the bureaucracy. For Brazil, the added incentive resulted from the June 2013 protests against government corruption and the waste of public funds. Citizen outcry for change proved to be a decisive turning point in the fight against corruption. When Dilma could no longer avoid the crowds that swarmed Brazil's largest cities and even the *planalto* capital grounds, she called upon the administration to produce immediate policies to combat corruption and appease the public. As a result of those chaotic hours, the Anticorruption Law 12.846/2013 was produced.<sup>203</sup> As indicated however, laws do not materialize over night; this particular law was likely in the making for some time as seen in its distinct mirroring of principles outlined in the OECD and UNCAC charters.<sup>204</sup> It is probable, that factions within the government had versions of these proposals already prepared and waiting for the requisite support to push them through. The new law entrusts the justice system with the authority to take action against activities harmful to public administration, organized crime, embezzlement, money laundering, illicit enrichment by nature of ones influences, and it even combats the obstruction of justice.<sup>205</sup>

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<sup>201</sup> "A Nova Lei do Crime Organizado," Vladimir Aras blog, October 26, 2013, <https://blogdovladimir.wordpress.com/2013/10/26/a-nova-lei-do-crime-organizado/>.

<sup>202</sup> "Brazil: Follow-up to the Phase 3 Report and Recommendations," Organization for Economic Co-operation and Development, accessed March 3, 2017, <http://www.oecd.org/corruption/anti-bribery/Brazil-Phase-3-Written-Follow-Up-Report-ENG.pdf>.

<sup>203</sup> *Organização Criminosa*, Law No. 12.850.

<sup>204</sup> Spalding, "Four Pillars," 15.

<sup>205</sup> Aras, "Nova Lei."

Not to be overlooked in this analysis are the particularly important contributions of international financial institutions like the International Monetary Fund and the World Bank. These institutions are a key source of assistance in supporting growth and development in countries plagued by poor governance and endemic corruption. While supporting nations through financial loans and investment, they play a key part in reinforcing the need for states to accept sound fiscal policies as well as adhere to anticorruption norms. Lenders are not as likely to lend when the borrower is unlikely to fulfill the terms of repayment. It is therefore, in lenders interest to vet all requests. Unlike domestic banks, the IMF and World Bank go to the effort of building up nations and their financial institutions to facilitate good investments and growth. As incentive for good governance and transparent economic standards, states receive favorable credit ratings that help them qualify for better loans and inherently make them attractive locations for foreign business and investment.

Another layer of international influence for state behavior is the work of unaffiliated not-for-profit third party organizations that make it their priority to find and expose public misconduct. One of the leading organizations that contributes to the fight against corruption is Transparency International. The organization is known for its relentless efforts to expose wrongdoing and produce transparency with its reputation as a whistleblower. It routinely makes immediate and clear public statements to highlight public malfeasance to the world. Additionally, one of the more universally recognized tools in assessing state corruption is the Transparency International Corruption Perception Index.

One example of Transparency International acting against corruption in Brazil was demonstrated in May of 2016, amid the ongoing *lava jato* investigations and the impeachment process of President Rousseff. At the time, interim President, Michael Temer, attempted to demonstrate commitment to anticorruption reform by replacing the nation's chief anticorruption organization, the CGU. Unfortunately, shortly after the newly minted Ministry for Transparency, Monitoring, and Control (MTMC) was set into place, interim President Michael Temer and his appointed head of the new organization, Fabiano Silveiro, came under fire after Silveiro was caught on tape giving advice on how

the president of the Senate could navigate the Petrobras corruption scandal.<sup>206</sup> The irony of corruption at the head of an anticorruption organization elicited a sharp censure from Transparency International, in which the organization rescinded support to the MTMC and asserted: “Brazil needs an effective and unimpeachable anti-corruption program to win back trust in politics.”<sup>207</sup> The efforts of international organizations like these to advertise wrong doing to the global community has an impact on state appearances and business perceptions that influence the desirability of working with that particular state.

#### **D. TIPPING POINT**

Peter Gourevitch argued that the international system can levy heavy burdens on a developing society, with results that can be well intentioned, but at times detrimental.<sup>208</sup> On the extreme side of those burdens, misallocated pressures can cripple a weak state and even incite revolution. Gourevitch warned that all revolutions “begin with some international disturbance that overtaxed the political system.”<sup>209</sup> While Brazil has not experienced the kind of revolution that upends the political landscape like the revolutions in Russia, France, or China, they did experience a transformative change provoked by international pressures that peaked in the summer of 2013. The events that motivated Brazil’s 20-cent revolution were not rising bus fares, although that was the initial complaint; if so, the protests likely would have remained localized to São Paulo and would have also been resolved locally. Instead, the protests grew and became a tidal wave of frustration and public discontent. For years the public was told that Brazil was on the rise and that it was their time to join the ranks of the global elite; however, the cost of rising to “first-class” came at a price that the nation was incapable of sustaining.<sup>210</sup> Furthermore, the World Cup and the Olympics that Lula energetically pursued, to demonstrate Brazil had arrived, backfired. Instead of seizing the moment to rise above its

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<sup>206</sup> “Brazil’s Corruption Clean-up,” Transparency International, May 3, 2016.  
[https://www.transparency.org/news/feature/brazils\\_corruption\\_clean\\_up](https://www.transparency.org/news/feature/brazils_corruption_clean_up).

<sup>207</sup> Ibid.

<sup>208</sup> Gourevitch, “Second Image Reversed,” 900.

<sup>209</sup> Ibid., 901.

<sup>210</sup> Belos, “Banking on World Cup.”

humble moorings, the nation reached its limit, inciting the people to produce possibly the largest anticorruption protest in history.<sup>211</sup>

Crises often lead to change, reform and revolution, and in June of 2013 Brazil was on the cusp of crisis. The economy had begun to slip and Rousseff's PT was grasping at straws to keep the coalition from falling apart and her from losing the 2014 election. The government was rocked by the lengthy protests that questioned state legitimacy, but what fanned public indignation was the enormous amount of money going into preparations for stadiums and venues to host an international spectacle. The public was fed up with paying premium rates for government services but getting third-world returns. According to an OECD assessment of 44 countries, Brazil's education system ranked in the bottom three in each category of mathematics, reading, and science.<sup>212</sup> According to a review by the World Health Organization Brazil ranked 125 out of 191 nations for overall health care performance.<sup>213</sup> Brazil also ranks number 16 out of 145 nations for most unequal countries by distribution of wealth.<sup>214</sup> Considering that Brazilians contribute to taxes at a rate of approximately 35 percent, it is not hard to understand why a 20-cent rise in bus fares was the spark that lit the fuse of frustrations.

In 2005 the news broke about the Workers Party vote buying scheme, but prosecutorial work drug on for seven more years before the *mensalão* would close. In the meantime, Lula was busily pacing the nation for an epic showcase in 2014 and 2016. As construction for the World Cup began, it was apparent the cost was taking a toll. Brazil chose to build more than the FIFA minimum of eight soccer stadiums, opting for twelve, and racking up a bill that nearly doubled that of South Africa's World Cup only four

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<sup>211</sup> Sotero, "Brazil's Rise."

<sup>212</sup> "OECD Data: Brazil," Organization for Economic Co-operation and Development, accessed February 28, 2017, <https://data.oecd.org/brazil.htm>.

<sup>213</sup> "Measuring Overall Health System Performance for 191 Countries," World Health Organization, accessed March 2, 2017, <http://www.who.int/healthinfo/paper30.pdf>.

<sup>214</sup> "The World Fact Book: Distribution of Family Income, GINI Index," Central Intelligence Agency, accessed February 28, 2017, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2172rank.html#br>.

years prior.<sup>215</sup> Some stadiums were updated and others were built from the ground up, like the *Estádio Nacional* in Brazil's capital, but like many of the other stadiums, the city is not a host to one of the nation's top flight regional teams and has gone unused since the games ended.<sup>216</sup> In 2013 and continuing through the Olympic games, Brazilians saw billions of dollars being poured into Brazil's Potemkin village while many remained impoverished, under educated, and mistreated in the midst of security crack downs to clean up the slums in preparation for the world.

On June 17 of 2013, the week after the initial protests turned into a violent struggle between unprepared police forces and the public; the streets of cities around the nation filled with disappointed civilians by the thousands, each carrying a list of grievances that had festered for some time. The protests set in motion a series of changes that transformed politics in Brazil. The people finally achieved a point of leverage over a predatory and corrupt class of politicians that had experienced few consequences for their scandalous actions and indulgences. In unprecedented fashion, politicians ceded real power to the public and also the judiciary, unleashing the powers that have produced the equally unprecedented prosecution of dozens of Brazil's most powerful politicians and business executives. Meanwhile, the country carried on and hosted a spectacular World Cup and Olympic Games, amidst the unraveling of the national economy and Dilma's presidency.

## **E. SUMMARY**

Alfred Montero stated that Brazil "seems trapped in a middle power dilemma, of knowing that it ought to be a bigger player in international relations," but struggles with how to assert itself.<sup>217</sup> Brazil has not relinquished its aspirations for first-tier status in the world, and even continues to lobby for a permanent seat on the UN Security Council,

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<sup>215</sup> James Young, "South Africa, Brazil World Cup Stadia Largely Remain National Burdens," *Sports Illustrated*, February 2, 2015, <http://www.si.com/planet-futbol/2015/02/02/world-cup-stadiums-brazil-south-africa-fifa-white-elephants>.

<sup>216</sup> Tony Manfred, "Brazil's \$3 Billion World Cup Stadiums Are Becoming White Elephants a Year Later," May 13, 2015, *Business Insider*, <http://www.businessinsider.com/brazil-world-cup-stadiums-one-year-later-2015-5>.

<sup>217</sup> Montero, *Reversal of Fortune*.



while being an active participant at all of the other major international policy venues. However, the continued aspirations have brought on much scrutiny and increased standards that challenge political corruption. International organizations welcomed Brazil's participation, and in many cases provided constructive criticism and recommendations to help make Brazil better for all Brazilians through transparency and good political and business practices. By looking outward, Brazilian sovereignty was slowly whittled down, exposing corrupt networks and manipulative power resources to invested foreign influences. Domestic transparency was thus assisted by the influences of multiple external agencies, but the tipping point was the decision to host the World Cup and Olympics in an expensive but brief two-year period. The burden proved to be too much for the public to ignore the gross mismanagement of public funds, resulting in a social movement that rearranged an archaic balance of political power.

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## VI. CONCLUSION

The objective of this thesis is to answer: how Brazil suddenly transformed its institutions to combat government corruption and why did it occur in the period between 2007 and 2017 and not earlier? The result of the research presented here identified three main pillars for influencing democratic reform; they are democratic consolidation, domestic accountability, and exogenous forces. Each of the three institutions was analyzed in the context of what Brazil achieved and what forces were most important in creating change. As a result, the findings of this thesis indicate that the most important pillar in these events was exogenous forces; however, it is critical to understand that none of them would have created this situation independently without contributions from the other two elements.

There are strong arguments for democratic consolidation and the gradual democratization process, contending that under the right conditions Brazil could have achieved these measures of transparency and judicialization through incremental reform and rebalancing of powers. To the contrary, however, one has but to listen periodically to the news line coming from Brazil to recognize that corruption is endemic, and there is no shortage of individuals who are willing to take advantage of the system's weaknesses and profit from the lack of transparency. As an example of this, Brazil's Senate Justice Committee is comprised of 13 members, of whom, 10 are currently being investigated for corruption as a part of the lava jato.<sup>218</sup> Additionally, during President Rouseff's impeachment proceedings, 303 of the 513 deputies in the lower house were undergoing some form of criminal or corruption investigation and 49 of the 81 senators were similarly accused.<sup>219</sup> This serves as an indicator that even though there are well-intentioned public servants among the group, they are likely in the minority. Thus, to suggest that Brazil's politicians led a top-down effort to transform corruption lacks the

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<sup>218</sup> "11 Senators On Brazil's Justice Committee Are Under Investigation," Plus55, February 10, 2017, <http://plus55.com/brazil-politics/news/2017/02/senate-justice-committee-investigation>.

<sup>219</sup> "Políticos que Votam Impeachment São Acusados de Mais Corrupção que Dilma, Diz Jornal Americano," British Broadcasting Corporation, Brasil, March 29, 2016, [http://www.bbc.com/portuguese/noticias/2016/03/160329\\_latimes\\_impeachment\\_rm](http://www.bbc.com/portuguese/noticias/2016/03/160329_latimes_impeachment_rm).

credibility to propose that the necessary two-thirds consensus would have been achieved in either house. Ultimately, of the three pillars, in this situation, democratic consolidation is the least influential in terms of anticorruption and the likelihood of self-regulation.

Arguments in support of domestic accountability contend that in order to keep politicians in check, they must inherently be held accountable to a demanding public with the ability to make politicians pay for their actions. As indicated throughout the research, the political system only recently found the capacity to hold government officials accountable. Additionally, for many years political careers in Brazil have been extended due to the convoluted and indirect nature of its proportional representation system of voting. This system makes it difficult to overcome the deep protective networks of political party priorities. It was not until the Clean Records law of 2010 that public discontent swayed the government to adopt measures to prevent corrupt politicians from running for office. There is no doubt that without public demand for change and the credible threat of consequences at the ballot box, government officials lack sufficient incentives to curtail their corrupt practices.

The most persuasive arguments that explain what occurred during this period in Brazil are those that describe international forces applying pressure on the state and the people and enabling transparency reforms. Brazil's ambition to be a leader in international decision-making led to interdependence and assimilation of domestic institutions with international states and organizations. Additionally, the desire to project Brazil as a first-class state through the World Cup and the Olympics brought a visible representation to the public of the government's international priorities, superseding domestic priorities. The result was a galvanized public discontent with its government, which sparked a social movement. That movement then triggered a political power shift and significant reforms to empower the judiciary.

In any analysis of the three pillars of anticorruption forces, domestic accountability is an essential pillar. That being the case, domestic accountability and democratic consolidation or domestic accountability and international influence could achieve transparency reform without the third pillar, provided the conditions are right. Conversely, the pairing of democratization and international forces in an already corrupt

system is less likely to produce significant transparency without accountability to the public. In democratic societies with free and open elections, when the public is heard and believed to be serious in their demand for change, politicians respond to public demand when the likelihood of losing their position is at stake. In the context of this research, it was shown that the likelihood of a pro-reform movement in Brazil is historically low, and combined with a generally ambivalent perception of politics, the protests were an anomaly in Brazilian contemporary culture. Yet, many Brazilians became involved and expressed high levels of interest and discontent, indicating that there was possibly some other trigger inciting the sudden change.

It is possible that democratization and social activism could have produced the changes discussed here, but it would have occurred at a much later date. If Lula had not been so active in his outward ambitions, the nation would not have invited the necessary scrutiny and political critiques that enabled legal reforms when the nation was prepared to adopt them. Additionally, if the pressure of paying for the World Cup and the Olympics had not occurred as the Brazilian economy began to slip, the government may not have demanded increased contributions from the people, and thus instigating the unrest of 2013.

Furthermore, the evolutions of the protests give additional indications that what instigated discontent is not what the protests will ultimately be remembered for. Initially, the protests were localized to São Paulo over a planned increase in transit costs, indicating that the nation's most populous state recognized the need for increased resources. In response, the public, feeling overburdened, started a peaceful demonstration. Later, Brazilians around the country who were unaffected by the increased bus fares, but sympathized with the over-burdensome taxation system were incensed when the protests were repressed violently. The protests then became a national demonstration against government inadequacies and gross negligence of public responsibilities. The people demanded immediate change to the perception that politicians could live in their ivory towers insulated from the hunger and deprivations of the *favela*. The public was mobilized, not because the economy had begun to slip to the point that the average citizen felt the difference in their pocket book because the economy

did not retract until 2014. The public mobilized because they could see the visible transition of government priorities away from providing for the public to hosting the World Cup and the Olympics, largely for international prestige.

The final assessment of Brazil's anticorruption process is likely still a few years off. The Supreme Court is still overburdened and the Brazilian political privilege law called *Foro Privilegiado* ensures that cases of seated politicians are only reviewed by the Supreme Court when time permits. The limitations of Brazil's federal courts thus impact the overall speed and success of bringing the *lava jato* to full closure. Regardless, the precedent has been made and the judiciary is far more capable than it was prior to 2010 when the *mensalão* case achieved its first successes. As for the nation, Brazil has an abundance of resources and social capital, but turning around the current recession takes great effort and sacrifice by both the government and the people. Politicians must look to what is best for the nation or be replaced by those committed to such a cause. As for the people, additional financial sacrifices may be necessary to balance the budget in the short-term to achieve success in the long-term, but they can feel confident that they helped produce dramatic political changes for a better future.

For interested agencies and nations, this research has given credence to the efforts of organizations that are committed to making the world a better place for all participants and sometimes in spite of some participants. This exploration demonstrates that perpetual but consistent steering of willing states toward transparency and accountability can help engender good governance and anticorruption measures. The situation in Brazil, although burdensome, may prove to be a significant turning point in which political, social, and economic issues aligned to transform against endemic corruption.

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