RISE AND FALL OF CORRUPTION CONTROL IN BRAZIL: Public Institutions, Corporations, Compliance, and the "Post-Car Wash Operation"

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The paper is dealing with the main corruption problems and institutions in charge of prevented it in Brazil. First of all, normative legislation will be presented - the main criminal laws and criminal procedure laws. In the second part of the paper, the authors analyze the Car wash Operation which disclose several articulations between companies and political agents in different levels of administration and legislative houses. Later, it is explained how the concept of corruption has evolved, with further details regarding different corporations and their respective directors. Finally, the focus is on the post-Car wash Operation period. In this part, authors explain different targets that were achieved when new political figures emerged and even sentences were reviewed as exaggerated and abusive. Accordingly, it became clear that Brazilian corruption criminal policy rose from a legislative change that allowed the criminal justice system to go further. Unfortunately, strategic limitation for structural changes and control development accompanied with judges and prosecutors' moral beliefs prevented further success in preventing corruption in Brazil.

KEYWORDS: Brazilian law; corruption; Car wash Operation; criminal policy; corruption control.

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INTRODUCTION

In Brazilian politics, corruption has always played a historical role. In the Brazilian Empire, there was a popular quatrain that said, "those who still a little are thieves/ those who still a lot are barons"[1]. The history of our Republic has been marked by promises that privileges will end, and the 'old ways' will be overcome. As examples of vows to change this *status quo,* Jânio Quadros (President of Brazil from January to August of 1961) had a campaign jingle that named him as "little broom" (*Vassourinha*), implying that he was the one who would "clean up" the Brazilian politics, and the first democratically elected President after the military regime (1964-1984), Fernando Collor (President of Brazil from 1990 to 1992), used to refer to himself as the "Maharajah hunter" (*Caçador de marajás*), during his presidential campaign. Both didn't even end their terms, surrounded by, or involved in, corruption scandals. Many authors, including jurists, in different moments, described corruption as "endemic" or "systemic" in Brazil, a culture failure or habit.

As pointed out by Nieto Martin (2013: 191), the judicial debate and the socio-moral responsibility created a common perception that corruption is a matter of political parties and public agents. Such perception created two main issues: (a) the lack of instruments for internal control; (b) the inability to identify corporations and specific agents that promote illegalities, as well as the main beneficiaries of these schemes. At some point, corruption was even defended as important and necessary to business if companies intended to grow overseas.

However, in the last two decades, the criminal policy has changed, urged by many scandals in the United States and Europe. Companies have outgrown the federal or state regulatory capabilities and this complexity has demanded multinational cooperation and their complexity demanded international cooperation. Therefore, OECD and UN started to promote different global agendas for sustainable development through ethical business. In criminal law and criminal procedure debates, Tiedemann, Arroyo Zapatero, and Nieto Martín, as many others, brought a new perspective for dogmatic and criminal policy reflecting on Euro-delicts and EU-members' cooperation (De La Mata Barranco, Hernández, 2013: 143).[2] This movement made by central countries has changed corruption conception in the Latin American countries, urging to a new model of economic criminal law (Agapito, Alencar e Miranda, Januário, 2020: 293-297).

[1] The original popular quatrain is: "Quem furta pouco é ladrão/ quem furta muito é Barão/ quem furta mais e esconde/ passa de Barão a Visconde" (Carvalho, 1987: 89).

[2] The Group of States against Corruption (GRECO), created by the European Council has also been important to enforce a new perception of corruption, motivating different countries to align their criminal policies.

This new perspective of corruption as an economic issue, promoting inequality, and threatening democracies, certainly has a more solid basis, offering concrete examples and data, increasing public awareness. However, all this movement could not overcome the classic view of corruption as a moral issue (Saad-Diniz, 2017: 725), which still stigmatizes certain groups, people, and activities. So, the moral element not only creates a license to exceed legal limits, but may also "overexcite" the public agents in their "fight against corruption". This is exactly the context of rise and fall of corruption control in Brazil.

In 2005, the Brazilian political scenario was marked by the *Mensalão* scandal, which involved different political parties that had been bribed to vote for the government's agenda. This case was investigated by a special commission composed by senators and federal deputies in the same year. In 2012, the Brazilian Supreme Federal Court judged 37 public and private agents, with 25 of them condemned by bribery, money laundering, criminal association, multiple frauds, and undue appropriation. This case brought a new perspective to public corruption, and the votes of Ministers, transmitted by national television, went on for months. It had become the greatest criminal judgment until then, demonstrating the importance of compliance programs and the limitation of many legal concepts, as *organized crime* and *money laundering*. At least five new laws were enacted within this context (2011-2013), increasing the judicial competence to produce proves.

In 2014, the Car Wash Operation[3] started to disclose several articulations between companies and political agents in different levels of administration and legislative houses. It became the "new biggest scandal" and the most recent criminal procedure instruments were largely employed, especially the plea bargain and collaboration agreements with corporations and their directors. These investigations evolved in multiple levels and agencies, in different states, until they reached the candidate leading the Presidential race. This election was held in 2018 and, next, the Car Wash Task Force shrank, after its most famous judge accepted to be the new Minister of Justice. The end of this operation is marked by President Bolsonaro's frequent talk, that is: "the corruption has ended!", while different scandals have surrounded him and his family. During the Covid-19 pandemic, a new serious investigation was undertaken by a group of senators. After its conclusion, an unwillingness to carry out the next investigative procedures was perceived on the part of the Attorney General, nominated by the same Bolsonaro, against Procecutors' desire. The moral perspective of corruption is reduced, here, to a personal populist

[3] We have used here the literal translation for "Operação Lava-Jato". However, it's important to mention that the word "Lava-Jato" carries another meaning in Brazilian Portuguese, equivalent to "really fast clean-up". Both meanings are good references for the operation name: the original one because the operation was started because of an investigation of a net of gas stations/car wash used to move illicit money of a criminal organization and the second meaning because it's a reference to the really high speed of money-laundering in the corruption schemes.

level, in a way that the public figures can still assume a savior's messianic role, just like *Vassourinha* and *Caçador de Marajás*.

The report elaborated by Sally S. Simpson, Melissa Rorie, Mariel Alper, and Natalie Schell Busey (2014: 40), points out that punitive sanctions and law has had a low impact on corruption deterrence, especially when focused on personal level. On the other hand, it says, regulatory policies and multiple interventions would certainly achieve a significant effect. In conclusion, corruption is not a matter of morality or punishment, but a matter of control and authority sharing. By this, the current essay intends to demonstrate how the Car wash Operation has resulted in no advance for Brazilian criminal policy, without any institutional literacy on corruption or judicial permanent development. This is evidenced by two articulated movements: a) the judicial main role played on the "fight against corruption", including systematic violations of fundamental rights; b) the judicial roll-back, indicated by different disarticulations, legal reforms, and Supreme Court's decisions.

According to Transparency International (2019: 3):

> " Brazil had become an inspiration for many countries as a successful case of confronting systemic corruption and impunity. The reversal of this progress will therefore have an impact beyond its borders, particularly in Latin America."

The report mentions the initial success of Car wash after "adoption of key anti-corruption laws and the strengthening of law enforcement and other bodies at the federal level…" (Transparency International, 2019: 3). However, it also reports that all advances have changed fast, since "decisions by the government, parliament and the judiciary also threaten Operation Carwash…" (Transparency International, 2019: 3). These advances became questionable, for being so vulnerable to small changes (particularly, the change of main characters). Transparency International perception of anti-corruption systems is based on short-term actions, such as legislative changes, not on expectation of their real impact or measures. The main hypothesis of the present essay is that those changes were actually a convenient manipulation of institutions for different objectives. Corruption prevention depends on institutional resilience and surveillance, which means a *long-term* change.

First, it will be presented the main criminal laws and criminal procedure laws promulgated, demonstrating the influence of common law institutes. Then, we will approach the Car wash Operation and how the concept of corruption has evolved, including different corporations and their respective directors. Finally, we will focus on the post-Car wash Operation period, in which different targets were achieved, new political figures emerged, and even the sentences were reviewed as exaggerated and abusive. In view of this, it became clear that Brazilian corruption

criminal policy rose from a legislative change that allowed the criminal justice system to go further, however, the moral argument used by prosecutors and judges turned out to be the Achilles' heel of their work, together with strategic limitation for structural changes and control development.

1. BRAZILIAN LAWS ON CORRUPTION IN THE LAST DECADE

Brazilian criminal code uses the term *corrupção* (corruption) to define the bad influence over a child, when including him or her in a criminal action, as fraud or theft (Article 218 – Corruption of Minors). The same term is also used to refer to drinking water pollution (Article 271), food contamination (Article 272), and medical supplies violation (Article 273). The term corruption in Brazilian Portuguese means deterioration. However, bribery is defined as *corrupção* only, without specifications (Articles 317 and 333). Many other actions of public corruption receive different names, as *prevaricação* (prevarication), a crime perpetrated by a public agent when not doing or delaying, unduly, his activities or achieving them against the Law to satisfy his personal needs or interests (Article 319), *tráfico de influência* (influence peddling), to provide bribery to exert influence over a public agent (Article 332).

Before Carwash Operation, specially, the legal frameworks that deserve attention are: (1) the Act 12.527/2011, the Access to Information Law; (2) the Act 12.683/12, that changed Brazilian Anti-Money Laundering system; (3) the Act 12.846/2013, the Brazilian Antibribery Law for Corporations; and (4) the Act 12.850/12, the Criminal Organizations' Law. Contemporary to the Carwash operation, it is worth highlighting the (5) Act 13.303/2016, the State Companies Law. More recently, a new law was passed, the (5) Act 13.303/2016, the Public Procurement Law, which will be approached at the end of this essay.

The (1) Act 12.527/2011 is known as Access to Information Law. It is the Brazilian legal framework that regulates access to information provided for in the Brazilian Constitution, besides amending other legal frameworks that set state financial obligations and public officers' duties. According to Article 37 of the Constitution, publicity is one of the principles of public administration. With the Act 12.527/11, confidentiality was delimited as exception, regardless of the public sphere or the agency, defining maximum deadlines that need to be publicly justified by public administration.

Enacted in the first year of Dilma Rousseff Government, the law brought the concept of transparency to public law (Michener, 2018: 611). The focus was primarily the strengthening of democratic institutions and the compliance with

Constitution. With its enactment, there would be a commitment of transparency by the State, which would be capable of promoting the informal[4] social control over the government accounts and actions, with potential to prevent mismanagement and corruption from a more general and institutional perspective.

This strengthening of State institutions, however, didn't prove to be promptly sufficient. In the face of a context of (a) street demonstrations in June 2013 (moralizing movement) in Brazil, and (b) international pressure for approval of a regulation against bribery practiced by companies, after the approval of the United Kingdom Bribery Act (international standardization of International Penal Law), it was necessary the enactment of (2) the Act 12.846/2013, the Brazilian Antibribery Law for Corporations. Since the United Kingdom was the last developed country resistant to regulation, when its acceptance occurred, pressure turned to developing countries. The demand to comply their legislations with the terms of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD) has increased dramatically.

In less than a year, Brazil also complied with the regulations.

The (2) Law 12.683/12 presented two new challenges to Brazilian Judiciary. First, the Law withdrew the list of background crimes from the Art. 1st, which restrained the possible applications of the crime. In this sense, in the absence of legal provision, it would be left to courts to delineate the possibility of "self-laundering" (Callegari, 2001: 75) and to elucidate the analysis criteria of the background crime (Fernandes, 2014) and clarify criteria to differentiate money laundering from other similar malpractices such as tax evasion and tax avoidance. (Rodrigues, Law, 2013: 249).

The second challenge came in the overhaul of Articles 9th to 12th, amplifying the list of people compelled to notify control agencies about suspicious transactions, and expanding, also, the kinds of penalties foreseen in case of non-compliance. Therefore, individual service providers were also obliged to know their clients and send information to the "*Conselho de Valores Imobiliários* – CVM" (Brazilian Securities and Exchange Commission) and to the COAF (Brazilian Financial Intelligence Unit). The Judiciary was provoked, then, to redefine under clear criteria the difference between administrative violations and joint perpetration in the money-laundering crime itself. (Pires, 2015: 178 & ss.).[5]

[4] We use this terminology as a synonym of every kind of control of bad practices that is not done by the State itself. The terminology is taken from: Saad-Diniz, 2019, passim.

5 Among the categories that were included, were the lawyers (Art. 9th, XIV), that so provide consulting services. The National Confederation of Liberal Professionals (representing accountants and advisers in general) filed the Direct Unconstitutionality Action n. 4.841 by reason of professional confidentiality, which would be undermined before the demands imposed by the new drafting of Art. 9th, XIV. In the same period, for the same reasons, the Brazilian Bar (OAB) decided to file another Action on lawyers' behalf, but expressing themselves against ADIn n. 4.841, for considering that the other categories of liberal professionals wouldn't need such privilege. So far, the referred Action hasn't been judged. Responding to OAB public demonstrations,

This Law was passed a little over a month before the beginning of the judgment of the Penal Action 470/MG by the Supreme Court, pointing, therefore, the importance of money laundering in corruption schemes.[6] The Law reform didn't have thus the production of a precedent by the judgment, but was conceived within the context of "Mensalão" and had its importance highlighted by the Court in the face of demonstration of goods flows and occultation procedures perpetrated by banks and marketing companies.

The (3) Brazilian Anti-bribery Law for Corporations (Law n. 12.846/13) addresses civil and administrative liability of legal entities for the practice of actions against national or foreign public administration. Although the liability model for companies is restricted to civil and administrative spheres, it is important to emphasize that criminal consequences may fall upon individuals, since it is a Law that regulates something considered to be a crime.

Furthermore, it is worth highlighting the particularity of the Brazilian context: as it was ascertained during the follow-up of the legislative process, the Law was maintained as "non-criminal" in a deliberate way to ease accountability and avoid obstacles and difficulties of a criminal-procedure model, as proposed by the President of the Republic at that time. This was sustained under the allegation that it is difficult to prove individual malpractices and, only then, sanction business enterprises. It is also alleged that there is a great difficulty proving legal entities' intention or negligence. However, it is also necessary to consider the companies' side, which will certainly be affected in criminal and economic aspects, without effectiveness being really assured through this support to an excessive *jus puniendi*. In Silveira's and Saad-Diniz's words:

> Anyway, it is possible, once again, to see a legislative policy that seeks to answer to socio-economic problems based on liability expansion, instead of regulating strategic sectors and organizations that enable corruption (but, not only this, also accounting frauds, diversion of funds, frauds in bidding procedures are relevant here). Creating mechanisms of approximation of its management to interests of public regulation, the new Anti-Corruption Law provides more interference on business activities' operations for objective, administrative and civil responsibility of legal entities for practice of acts of national or foreign public administration, reaching even the person of their managers. (Silveira; Saad-Diniz, 2015: 309) [Free translation].

the COAF issued a resolution excluding lawyers from the list of obliged professionals, since they are already submitted to their own control institution. On lawyer's duties and analysis of their participation in money laundering, see: Salgado, 2017.

[6] In her vote, Minister Carmen Lúcia made use of a comparison: "money is to crime, what blood is to a vein, that is, if it doesn't flow with volume and without obstacles, there won't be criminal schemes like these" (STF, 2012: 3351).

Certainly, this objective responsibility creates enormous difficulty for the company to defend itself.[7] If, as mentioned, there is a penal logic within the Law, it is inevitable to question the restraint to defense when instituting the strict liability in this Law (Scaff, Silveira, 2014). This legislative preference revived the debate about the models of corporate accountability[8].

Despite all the criticism, it is worth pointing out the preventive initiative of this Law, which can actually be effective in corruption prevention through incentive to compliance policies. The positive effect of this policy is commented by Adán Nieto Martin:

> "...In some occasions, they are even bound to comply with the company anti-corruption policy if they want to do business. This mechanism seems to me to be a very powerful tool in the expansion of the fight against corruption. If, in a region of Africa or Asia, a big multinational company imposes adoption of anti-corruption policies on its providers and partners, this measure can be more effective than many legislative changes"[9] [free translation].

Therefore, notwithstanding all the criticism, the subject is in line with international trends and the aim in preventing corruption. As respects to the proposals of alternatives in the face of criticisms, "the foreign example must, therefore, be taken into account, even to know the possible range of the Law, with State control and preservation of rights, under penalty of violation and assault against companies" (Scaff, Silveira, 2014). The example from abroad may indeed be useful either to adhere to or depart from certain legal provisions. Adhesion, however, should be questioning and critical, drawing on comparative law, but able to adapt legislation and problem solutions to national scenario. Up to the present moment, that has not been the case in Brazil.

In this respect, see the 5th Article of Anticorruption Law, which lists the offensive acts against national or foreign public administration. They are many and varied, from bidding frauds to bribery of governmental authority. "Such proceedings would constitute themselves in those against the national or foreign public patrimony that aim at, generically, promising, offering or giving, directly or indirectly, undue

[7] For a critical analysis of the Brazilian model of criminal liability of legal entities, see: Januário, 2020; Januário, 2019b: 345 & Ff.; Januário, 2018a: 211 & ff.).

[8] On this debate, see: Canestraro; Januário, 2018: 269 & ff.; Januário, 2016; Januário, 2018b.

[9] The text in foreign language is: "En ocasiones obligan incluso a que se acepten, si quieren hacer negocios, la política anticorrupción de la empresa. Este mecanismo me parece un arma muy poderosa de extensión de la lucha anticorrupción. Si en una zona de África o Ásia una gran multinacional obliga a todos sus provedores y socios, si quieren serlo, a adoptar medidas anticorrupción, esta medida puede ser más efectiva que muchos cambios legislativos" (Nieto Martín, 2013: 205).

advantage to public agents." (Scaff, Silveira, 2014) [free translation]. So, initially, two concerns present themselves: (I) ample prescription of conducts, with many vague judicial concepts and great confluence between descriptions of criminal practices provided for in the Brazilian Legislation and the "offensive acts" foreseen by law; and (II) the emphasis on sanctioning acts committed against foreign public administration, which shows the far extent and the influence of *Foreign Corrupt Practices Act*[10] in the creation of the Brazilian Law.

As to the (I) ample prescription of conducts by the Law, with many vague judicial concepts and great confluence between descriptions of criminal practices provided for in the Brazilian Legislation and the "offensive acts" foreseen by Law, Eduardo Saad-Diniz presents the confluence in a very relevant synthesis:

> "Regardless of greater or smaller consistency that can be drawn from the Law in the Brazilian theoretical field, it is in Davi Tangerino's analysis that we can find a well-elaborated design about the confluence between the description of criminal conducts envisaged in the Brazilian legislation and the offensive acts foreseen in the new Law. Tangerino outlines the comparative charter in two columns (Offensive Acts against Public Administration cf. the New Anti-Corruption Law; and Criminal Types), classifying in 5 lines the equivalent pairs, summarized here: 1) Undue Advantage Offered to Public Officers would match "Active Corruption, combining with the Article 29, CP, therefore, Privileged Passive Corruption and Prevarication, with no harm of extravagant legislation", (2) Incentive to any of the acts provided for in Anti-Corruption Law, which could provide the setting for the types foreseen in the topic (1) by virtue of agents' cooperation; (3) use of legal entities, to conceal or disguise the real interests or the identity of the recipients of the perpetrated acts, which "in general terms, the wilful omission of information that should be registered in a public or private document gives effect to misrepresentation crime or money-laundering"; (4) biddings and contracts, equivalent to practices

[10] "The Anti-Corruption Foreign Corrupt Practices Act (FCPA) prohibits corruption of public agents and foreign government officials in order to obtain, retain or direct business. It outlaws bribery of foreign governmental authorities to obtain or retain business. Any company that has international business as a strategy must develop and implement a policy in accordance with the Anti-Corruption Law FCPA, besides, of course, the Anti-Corruption Laws of its country" (Coimbra, Manzi, 2010: 64) [free translation]. Worthy of additional comments is the fact that such a Law, originated from the US, has been used as a parameter for regulation in many countries and can strike companies that have shares quoted in North American stock markets, regardless of where the malpractice has been committed. For this reason the Brazilian companies must have a special concern if they have international business activities. Any act of corruption related to US jurisdiction can be sanctioned. In this respect, the Law no. 12.846/2013 may indirectly compel such companies to comply with a FCPA, contributing to many Brazilian economic protagonists.

> "incriminated by the types defined in Law no. 8.666/93", without, particularly in sub-paragraphs "f" to "g", falling on malpractices against public administration; 5) hinder investigation or monitoring, even within the scope of regulatory and inspection agencies, would be equivalent to "resistance, disobedience, in their several respects" (Saad-Diniz, 2017: 739-740 [free translation]).

It can be noted, on the layout above, the recourse to Criminal Law, even though the Law deals only with the non-criminal responsibility of the companies. This recourse happened exactly in the form of an increment of the sanction rules.

We can see, as a result, (II) the emphasis on sanctioning acts committed against the foreign public administration, what demonstrates the wide range and influence of Foreign Corrupt Practices Act in the construction of the Brazilian Law. Beyond legal standards, the increase of the punitive intervention reproduces the sort of repression against corporate scandals largely applied in the United States of America[11]. The similarity between the Anti-Corruption Law and the Foreign Corrupt Practices Act is preserved, not only in the legislative technique, but also in the very "obsessive persecutory strategies for intimidation" (Saad-Diniz, 2017: 740).

It happens that this integral internalization of the patterns brought along with it several problems that are evident today. There are, initially, two reasons for this occurrence: (a) the poor result of penal intimidation in the country of origin of regulation and (b) this regulatory standard needs to go through legitimacy filters before being internalized, aiming at an appropriate internalization.

As to (a) the poor result of penal intimidation in the country of origin of regulation, for some time, it has been insisted that the effectiveness of penal intimidation is poor and the major investigations didn't fulfill its potential in terms of positive changes in the governance structures of the organizations in several places in the world, notably in the USA and in Italy. As a matter of fact, there are no elements of empirical evidence showing that the increase of the penal intimidation has guaranteed greater effectiveness in those places. The investigative and legislative reinforcement has been treated by some North American authors even as an illusion sold to ensure the recovery of confidence on the market (Laufer, 2016). As we will see ahead, something similar has been seen in Brazil.

As regards (b) the necessity of legitimacy filters for this regulatory standard before its internalization, aiming at the appropriate internalization, this occurs because there is a sense of uncertainty about the law enforcement institutional conditions and the regulatory potential of the legislation. In Eduardo Saad-Diniz's words:

[11] On the U.S. debate, see: Laufer, 2016: 13-14.

> "On the one hand, there has been little or no discussion about the incompatibilities between legal instruments proper of the Common Law tradition and the Brazilian constitutional order. On the other hand, the specificities of the organizational culture must be taken into account to avoid a mere transposition of standards of compliance duties to a social reality that may not be definitely able to accommodate it" (Saad-Diniz, 2016: 735-736) [free translation].

The law enforcement reality in Brazil is completely different from the one in the US, which is why the mere internalization of the foreign standard is complex. A system of administrative sanctions against companies, strongly linked to Penal Law, was created in a country where the old moralizing intervention perspective hasn't replaced, but overlapped with, the new one, focusing on institutions and companies, which occurs to date. Furthermore, the utility of liability prevention measures

> "(…) is also questionable as to the interpretation criteria inserted in the new Law. In fact, besides poor effectiveness, what we have are negative impacts, an ambience averse to risk and potential investors' drain" (Saad-Diniz, 2016: 741) [free translation].

Following the analysis of the Law, the Art. 6th, in its turn, lists the administrative sanctions set forth in it for commitment of illicit acts: a fine of 0,1% to 20% of the gross revenue or 6 thousand to 60 million *reais*, being the amount not inferior to the advantage obtained, not excluding full compensation for the perpetrated damage when possible. Another foreseen sanction is the publication of the convicting sentence, which is interesting from the perspective of social reproach.

The fact that the fines will never be smaller than the advantages obtained has been praised due to being an intelligent way of punishing illicit acts committed by companies (Souza, 2014). Such perspective even approaches what was defended by Klaus Tiedemann in the sense that if the offenders risked losing their illicit advantages only, or their illicit products, they would practically be at no risk and thus wouldn't feel the special preventive effects of the sanction. A preventive effect could only be produced if the fine comprised a sum well above the value of the illicit benefit earned, in a way that the illicit act wouldn't be advantageous to the company (Tiedemann, 1995: 24-25).

Saad-Diniz, on the other hand, criticizes the common assertion that the introduction of rational logic choice between costs and benefits in Law was positive, or innovative by offering a gradation to the sanction attributed in terms of objective liability. The author substantiates his view by pointing that there is a lack of studies

validating the quality or consistency of such an argument and that, even in terms of competitive advantage, the compliance policies would be of very little significance. The current context of economic crisis per se doesn't help in investment inputs to the productive sector. The resources end up being scarcer for adhesion to vague and strict regulatory standards, which are optional and expensive. It wouldn't be surprising that a company alleged state of need to justify its non-compliance with the integrity standards required by the Law. Additionally, the risk of small and medium-sized companies being wiped out by strict sanctioning mechanisms is real, bearing in mind that even the biggest Brazilian companies were threatened by them during the Car Wash Operation (Saad-Diniz, 2016: 741-742).

Next, in the civil sphere, the sanctions can be found in the four clauses of Article 19. They are: (I) the forfeiture of money, assets, or anything else of value that constitutes advantage or profit obtained, directly or indirectly, through the illicit, safeguarding the rights of the adversely impacted or bona fide third parties[12]; (II) the suspension or partial prohibition of their activities; (III) the compulsory dissolution of the legal entity; and (IV) prohibition of receiving incentives, subsidies, grants, donations or loans from governmental agencies, entities, governmental financial institutions, or government-controlled organizations, for a minimum period of 1 (one) year and maximum of (5) years. The paragraph 1st also raises the two hypothesis, which, when proved, can lead to the compulsory dissolution of the legal entity: (a) when the legal entity is regularly used to facilitate or promote practices of illegal actions; b) when it is created to conceal or disguise illicit interests or the identity of beneficiaries of such illicit acts. They are provisions with too severe penalties, what makes us question whether it isn't precisely the severity of sentences imposed to companies that would justify a system of more guarantees for them in the Anti-Corruption Law cases, and, also, whether this model wouldn't be a motivator to denunciation by the company, handing its employees over to criminal liability, seeking to avoid its own responsibility.

It is at this stage that compliance becomes especially important. In this sense, the Article 7th sets parameters to be considered when assessing the sanction. Worthy of note is the subparagraph VIII, citing, as a means of mitigating sanctions, "the existence of internal mechanisms and procedures of integrity, auditing and incentive to reports of irregularities and the effective application of Codes of Ethics and Business Conducts within the framework of the legal entity" (Scaff, Silveira, 2014 [free translation]), referring here to compliance programs.

[12] On the historical evolution of the loss of assets, see: Januário, 2021: 211-219.

> "Recognizing its failure to act, the State chose not to try an externally imposed regulation, but what has been referred to as regulated self-regulation. Some premises are provided (by the State), leaving it up to the companies to implement their internal conduct codes to better adapt themselves to the new context." (Scaff, Silveira, 2014)[13].

It turns out that this accountability framework is specific of the self-responsibility models (that can even be criminal) of the companies. Thus, regardless the fact that liability in the Anti-Corruption Law cannot really be referred to as a criminal liability of the legal entity, particularly because the Law has expressly adopted the nomenclature of objective, civil and administrative liability, even so, the criminal nature of the Law has been extensively discussed. The great consequence of the debate refers to its strict liability provision (Bottini, Tamasauskas, 2014), whose constitutionality is doubtful, although it has never been questioned.

Apart from that, this provision consolidated the companies' accountability and their adhesion to compliance programs as a way of preventing corruption in Brazil.

As to the objective parameters of analysis of compliance standards, there was, initially, a concern about the inexistence of parameters that the State would provide or demand as a counterpart of the regulation since the law delegates its detailing by decree[14]. It took almost two years for this regulation to be implemented.

In that period, there was an acceptance of the ambiguous liability formulation of different responses for different precautions took by companies (those who take precaution measures shall not be punished as those who do not).[15] Finally, in 2015, the Federal Regulatory Decree no. 8.420/2015 was promulgated, aiming at resolving the question. This, for its part, was criticized for replacing "the state of uncertainty of the 'empty' regulatory provision for the 'excessive one'. After generically defining the 'integrity program' (Art. 41), it inserted sixteen clauses that would be more suitable to demonstrate the company's due caution. The most severe criticism pointed to a "strong commercial appeal, by linking each of the Clauses to a product to be sold in order to 'avoid' or 'mitigate' the company's culpability, albeit limited to the formality of the punitive Administrative Law" [free translation] (Saad-Diniz, 2016: 742-743). This regulation ended up creating a great compliance market in

[13] For more details on compliance programs and possible incentives for their adoption in Brazil, see: Januário, 2019a: 119-147; Canestraro; Januário, 2021: 24 & ff.; Canestraro; Januário, 2020, passim; Januário, 2019c: 221-228.

[14] "Law 12.846/13: (...) Art. 7th - Will be taken into account in the application of sanctions: (...)VIII – the existence of internal mechanisms and procedures intended to ensure integrity, auditing and incentive to irregularity reports and the effective enforcement of the Code of Ethics and Conduct within the Legal Entity framework; (...) Sole Paragraph. The assessment parameters of the mechanisms and procedures foreseen in clause VIII of the caput will be set under regulation of the Federal Executive Power".

[15] This is ambiguous because any measure or key concepts to be verified were offered, which means that any compliance program might be equal, even the most cosmetic and inefficient.

Brazil, without any compelling evidence about the institutional improvement of corruption in Brazil.

The landmark decree is criticized because it demonstrates the reproduction of the definition that compliance programs are in themselves effective once they meet certain formal requirements. The sixteen items that sought the criteria for the interpretation of what "effectiveness" would be, the main compliance mechanisms can be summarized as (I) tone at the top; (II) conduct protocols; (III) code of ethics; (IV) integrity measures; (V) third-party compliance; (VI) training and monitoring; (VII) periodic risk assessment; (VIII) accountability control; (IX) internal controls, reaction strategy and immediate interruption due to irregularities; (X) specific models for irregularity hypotheses and; (XI) communication channels and due diligence (SAAD-DINIZ, 2016, p.743). These mechanisms, as can be seen, only refer to procedures, that is, to what is formally required for compliance as a structure and process. However, none of this allows for true efficiency metrics, since, for example, it does not mean that the training content has been internalized and is followed by the employees. That is, the existence by itself of one of the requirements does not guarantee that the compliance program will work better.

Concerning collaboration with the authorities in investigations, the law provides for it through self-denunciation by the legal entity itself and not through whistleblowing. Initially, it was pointed out that this could lead to an attempt by the company to hide the crime instead of reporting it (Souza, 2014: 4-5). On the other hand, the regulatory decree provided for the protection of the whistleblower. According to him, an adequate compliance program would have an incentive structure that proposes a business environment committed to private-public cooperation. The problem would then be found in the sphere of encouraging denunciation by linking the various benefits of leniency agreements to the company's self-reporting (Silveira, Saad-Diniz, 2015: 349).

In addition, the self-report, which by law must be made by business entities (whistleblower reports only internally, to the company itself, which reports itself to the government), is not accompanied by the possibility of extending the benefits of collaboration to criminal responsibilities of individuals. According to Renato de Mello Jorge Silveira and Eduardo Saad Diniz:

> "... An undeniable obstacle present, however, [...] concerns the failure to provide for attenuation or exemption from criminal responsibilities to be extended to individuals, as was the case, albeit in a limited way, in the antitrust legislation. Without the necessary complementary guarantee, the legal measure is not considered very fruitful, which is limited solely to the corporate sanctioning scope. In this way, such rules, despite being foreseen in some sort of forecast, can ultimately

> generate a reverse effect, that is, to transform the leniency agreement, from a fundamental pillar, now of the anti-corruption policy, into a true Achilles' heel of the system." (Silveira, Saad-Diniz, 2015: 350) [free translation]

In the current regulatory decree, what would be of most interest to the company would be self-reporting to get rid of its punishment. The bad practical consequences of this mainly refer to a tendency towards individual accountability and treatment of corruption from the classical perspective, as a moral deviation, despite the use of the sophisticated and current mechanisms of institutional treatment of corruption. These effects were just the ones noticed throughout Operation Car Wash, as will be shown below. It can be noted, therefore, that Law 12,846/2013 was the normative apparatus that allowed for the huge projection of the operation (the rise) and at the same time posed an obstacle to the creation of an institutional and corporate anti-corruption culture in Brazil and, consequently, the maintenance of earnings from the Car Wash Operation (the fall).

Then, (4) Law n.12.850/13 came to offer new criminal descriptions and, mainly, more modern instruments of investigation, adapting to the standards of the Convention of Palermo, from the United Nations (Greco Filho, 2014: 8). The Brazilian penal code already provided for the figure of an organized crime group or gang, which consisted of the association of three or more people to commit crimes of any nature (art. 288, CP). This figure was renamed as a criminal association, failing to adopt such a stigmatizing term that better defines the concept of the figure. In turn, a second criminal category was created, called criminal organization, characterized by three elements: a) four or more people; b) orderly structure with a clear division of tasks; c) with the intention of committing offenses with a maximum penalty of more than four years or transnational nature.

Also in 2012, the Mensalão judgment explored and applied the concept of "criminal organization" of the Palermo Convention to characterize money laundering. Limited by the then existing list of previous wrongs, laundering could be recognized if the previous offense was committed by a criminal organization (art. 1, VII, Law n.9.613/98), even though the Brazilian legal system didn't offer any definition of its own of this figure. Despite the ratification of the Convention by Brazil, the definition of "serious crime" (art. 2, b, of the Palermo Convention) was not clear in the legal system and may be limited to transnational offenses and the traffic of drugs, people, and weapons (theme of greater attention of the Convention), as explained by the votes of the Supreme Court Judges (STF, 2012: 1206 and 1210).

The Mensalão trial thus ended with the conviction of ten defendants for the crime of "crime organizado" (organized crime), but at different times it demonstrated the existence of a system organized into three main cores, they are: political,

operational, and financial (STF, 2012: 5). Therefore, this division of tasks and subordination between different actors were not particularly valued due to the lack of a legal definition of its own but was presented as an important mechanism for the success of this achievement.

On the other hand, the instruments of investigation thus inserted in the Brazilian legal system were (article 3 of Law n.12850/13): a) the awarded collaboration; b) the controlled action; c) infiltration of police agents. In addition to these, when investigating criminal organizations, the possibilities of: a) environmental capture of sounds and transmissions were made more flexible; b) access to the record of calls and message communications, including databases; c) interception of calls and message communications; d) access to financial, banking and tax records; e) cooperation between different public institutions, regardless of hierarchy or administrative instance. It would then be the task of the judiciary to continue defining minimum standards of legality given the new probationary possibilities developed.

It happens that, once these means of producing evidence were available under the new law, there was fear that the position of the Prosecution and the Judiciary would extend the application of Law 12,850/13 to compensate for the delimitation of the minimum standards of legality for use of these means of proof. In this sense, Silveira (2013: 169 *et seq*.) criticized the extension of the dogmatic interpretation of the crime of criminal organization to the use of procedural institutes that were only applicable to this type of association of people for the commission of crimes, in particular, temporary detention and the means of producing evidence provided for in art.3 of Law n.12.850/13. During the Carwash Operation, it was noted that the use of these devices was a critical success factor for the operation, being criticized precisely for this excessive use of temporary detention and turn state's evidence instruments.

Then, (5) Law 13.303/2016 was promulgated during the Car Wash Operation. This law is also known as the State-owned Companies Law and was clearly aimed at operating to avoid new problems at Petrobras, as Brazil's State-owned oil company was at the center of the corruption schemes revealed by the operation.

In this regard, it is important to emphasize that Petrobras is historically one of the most important and profitable companies in Latin America, in addition to practically monopolizing the extraction of crude oil and the refining of fuels in Brazil. For this reason, it is also one of the most important companies on the continent in carrying out works with economic purposes and infrastructure improvement. As it is an economic center and carries out many works (contracts that allow additives, variations, and price increases), it is expected that there is a focus of corruption there, according to the criminological literature on corporate crime (Nieto Martín, 2015: 54 *et seq*.). The facts denounced at the Car Wash Operation, therefore, should not

be surprising, even if they needed an adequate response to avoid the maintenance and reproduction of corruption in the company.

In this scenario, while the application of punishments in the Car Wash Operation was the response method chosen by the Judiciary, the enactment of Law 13.303/2016 was the response chosen by the Brazilian National Congress. With a focus on preventing corruption, the provisions of articles 9, paragraph 1, and 17, paragraph 2 are highlighted in the law. Art. 9, §1 requires state-owned companies (public companies and mixed-capital companies) to implement a code of ethics and an "integrity program" (the sum of the compliance program and other internal control measures that align the 3 lines of defense against risks corruption). Art. 17, §2º prohibits the appointment of political figures or those related to politics, union organizations, and other conflicts of interest for senior positions in the administration of state-owned companies. There is, therefore, an attempt to strengthen the prevention of corruption at the institutional level, with a focus on ethical conflicts, conflicts of interest, and structuring of prevention against corruption in state-owned companies.

Although these changes, the Car Wash Prosecutors' Task Force proposed in 2015 a legislative change entitled "Ten Measures Against Corruption". Under the argument that the Brazilian criminal procedure was excessively full of guarantees and slow, leading several corruption crimes to the statute of limitations and impunity, the prosecutors thus proposed, among other measures[16], the typification of new conduct (such as illicit enrichment), flexibilization of the criteria for enforcement of procedural arrest and creating objective accountability of political parties if their accountability were rejected by the electoral justice. This proposal ended up not becoming law, but it is noteworthy for having had great repercussion during the operation, demonstrating its importance and national and political projection during its heyday.

Finally, the latest important legislation modified in the last decade in Brazil that relates to the prevention of corruption at the institutional level is (6) Law 14.133/2021, the New Public Procurement General Law, enacted after the end of the Carwash Operation. This law came to replace the former Law 8.666/1993, which already provided for several financial and non-financial controls for public purchases very similar to those provided for by the annexes of ISO 37001 for corporations (International Organization for Standardization, 2006). With the reform, the new law not only has deepened these controls, requiring, for example, division of functions in the requisition, authorization, payment and internal and external inspection (to the institution) of public contracts, double verification

[16] The project received its own website, where the ten measures were thus systematized. See: Ministério Público Federal (2021, online). The "popular initiative" law project (PL 3855/2019) was endorsed by different judiciary bodies and is available on the Chamber of Deputies website: Câmara dos Deputados (2016, online).

for payment, and rules for maintaining the greater competition and favoring the lowest possible price for purchase by the government, but it also brought several provisions on integrity programs. In art. 25, §4, the Law requires companies that are contracted by the State in contracts exceeding R$ 200,000,000 (two hundred million reais) to implement an integrity program in six months. In art. 60, the law provides that, in the event of a tie in the competition, companies that already have an integrity program in place have the advantage of a tiebreaker against those that have not implemented it yet. In art. 156, §1, the integrity program is placed as a factor to observe the application of administrative sanctions in case of deviations during public contracts. Finally, the sole paragraph of article 163 of the Law provides that the implementation of the integrity program will be mandatory if a company that infringed the competitive bidding wishes to rehabilitate itself to participate in a new bid.

The sum of all these measures were aimed at avoiding the creation of people and bribery schemes, overpricing in public contracts, and space for arbitrary decisions in favor of companies. The focus is to avoid corruption and damage to public coffers. It is yet another attempt to block the misuse of public resources, again providing for measures from an institutional perspective, and at the initiative of the Brazilian Parliament. The reasons for this change at this time, however, are not only due to the Car Wash Operation, but the negative effects after it was finished, which were made evident after the publicity of corruption scandals in the purchase of health equipment and vaccines for the covid-19 pandemic treatment. More about this will also be indicated in the final topic of this paper.

It is noted, therefore, that many legislative changes were carried out in Brazil aiming at the treatment of corruption from an institutional perspective. However, at the level of law enforcement, the traditional interpretation that interprets corruption from a moralistic and individual perspective remains strong in the country and, together with gaps in current legislation, prevents the mature and institutional treatment of corruption at a national level. Finally, it is also noted that except for Law 12,527/2011 (Access to Information Law), which can publicize data on salaries received by public employees, and the limitations on hiring for the administration of state-owned companies by Law 13.303/2016, the other legislative amendments said nothing about the hiring of personnel by the government, another measure that would be advised as an important control against corruption. This regulatory void was also another problem for the Post-Car Wash Operation, as will be seen at the end.

2. *CAR WASH* NEW STANDARDS OF INTEGRITY AND DUE DILIGENCE

Commenting on the "Car Wash Operation", Eduardo Saad Diniz points out that, despite the operation reaching global dimensions, the intimidating reinforcement did not necessarily reflect in transformations that present:

> "Convincing results of improvement in the ethical environment in politics or the market. The trend seems to form part of an international agenda, introducing into the daily routine of the criminal justice system, sophisticated practices of awarding whistleblowing, leniency agreements and compliance programs." (Saad-Diniz, 2016, p.722) [free translation]

This international trend is also verified by the positive reinforcement offered by international institutions, as was the case with the *Transparency International Anti-Corruption Award* given to Carwash Prosecutors' Task Force in 2016 (Transparency International, 2016). As said by the institution, the convictions obtained and the "10 Measures against Corruption" project proposed to demonstrate how the group assumed the main role in Brazilian's transformation (*Ibidem*).

Although it does not discredit the process of changing the paradigm in the treatment of corruption in Brazil, it is worrisome given the efforts that have been undertaken to change this reality.

Another important issue about the efficiency in transforming the Brazilian corporate culture concerns the reproduction of the regulation of the Foreign Corrupt Practices Act in Brazil during and after the Car Wash Operation. In this regard,

> "Even though there is widespread mobilization in the provision of legal services, making certain that the fear of company directors concerning the extraterritorial reach of the American legislation is made, the impact of the FCPA (Foreign Corrupt Practices Act) is small, with a relatively low incidence of cases involving Brazilian actors. Not only in Brazil but also in Latin America, the reference to the FCPA was limited to "cosmetic" appropriation as derived from the imposition of multinationals, representing a mere reaction to crises or as a mechanism for extortion and business strategies, without effective results in terms of improving the business environment." (Saad-Diniz, 2016: 735) [free translation]

The situation, at this point, is more sensitively aggravated. If adherence to the compliance culture only takes place through "cosmetic" compliance programs to ensure economic benefits for a few agents, something wrong is being identified. Furthermore, in economic terms, the extraterritorial reach of the Anti-Corruption Law would have the potential to harm the allocation of international investments. This effect affects emerging markets more drastically, as is the case in Brazil. Furthermore, if the central point of defending the legislation is due to the preventive potential of the regulatory incentive to compliance, on the other hand, "most of the compliance programs already structured in national companies make references to The FCPA Guide's recommendations." As previously criticized, "although there is a certain reception of the American legislation in the configuration of the Brazilian law, it is wrong to believe that the simple adherence to the North American standard would justify a behavior 'in conformity with the Brazilian legislation." (Saad-Diniz, 2016: 736). The regulatory standards, institutional conditions for implementation, and the corporate culture of the countries are different, which is why the operation cannot be automatic.

What is exposed here is also added to the particular conditions of Brazilian capitalism. Brazilian dependent development is evidenced when it denotes the internalization of external legal standards. Brazil adheres to the standards imposed to guarantee the maintenance of its condition of (deficit in) development (Fernandes, 2008). At the same time, even the country's corporate and legal cultures adopt external standards, even though their conditions are evidently particular and tragically national.

Furthermore, in economic terms, it is notable that in Brazil there is a greater need for economic and social development than in the USA, the country that originated the FCPA. The country can't adopt the same regulatory standards as a country with a consolidated production matrix and consumer capacity. This happens not only because Brazil materially cannot do it, but mainly because it has not politically agreed that it should do it. Adherence to US standards during the Car Wash Operation for the interpretation of Law 12,846/2013 was automatic and not discussed.

Since the Brazilian elite's resource to compensate for the deficits in economic development is the isolation of the State (Fernandes, 2008), it is equally not to be expected that the standards of practice of corruption and infringement of democratic ideals are the same in Brazil and the central economies. The regulation, therefore, needs to be adapted to the national reality and justify itself not only by what it protects but also as guardianship, given the context in which it operates (Shecaira, 2012: 603 *et seq*).

Compliance regulation, therefore, cannot be innocently treated as a reinvention of the wheel. It must be recognized that economic activity cannot

be made unfeasible. For these reasons, anti-corruption regulation needs to be in contact with producers, especially those with less potential to invest in corporate controls, usually smaller companies. On the other hand, none of this can justify greater burdens on the working class, as occurred from 2016 onwards in Brazil, with the cut in labor and social security rights as a way to "compensate" for the loss of illicit advantages that the pursuit of corruption by half of the Car Wash Operation would have caused. It is necessary to be careful with the worker in the compliance regulation, especially when it is placed in a situation of criminal risk and the counterpart is the adherence to cosmetic compliance practices (Miranda, 2019: 125-126).

Thus, now, with the Car Wash Operation concluded, all regulation and enforcement of corruption in Brazil is in a space of uncertainty regarding the political-criminal parameters that the country wishes to adopt. If the existence of the operation was important to affirm that the laws exist and apply to everyone, on the other hand, it is even more important to know "what comes after the Car Wash Operation". The operation introduced regulatory parameters to be applied in the day-to-day activities of all companies. In the media spotlight, the operation's problems were hidden by the fetish that the spectacle of the arrests of politicians promoted, but the results after the operation could highlight the worst of the collective "anti-corruption" hysteria: the restriction of rights, the exchange of "politicians" by "scapegoats" and new waves of corruption with more tragic consequences.

3. THE POST "CAR WASH OPERATION": RISE OF POLITICAL FIGURES AND FALL OF ENFORCEMENT AGAINST CORRUPTION

One of the very important concepts for the analysis of power in Latin American countries is the coloniality of power. It is a concept that demonstrates how colonial structures are sustained to the present day, keeping a distance from the people (and their social identity) away from those who exercise power (including the judiciary) (Quijano, 2005). Commenting on this concept, Haesbaert points to the need to overcome binomials, one of them being the opposition between command and obedience (Haesbaert, 2021: 113). Thus, he cites as an example the Zapatista premise of *mandar obedecendo* (to command while obeying) - power is only legitimately exercised to such extent as it is representative of the popular will - which would require the restructuring of institutions of "multi or trans-territoriality articulated at different scalar levels" (Haesbaert, 2021: 113).

On different occasions, the Car Wash Operation presents itself as a turning point in Brazilian republican history. However, the fact that its members were

elevated to the status of "national heroes"[17] echoed the well-known story of maharaja hunters and broomsticks. The control, the surveillance and even the truth remain a privilege of some men in a small room (or Telegram group).

The fall of the Car Wash Operation ironically started when people involved in the anti-corruption enforcement focused on individuals and not institutions in the fight against corruption. This moment was when, according to the Brazilian Supreme Court Judge Gilmar Mendes, prosecutors and judges of the Car Wash Operation aided Jair Bolsonaro in the Presidential elections (Passarinho, 2021).

Above the personal political alignment of the members of Car Wash Operation and their anti-corruption agenda, there was an extra key factor to explain this so said support. Judge Sergio Moro, the main figure of this operation, wanted it to go beyond "Mani Pulite", the Italian operation that inspired the Brazilian one. The idea was to take his "perspective of implementing a strong anti-corruption and anti-organized crime agenda, with respect for the Constitution, the law and the rights" (Gragnani, 2018) in the new Government.

Things went exactly the way Judge Sergio Moro wanted, until a certain point in history. The Car Wash Operation was able to remove from the election the most important figures of the Workers' Party (Partido dos Trabalhadores, PT), creating the opportunity for a change in power and the victory of the opposition. When the opposition prevailed in the election of the President Jair Bolsonaro and many Senators and Deputies of his party or of conservative allies, massacring the Brazilian leftists, it was expected Sergio Moro to be part of the new government. And so he did. Sergio Moro became what the press called the "Super-Minister of Justice" in Bolsonaro's Government and was one of the most important figures in the first year of the new government (Soares, 2018).

Things, however, didn't turn out the way Moro wanted once he was in the government. The problems started when the Rio de Janeiro District Attorney Office started to investigate two of the President's sons for the practice of corruption. They were basically accused of employing people with no capacities for the job in their staff of public employees of unconditional hiring, with the condition these people repassed part of their wages back to their employers. This scheme was called "rachadinha" (Borges, 2020).

When this happened, corruption control became personal. First, the President started with speeches about the new corruption-free government because he was the most important and honest figure leading the country. After that, he started to try to interfere in the institutions, with several actions, which two deserve special

[17] In addition to the fame achieved by the then judge Sérgio Moro, the task force of the Public Ministry also claimed a place in the pantheon of the national political imagination. One of the most famous episodes was the hiring of an advertising billboard with a photo of the promoters, paid directly by one of its members. The case did not suffer any administrative sanction (Angelo, 2020).

mention: (1) he nominated an Attorney General and a Supreme Court Minister aligned with his agenda, acting like government members, not Estate members, and avoiding any accusations against government people and allies; (2) tried to nominate a new chief to the Rio de Janeiro Federal Police Department who was friends with the Bolsonaro family, hoping he could "help" in the investigations against his sons. Suddenly, there was already an observed context of enforcement institutions weakening, compromising corruption control in Brazil (Shalders, 2020).

When the President (2) tried to nominate a new chief to the Rio de Janeiro Federal Police Department that was friends with the Bolsonaro family, hoping he could "help" in the investigations against his sons, Sergio Moro got especially angry and got away from the government (Shalders, 2020). After going home, Moro aimed for the compliance industry he so well built in the Car Wash Operation and became not only a compliance consultant but also a monitor of the bankruptcy reinstatement of one of the corporations the Carwash operation devastated when applied the law 12.846/2013 (UOL, 2020).

Bolsonaro then became unstoppable and went deep in his mission of protecting people around him against corruption accusations. One of the measures was the burial of the Car Wash Operation itself. Augusto Aras, the nominated Attorney General, despite not being someone voted by the Prosecutors (the PT government established a good practice of nominating as Attorney General the Prosecutor elected by the Prosecutors themselves) (El País Brasil, 2019), was the one with the power and the will to finish off the operation and so he did in January 2021 (Shalders, 2020).

When all those things were already a fact for Brazilians, the OECD started to show how much it was worried about Brazil and its throwback in the fight against corruption (OECD, 2019).

In the current state, things not only didn't get better but, in fact, they look worse. People around the whole world know that the Covid-19 pandemics caused an even worse tragedy in Brazil. It included the arising of a new variant of the virus in the country and many restrictions of various countries over the circulation of people that were in Brazil during the time of the toughest measures against the virus. Corruption played a central role in this tragedy. It's not a coincidence that right after all the dismantling of the institutions of corruption control, the Brazilian Senate is now discussing the Covid-19 crisis in the country and has opened a Parliamentary committee to investigate the reasons behind it. According to the Senate Investigation Commission, Brazil took this much time to solve the Covid-19 crisis because there were corruption problems in the acquisition of some vaccines. They were delayed because people were trying to ask for bribes and only some sellers were up to it (Rezende, 2021). In the middle of this delay, the government tried to impose hydroxychloroquine treatment in many places, both public and

private, aiding private actors willing to take it forward. The result was that lots of people died, mainly elderly people and vulnerable indigenous (G1 SP, 2021 and Juca, 2021). At this moment, some people, including the President himself, are being indicted for practices that look so much like those of the Nazi regime, but also corruption is at the core of these problems (Brito, 2021).

Now, in response to the Senate commission appointments, comes the President with his new Presidential Compliance Program, in a signal of institutional maturity (Brasil, 2021). However, he repeatedly affirms the "end of corruption" because of, in his own words, his "incorruptible honesty" (Shalders, 2020). It's still happening mainly because, in response to the moralism in the treatment of corruption by the Car Wash Operation, corruption became a person, an enemy, a political party, a name which prison or depossession would solve all problems. In this scenario, the President put himself beyond any moral doubt and acted like he was above any kind of accusations. Obviously, his fellow government mates acted in the same way. Therefore, corruption and personified ethics come before control mechanisms and start to adopt a post-truth model of administrative probity. We are not talking about verification, but about personal beliefs (not to say messianic faith) without institutional mechanisms capable of controlling them. The results are basically corruption in the core of the sanitary crisis and the maintenance of the toxic narrative of personal honesty.

Institutional immaturity is also manifested in the lack of regulation of the hiring of people to exercise public positions of unconditional designation. Coincidence or not, this issue is never questioned by the President of the Republic, even though it is a critical success factor for the occurrence of corrupt practices of improper appointment of public servants who then pass on their salaries to holders of elective positions that were appointed. As noted in the regulatory analysis, this institutional control mechanism is precisely the one that has been missing from legislative changes in Brazil over the last 10 years.

In a general way, the Brazilian situation shows institutions must be above people if controlling corruption is really important. The focus on corporations and the responsive regulation aiming the prevention are still the best options for good institutional arrangement and achieving results against corruption in an efficient way.

Finally, in a similar vein, it is worth mentioning Saad Diniz, for whom the change of perspective only occurs when corruption is given a more open treatment to embrace the multiple forms of its manifestation. Among the different possible perspectives in which corruption can manifest itself, Saad Diniz highlights the micro and macro forms, valued by the degree of vulnerability of the Rule of Law, the level of disruption of governance and interaction networks (Saad-Diniz, 2017: 722). This distinction is important when trying to verify the degree of institutional disruption (public or market sector, corporate) of corruption and think about

more sophisticated sanctioning controls, always focusing on institutions and less on individuals, even though they also deserve the attention of the Law.

CONCLUSION

This article attempted to demonstrate how a scenario of strong reaction to corruption can so quickly transform into a scenario of authoritarianism and inefficiency. The Car Wash Operation, although performed after the 2013 protests (which was a popular movement), actually originates from a series of legislative changes. In this way, they are the movements of the State itself (trial of the *Mensalão* and the introduction of new investigation mechanisms) that led to the emergence of an "unprecedented" operation, but which kept the same moral perspective of corruption.

The lack of change in perspective led the operation to launch its own legislative ("Ten Measures Against Corruption") and electoral endeavors, without generating sensitive changes in the organizational culture or even offering a new regulatory model guided by prevention through compliance instead of criminal repression. Moral speeches led to a conservative shift in national politics and the abuse of procedural instruments despite evidence. Ironically, the operation itself is dismantled by the system it helped to elect and sees a new institutional adjustment between the powers to guarantee the emptying of the "advances" that were once recognized.

In addition to the ineffectiveness of the moral speech and the short-term metrics used, for example, by Transparency International, this article concludes that the problem of corruption is not overcome by cooperation between the powers or by the articulation of "political projects". Considering what has been said, if the protection of public administration must be guided by the adequate provision of services by the State and the adequate provision is guided by the correct intervention of the State in the social and economic spheres, aiming at maintaining the democratic legitimacy of the institutions, it comes to an initial idea of what is intended to protect and on what basis the strategies to fight corruption will be implemented. These reasons seem to be, in principle, adequate to what the Constitution of the Federative Republic of Brazil provides, especially in its article 37.

Control and surveillance mechanisms must be democratized. It is necessary to decentralize decisions and overcome the personification of solutions. Messianic speeches must be overcome, as well as the North American techniques of "negotiation", which only privatize the conflict by putting it in the hands of a few inexperienced public agents. The nation does not need to be saved from its people, but by its people.

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USPON I PAD KONTROLE KORUPCIJE U BRAZILU: Javne institucije, korporacije, usklađenost i stanje nakon "Car Wash" akcije

Autori se u radu bave analizom problema korupcije i rada nadležnih institucija u Brazilu. U prvom delu rada su predstavljene relevantne odredbe krivičnog materijalnog i procesnog zakonodavstva. U drugom delu rada autori su analizirali "Car Wash" akciju koja otkriva nekoliko primera povezanosti kompanija i političara. U sledećem delu autori objašnjavaju kako se koncept korupcije razvio u institucijama i korporacijama u Brazilu uz navođenje relevantnih informacija koje se tiču njihovih direktora. Zatim se osvrću na period nakon "Car Wash" akcije. U tom delu objašnjavaju različite ciljeve koji su realizovani dolaskom novih političara. U pogledu toga izveden je zaključak da je brazilska kriminalna politika u vezi sa suzbijanjem korupcije unapređena izmenom zakonovadavstva, a što se najviše odrazilo na rad krivičnog pravoduđa. Nažalost, strateško ograničenje u pogledu strukturnih promena i dalji razvoj kontrole, praćeni moralnim ubeđenjima sudija i tužilaca sprečili su dalji uspeh u suzbijanju korupcije u Brazilu.

KLJUČNE REČI: Brazilsko pravo; korupcija; "Car wash" aktivnost; kriminalna politika; kontrola korupcije.