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Research Paper

The Accidental Trojan Horse: Plea Bargaining as an Anticorruption Tool in Brazil

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Abstract

This paper employs the Advocacy Coalition Framework (ACF) as a model to understand the legislative process that led to the implementation of plea bargaining as an anticorruption tool in Brazil. Through the analysis of primary qualitative data, it assesses the political and social forces that formed a coalition and propelled this legislative process forward, thus allowing the posterior emergence of the largest anticorruption judicial action in the history of Brazil. In doing so, it elucidates the reasons that led a systemically corrupt legislative to enact a remarkably effective anticorruption policy, often to the detriment of lawmakers themselves. This paper's contribution to the literature about the anticorruption framework in Brazil lies in its critical interpretation of the interplay of political forces involved in the early stages of policy formulation. It adds empirical elements to a modern institutional approach to the study of corruption, which derives from classical theories about the formation of Brazilian society. Finally, the paper serves as an illustration of the difficulties inherent to applying the ACF in dysfunctional contexts, such as those marked by systemic corruption.

Keywords: *plea bargaining; corruption; Lava Jato; Advocacy Coalition Framework*

List of Acronyms

ACF: Advocacy Coalition Framework

ADPF: *Associação dos Delegados de Polícia Federal* (National Association of Federal Police Commissioners)

AGU: *Advocacia-Geral da União* (Federal Legal Department)

AMARRIBO: *Amigos Associados de Ribeirão Bonito* (Associated Friends of Ribeirão Bonito)

Banestado: *Banco do Estado do Paraná* (Paraná State Bank)

CCJ: *Comissão de Constituição e Justiça* (Congress' Commission for Constitution and Justice)

CEP: *Comissão de Ética Pública* (Public Ethics Commission)

CGU: *Controladoria-Geral da União* (General Comptroller's Office, recently renamed Ministry of Transparency, Oversight and General Comptroller's Office)

CNJ: *Conselho Nacional de Justiça* (National Justice Council)

CNMP: *Conselho Nacional do Ministério Público* (Prosecutor's Office National Council)

Coaf/MF: *Conselho de Controle de Atividades Financeiras do Ministério da Fazenda* (Council for Financial Activities Control of the Ministry of Finance)

COL: Criminal Organizations Law (Law 12.850/13)

CONAMP: *Associação Nacional dos Membros do Ministério Público* (National Association of Federal Prosecutors)

CPI: *Comissão Parlamentar de Inquérito* (Parliamentary Inquiry Commission)

DRCI/MJ: *Departamento de Recuperação de Ativos e Cooperação Jurídica Internacional do Ministério da Jutiça* (Department of Asset Recovery and International Legal Cooperation of the Ministry of Justice)

ENCCLA: *Estratégia Nacional de Combate à Corrupção e Lavagem de Dinheiro* (National Strategy for Fighting Corruption and Money Laundering)

FATF: Financial Action Task Force on Money Laundering

MP: *Ministério Público* (Prosecutor's Office)

MPF: *Ministério Público Federal* (Federal Prosecutor's Office)

OAB: *Ordem dos Advogados do Brasil* (Brazilian Bar Association)

PDT: *Partido Democrático Trabalhista* (Democratic Labour Party)

PF: *Polícia Federal* (Federal Police)

PLS: *Projeto de Lei do Senado* (Bill from the Senate)

PSDB: *Partido da Social Democracia Brasileira* (Brazilian Social Democratic Party)

PT: *Partido dos Trabalhadores* (Worker's Party)

SAL: *Secretaria de Assuntos Legislativos do Ministério da Justiça* (Secretariat of Legislative Affairs of the Ministry of Justice)

STF: *Supremo Tribunal Federal* (Supreme Court)

TCU: *Tribunal de Contas da União* (Federal Accounts Tribunal)

Glossary

Plea bargaining: the expression used in the COL is *colaboração premiada*, which literally translates as 'awarded collaboration'. This technique has become popularly known in Brazil as *delação premiada*, or 'awarded denunciation'. Although for the sake of clarity we have opted to refer to this instrument as 'plea bargaining', it has significant differences from the tool used in the American criminal justice system. Whereas in the US defendants are allowed, for instance, to plead guilty to a lesser offense (a bargain whose benefit to the prosecution is merely the avoidance of a costly and time-consuming trial), in Brazil plea bargains serve exclusively to obtain one of the following results: 1) identifying other criminals; 2) revealing

the structure of the criminal organization; 3) preventing other crimes by the organization; 4) recovering assets accrued through the criminal activity; or 5) locating a victim of the crime in safety (COL, article 4).

Criminal organizations: Article 1, paragraph 1 of the COL defines criminal organizations as follows: "the association of four or more persons in a structurally ordered way and with division of labour, even if informal, with the objective of obtaining, directly or indirectly, advantages of any nature through the practice of criminal infractions whose maximum sentences are higher than four years, or that are transnational in nature." Therefore, the law does not specify which type of criminal infraction leads to the additional charges of belonging to a criminal organization.

Preventive arrests: this type of arrest can be ordered by judges at any point of the investigation or of the criminal trial. According to article 312 of the criminal procedure code, its purpose is to "ensure the public or economic order; to safeguard the judicial proceedings; or to ensure the application of criminal law". In other words, preventive arrests should be used to stop the defendant from continuing to practice the crime, or to prevent them from disrupting the investigation by escaping, destroying evidence, threatening witnesses, etc. Since these arrests are ordered before the trial, they do not have a punitive nature. Accordingly, STF jurisprudence states that they "cannot be used as an instrument of anticipated punishment (…), because in the Brazilian legal system, which is founded upon democratic bases, the principle of liberty prevails, being incompatible to punishment without due process and irreconcilable with convictions without prior defence (…). The gravity in abstract of the crime does not legitimize the preventive deprivation of liberty" (Habeas Corpus 96095, 2009).

Parliamentary Inquiry Commissions (CPIs): these are temporary investigative bodies formed by either house of Congress, or by both together. According to the 1988 Constitution, they "have investigative powers typical of judicial authorities, besides the powers assigned by the regiments of each house" (CF 88, Article 58, Paragraph 3). These powers include the issuing of subpoenas, the request for disclosure of financial information protected by privacy laws, etc. They are usually set up to investigate well-determined facts that have attracted public attention (such as the deterioration in public safety, in the case of the Public Safety CPI of 2002). Its conclusions can be submitted to the MP, which then decides whether its findings should lead to the prosecution, whether civil or criminal, of the suspects.

Meta-individual rights: In Brazilian law, meta-individual rights are those possessed by groups, classes or categories of individuals. According to Mazzilli (2005: 19), they can be: 1) diffuse, when they are indivisible and common to a group whose individuals cannot be determined, but who share a certain factual situation (e.g., the right to a protected environment); 2) collective, when they are indivisible, common to a group whose individuals can be determined, and who are united by the same legal relationship (e.g., those who enter into consumer contract that contains illegal clauses whose consequences are equally borne by all members of the group); and 3) homogenous individual interests (similar to those of class action lawsuits in the US), when they are divisible, common to a group whose individuals can be determined, and who have suffered damages from a common cause (e.g., buyers of a defective product).

1. Introduction

Why would corrupt lawmakers create, to their own detriment, an anticorruption tool so effective that it immediately brought about the biggest scandal in their country's history?

On May 2006, PLS 150 was presented as a bill in the Brazilian Senate. Seven years later, on August 2013, it entered into force as the Law 12.850, or 'Criminal Organizations Law' (COL). Under this law, taking part in organized crime came to be considered an offense in itself, meaning, for instance, that a gang member who deals drugs can now be charged not only with the 'antecedent crime' of drug trafficking, but also with the additional offense of belonging to a criminal organization. Since the nature of this antecedent crime was not specified, any offense can be considered one, provided it has a maximum sentence above four years, or occurs on an international scale (COL, article 1, paragraph 1).

Despite the fact that the COL's main intended innovation was to define criminal organizations, it was one of its subsidiary portions that ultimately rose to fame in Brazilian politics. As a way to modernize the investigation tools at the disposal of the Brazilian criminal justice system, this law regulated so-called 'special techniques of investigation', among which is plea bargaining. Although it already existed in previous laws, plea bargaining was not frequently applied with success in Brazil, due to a lack of thorough procedural regulation. With the COL, prosecutors quickly began to resort to this instrument as a way of unearthing and proving crimes that were particularly secretive in nature.

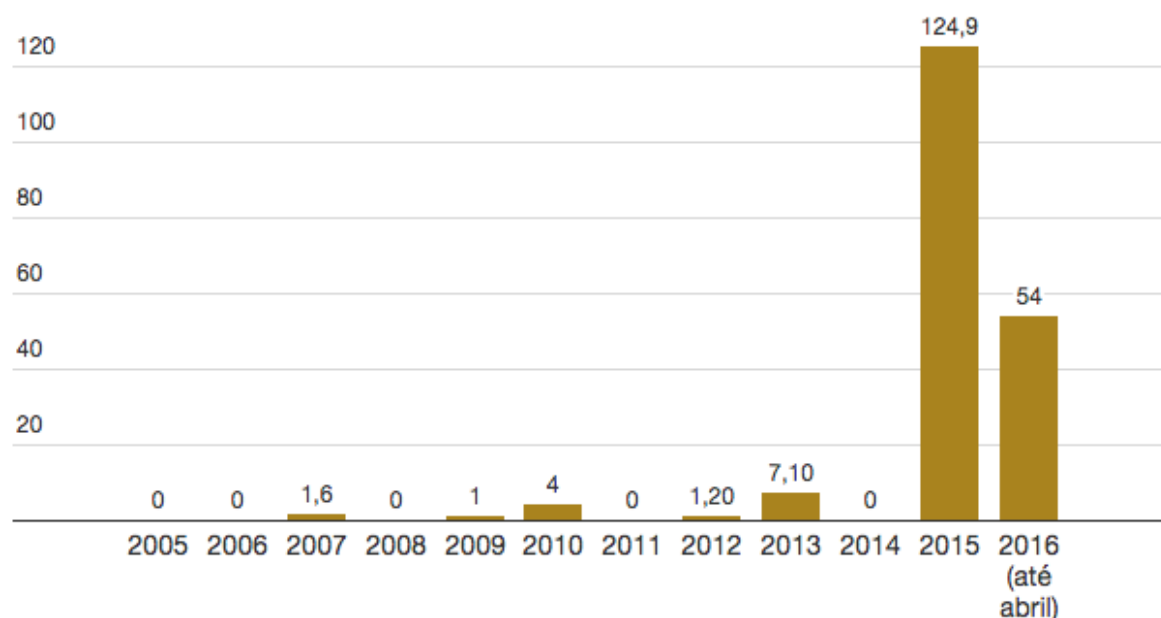One such crime is corruption.

Merely seven months after the COL came into force, on March 2014, the Federal Police (PF) and the Federal Prosecutor's Office (MPF) began to investigate four criminal organizations led by 'doleiros' ('dollar-men', foreign exchange brokers who deal in the parallel market). The investigations and ensuing prosecutions fell under the jurisdiction of a federal court in Curitiba, the capital of the southern state of Paraná, since the crimes had initiated in Londrina, a town in this state. The PF named this operation 'Lava Jato' (Carwash), because a petrol station in Brasília, the country's capital, was being used for money laundering.

The investigators identified the involvement of Alberto Yousseff, a doleiro, and Paulo Roberto da Costa, a former director of Brazil's state-owned oil company, Petrobras. After being temporarily arrested, both Yousseff and Costa agreed to become informants, causing a chain of reactions that has resulted so far in 70 plea bargains and the revelation of a far-reaching and spectacularly large corruption scheme in Petrobras.

The Lava Jato uncovered kickbacks that were systematically paid by private companies to politicians, political parties and civil servants in exchange for contracts with Petrobras. The MPF is seeking to recover US$ 11.81 billion (including fines imposed against individuals and private companies). The criminal charges already filed refer to bribes amounting to US$ 1.98 billion. The operation has already led to the arrest of senior businesspeople in construction companies, as well as of prominent politicians. It has also led to the repatriation (mainly from bank accounts in Switzerland) of approximately US$ 230 million, with an additional US$ 750

million already frozen abroad and pending final sentences to be repatriated[1]. Not without reason, the PF considers this the largest investigation of corruption in the history of the country, dwarfing prior operations such as *Satiagraha* (2008) and *Castelo de Areia* (2009).

Figure 1. Repatriation into Brazil of funds illegally transferred abroad

Talento and DRCI (2016) [Updated until April 2016]

The Lava Jato was also a significant factor in the impeachment of president Rousseff. Indeed, despite the fact that up to this moment she has not been personally implicated in the investigation and that her impeachment was based on an accounting technicality[2], the damage to her popularity was clearly a factor that allowed political momentum for the process to go forward.

As expected, however, critics of the operation have also been vocal. The backlash has hailed, predictably, from affected politicians, but also from other sources. Left-leaning sections of the media, for instance, have pointed to a bias against politicians from the PT, as opposed to those of the PSDB, as well as criticized the luxurious lifestyle enjoyed by informants[3]. Legal

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[1] All figures were updated until October 13th 2016. They were converted from Brazilian Reais using that date's exchange rate (R$ 1 = US$ 0.31). Source: MPF (2016a).

[2] President Rousseff was accused of 'fiscal pedalling', a 'creative accounting' technique that masks public deficit by delaying transfers from the central government to state banks, thus forcing these banks to front payments for social programmes such as the *Bolsa Família*.

[3] Fonseca (2015), for instance, argued that "some magistrates and prosecutors have failed to disguise their political passions, contributing to the hunt for Lula, the main target of the current operations." Despite recognizing how disseminated corruption was within the PT, Santos (2015)

scholars have condemned the tendency to accept evidences obtained illicitly[4]. Lawyers such as Mariz (2016, personal interview) have highlighted that the misuse of preventive arrests to coerce defendants into signing plea bargains could lead to arbitrary arrests and to violations of constitutional rights, since Brazilian criminal law does not allow preventive arrests to be made with this purpose. Politicians have also made this last point, whether publicly (Deputy Wadih Damous proposed a bill – PL 4372/16 – prohibiting plea agreements to be made if the defendant was in prison) or privately (in a leaked phone conversation, the President of the Senate, Renan Calheiros, also suggested this measure (Valente 2016)).

The most prominent criticism, however, came from members of the former PT government, who accused prosecutors of acting politically, with the goal of undermining the party, promoting the opposition and ultimately legitimising what the PT considers a coup d'état. The president of the PT, Rui Falcão, endorsed an open letter written by lawyers, saying that it "alerts about the excesses of forced plea bargains, of selective leaking of information to the press, of preventive arrests, of trials turned into spectacles, of restrictions to the right to a defence and to the work of lawyers" (Falcão 2016). When the former President Luiz Inácio Lula da Silva was indicted by the Lava Jato, on 14 September 2016, he responded by saying that "they have built a lie, and now they will build the closing chapter, which is to end my political life" (Lula 2016).

Regardless of the view one adopts of the Lava Jato and of its political implications, it is impossible to understand its emergence without assessing the political forces that shape the anticorruption framework in Brazil. The usually slow-paced evolution of this complex system has suddenly been shaken by the introduction of plea bargaining, an instrument whose effectiveness has surprised the entire country. Thus, the process of formulation and implementation of such policy deserves scrutiny.

So far, most analyses of plea bargaining in Brazil come from legal scholars, who focus on the technical aspects of its application during investigations and trials. Gomes and da Silva (2015) describe the shift from the previous model of 'conflictive' criminal justice, whereby any negotiation between accuser and accused was prohibited, to a new model that allows such bargains as part of procedures. Pereira (2013) focuses on the value as evidence of the information obtained through plea bargains, concluding that it is incumbent on magistrates to argue convincingly that the declarations of the accused are credible, and that such opinion should be predicated upon "objective elements outside the scope of the declaration", that is

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claimed "each policy in favour of the poorest in the country increased the persecution to this new player *[the PT]*." Lastly, Beirangê (2016) contended that while informants "reside in beach-front mansions", their testimonies have merely "served to bring about a partial and highly selective purge."

[4] The issue of illicitly-obtained evidence has been much debated in Brazil. Convictions resulting from previous PF operations, such as *Castelo de Areia*, were annulled because they had been based on wiretappings undertaken without warrants. The Lava Jato itself faces accusations of gathering inadmissible evidence, since it intercepted conversations supposedly protected by attorney-client privilege (Lopes and Segalia 2016). The Lava Jato taskforce has supported a legislative proposal allowing the use of illicit evidence, provided it is obtained with a 'reasonable' assumption of its legality (see chapter 6).

to say, that the information provided by the accused should be complemented with evidence from other sources in order for a conviction to be possible.

In the field of public policy, on the other hand, a robust literature about this new instrument has yet to emerge in Brazil. Nevertheless, some legal scholars, replicating an already well-established international literature, have incipiently expanded their scope of inquiry to include analytical frameworks typical of social research, such as game theory and the prisoner's dilemma, which attempt to explain how and why suspected criminals agree to become informants (Gomes 2015).

However, no comprehensive account of the legislative process that led to the adoption of plea bargaining in Brazil has yet been made. This gap in the literature limits the understanding of how political gridlock can be overcome and consensus reached to implement effective tools to address the dysfunctionalities of the anticorruption framework. Such understanding would be a much welcomed complement to a well-established body of work that seeks to explain the overarching institutional traits of post-authoritarian Brazil, particularly with regards to the nefarious persistence of corruption as a scar on the country's political system.

This paper endeavours to present such an account, by building upon the literature that describes the cyclical nature of policy formulation and implementation, as well as provides a framework for assessing the advocacy coalitions formed within policy subsystems.

In order to do so, we will first present and explain the research questions this work seeks to address. Then, we will describe the analytical framework and research methods employed to this end. Later, we will provide an overview of the literature that seeks to understand corruption as a systemic trait of Brazilian society, from traditional cultural approaches to modern models that describe the country's anticorruption framework. At this point, we will assess its institutional multiplicity and the several means of enforcement according to which it is organized, as well as the more robust role played by the MPF since the 1988 Constitution. We will then portray the political forces that shaped the legislative process leading to the approval of the COL and to the regulation of plea bargaining. Next, we will employ the analytical model of the advocacy coalition framework to understand these forces, first by applying its many elements to the coalitions formed in order to pass the COL, and later to understand the role of its two main beneficiaries, the judiciary (particularly with regards to the prominent role played by judge Sérgio Moro) and the prosecutor's office. Finally, we will present our conclusions and suggest future directions for research.

2. Research Questions

Main research question:

- _Why have Brazilian lawmakers, who are widely perceived as corrupt, approved plea bargaining, seemingly against their own self-interest?_

With this central question, we seek to explain an apparent contradiction. On the one hand, a procedural instrument is implemented and quickly allows the systemic nature of corruption in Brazil to be revealed, many of its beneficiaries to be named and their participation in specific cases to be proven. On the other hand, the legislators responsible for creating this instrument are themselves seen as predominantly corrupt; thus, they had good reason to prevent plea bargaining from being approved, as evidenced by the fact that many of them were themselves ultimately implicated in the Lava Jato scandal.

The claims that lawmakers are widely perceived as corrupt and that plea bargaining has often acted against their own rational self-interest can be supported by:

1) *Perception indexes*: Brazil was the country that presented the largest drop in Transparency International's Corruption Perceptions Index of 2015; the country now occupies its 76th position (Transparency International 2015).

2) *Opinion polls*: in 2015, for the first time Brazilians pointed corruption as the country's biggest problem (Datafolha 2015). In that same year, the *Índice de Confiança Social* (Social Trust Index) has shown that the trust Brazilians have in Congress is the second to last out of 18 institutions, being only in front of the trust deposited in political parties (Ibope Inteligência 2015). Although this deterioration of public opinion alone is insufficient to demonstrate that corruption is worsening in the country (it may in fact indicate the exact opposite, that is to say, that the successful detection of corruption increases the public's perception of the phenomenon), Congress' dismal reputation certainly allows the interpretation that the political class in Brazil is seen as consistently acting against the public interest.

3) *Number of implicated parliamentarians*: as of June 2016, 134 individuals who held office were under formal investigation by the Lava Jato operation (Macedo 2016a). On March 2016, the Lava Jato taskforce apprehended a spreadsheet at the house of the president of a major construction company in Brazil, which indicated that illegal donations had been made to 279 politicians of 22 different parties (Macedo 2016b). The actual figures are probably significantly higher, since portions of the investigations are considered classified.

Research sub-questions:

- Which political and social forces made it possible for plea bargaining to be introduced in Brazilian legislation?

Explaining the reasons behind the COL's approval requires one to understand which coalitions were formed between actors in and out of Congress around the formulation and implementation of the law, as well as who were the actors that had a capacity to set the agenda in these negotiations.

- What were the main assumptions and beliefs upon which such actors were based while negotiating the COL?

Once an understanding is reached as to who the actors were and what coalitions they formed, it is relevant to describe the views upon which they based their positions and exerted their influence in the legislative process. While answering this question, we will describe the stance taken by each organization that played a role in shaping the COL.

- What were the controversies and points of conflict between the different actors as the legislative process moved forward?

The detection of points of conflict that may have emerged during the crafting of the COL is useful to indicate the purposes of each of the actors that participated in the process. It is relevant, for instance, to assess whether these disagreements have revolved around procedural technicalities or if in fact there were actors who opposed the very idea of introducing plea bargains in Brazil. As this tool acquired great visibility after the COL's approval, many voices emerged to criticise it, both on legal and on ethical grounds. Verifying discrepancies in the criticisms before and after the COL will help to elucidate the beliefs each actor espoused when crafting the bill.

- Did the main beneficiaries of the COL act strategically during the formulation of the bill, or did they merely act with opportunism after its approval?

The judiciary and the Prosecutor's Office have arguably been the main beneficiaries of the COL, since they took advantage of plea bargaining to conduct the Lava Jato operation, thus bolstering their image among the Brazilian population and increasing the scope and efficacy of their anticorruption activities. In order to gain a further understanding of how the COL came to be approved by Congress, it is relevant to know whether these specific actors had a prior awareness of the potential applications of plea bargaining, thus acting to influence the legislative process accordingly, or if instead they only benefitted from the serendipitous and independent creation of this instrument by Congress.

3. Analytical Framework and Research Methods

The Advocacy Coalition Framework (ACF)

The anticorruption framework in Brazil has acquired its current format through an iterative process spanning decades of evolution. Like any such policy process, this one has been marked by struggles between diverse political camps and by competing popular pressures negotiated in the policy arena. Inevitably, public interest on the matter has also been pitted against the sum total of the rational self-interest of (often malevolent) legislators, power brokers and special interest groups. Additionally, several private and public organizations dedicated to the topic (groups often called 'epistemic communities' (Haas 1992) acting in

'policy subsystems' (Sabatier 1988)) attempt to guide policy changes to satisfy their specific objectives.

This process is so astoundingly complex that understanding even one of its many components – in our case, the legislative process that led to the approval of the COL – requires a conceptual framework that shows how strategic interactions within a policy community bring about succeeding policy iterations over time. It is precisely this conceptual framework that Sabatier (1988) has developed, naming it the 'advocacy coalition framework' (ACF).

Three main premises underlie the ACF: 1) that assessing policy change and learning requires a window of time of at least one decade, to allow insights provided by the completion of an entire policy cycle, as well as to verify the successes and failures of a program; 2) that within this timeframe, the most suitable way of reflecting about policy changes is to view them through the lenses of 'policy subsystems', that is to say, the assemblage of actors (whether individuals or organizations, both inside and outside the state apparatus) who are devoted to a certain policy issue; and 3) that such policies can be understood in the same way as 'belief systems', i.e., "sets of value priorities and causal assumptions about how to realize them" (Sabatier 1988: 131).

The cumulative changes and corrective adjustments that fine-tune the anticorruption framework in Brazil can be adequately understood by employing the ACF. In the specific case of the COL, the three premises of this framework are clearly present:

1) **Timeframe.** The implementation of plea bargaining in Brazil has been gradual. Since the 1980s, several legal instruments have been slowly creating what Brazilian legal scholars consider a new paradigm of 'negotiated criminal justice' (Gomes and da Silva 2015: 164; Mariz 2016, personal interview). From the beginning, these instruments have included plea bargaining agreements, but only for specific crimes such as kidnapping (Law 9.269/96) or crimes against the financial system (Law 8.137/90). Not only were these instruments too narrowly applicable, but they were also marred by inconsistencies and technical flaws that betrayed their tentative (and arguably improvised) nature, causing prosecutors to resort to them only rarely. The COL was the first norm to meticulously systematize plea bargaining and the procedures for conducting such negotiations, to such an extent that a new jurisprudence has been extending the application of this law even to crimes with which it does not deal specifically (Gomes and da Silva 2015: 169). The PLS 150/06 was proposed in 2006 and only voted and passed by the Congress seven years later. The rationale for Sabatier's recommendation that a timeframe of at least a decade should be observed is well illustrated in this case: an entire "formulation/implementation/reformulation cycle", as well as a "reasonably accurate portrait of program success and failure" (Sabatier 1988: 131), can both be seen in regards to plea bargaining in Brazil.

2) **Policy Subsystem.** The struggle against corruption involves a wide set of actors and organizations which have a say in the formulation and implementation of policies. Each organization acts in the policy arena aiming to shape decisions according to their own preferences, which can be selfish or altruistic in nature. In the specific case of
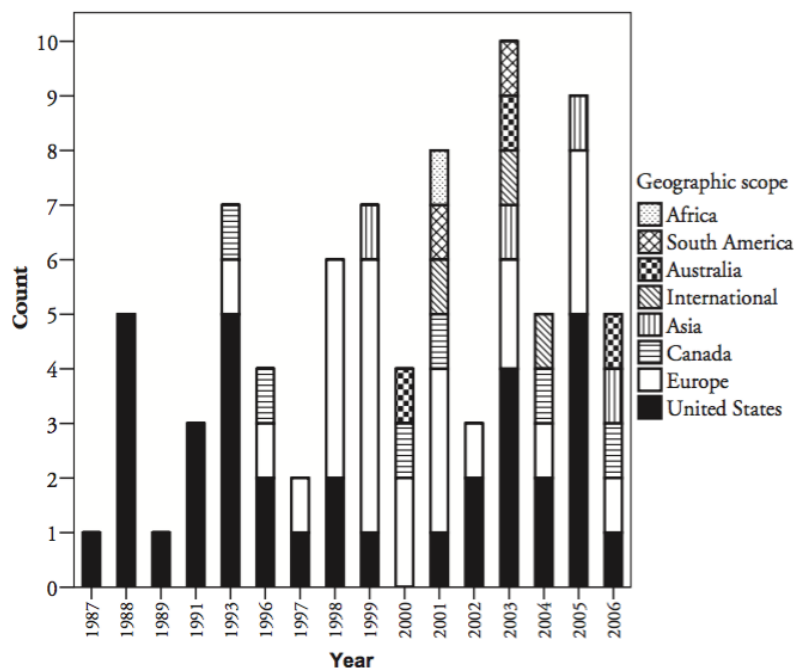
plea bargaining, this epistemic community was not exclusively active in the field of anticorruption policies, since the designed instrument is applicable to all types of organized crime, from drug trafficking and money laundering to corruption itself.

3) **Belief Systems.** The ACF assumes that "people get involved in politics at least in part to translate their beliefs into public policy" (Sabatier 1988: 132). These belief systems, Sabatier argues, are translated into implicit theories that seek to explain how public policies achieve their objectives. Therefore, they are the causal driving force that shape policy formulation. Although Sabatier's seminal work did not deal specifically with contexts of systemic corruption, one could feasibly argue that even in such scenarios the aforementioned assumption is valid, since corrupt individuals who attempt to interfere in the legislative process with the goal of avoiding the detection and sanctioning for corruption also act according to their 'value priorities'; it just so happens that theirs are malevolent and self-seeking ones.

The subdivision of the ACF's belief systems into three categories is suitable for understanding the process which led to the creation of plea bargaining in Brazil. Deep core beliefs "include normative and ontological axioms applicable to multiple subsystems"; policy core beliefs serve as the basis for the attainment of deep core beliefs; and secondary beliefs are instruments designed to achieve policy goals (Henry et al. 2014: 300). Employing this sectional understanding of belief systems certainly provides insights into why an extremely effective anticorruption tool has been approved without fundamental controversies by a Congress which is widely perceived as systemically corrupt.

Although the ACF has gained increased popularity in the past 28 years, it has predominantly been applied in North America and Europe.
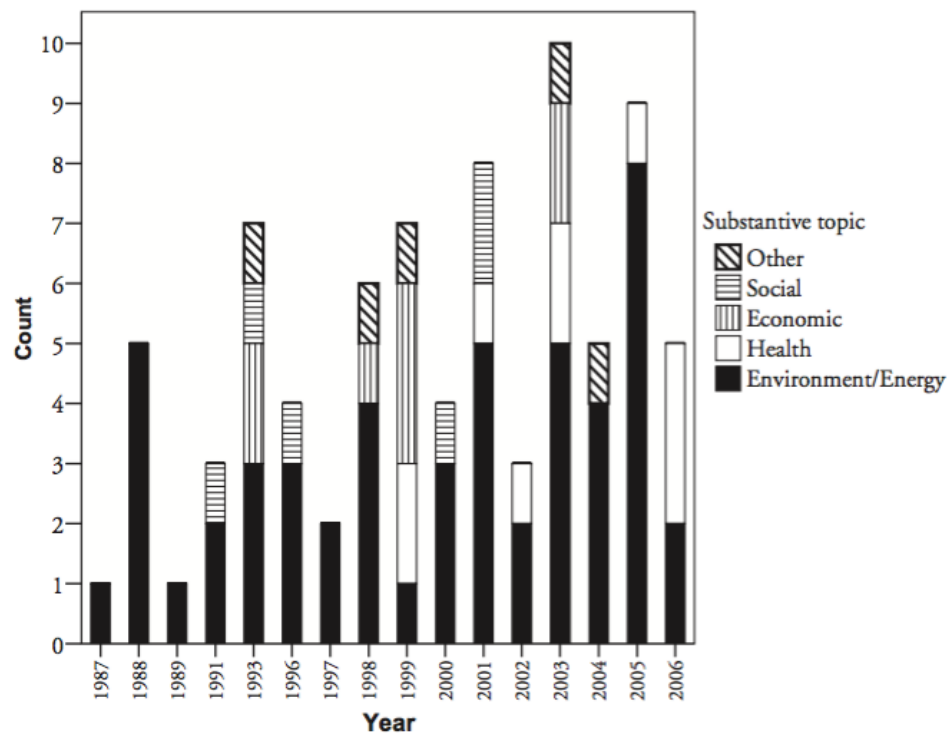
Figure 3. ACF applications thematically, 1987-2006

Weible, Sabatier and McQueen (2009: 127)

With regards to the substantive scope of the applications, the fact that the ACF originated in studies of environmental/energy policies means that such topics have seen the greatest number of case studies. However, researchers in other fields have also used the ACF, as seen below.

Figure 4. ACF applications by geographic area, 1987-2006

Weible, Sabatier and McQueen (2009: 126)

Nevertheless, the ACF's applicability in contexts of grave dysfunctionalities such as corporatism or authoritarianism has been called into question (Parsons 1995), but recent summaries of existing applications have encouraged its continued use in such contexts, with the caveat that "assumptions may need to be questioned, theory developed, context better incorporated, and hypotheses rejected and revised to enable comparisons and valid insights" (Henry et al. 2014: 308).

Provided such precautions are observed, the ACF is preferable to the most widely-accepted alternative models that could also have been applied here, such as the stages heuristics and the punctuated-equilibrium framework:

1) The *stages heuristics* (Jones 1977; Peters 1986) has been a standard model to understand policy processes. It subdivides them into the stages of identification of the problem and setting of the agenda; formulation and adoption of policy; implementation; evaluation; and reformulation. However important the contributions of this model, its limitations have also been widely reported. Jenkins-Smith and Sabatier (1994: 177), for instance, argue that it is not a causal model, lacking "an

identifiable force or forces that can drive the policy process from one stage to another and generate activity within specific stage." This shortcoming would be particularly problematic in the case of this paper, in which understanding the causal forces that propelled the legislative process forward is a particular goal.

2) The *punctuated-equilibrium framework* (Baumgartner and Jones 1993) has many similarities with the ACF, such as its focus on long windows of time for policy change. However, one of its views is that major punctuations that allow policy implementation are followed by a lasting stability in the policy arena, which seems incompatible with the events that followed the enactment of the COL, where immediate upheavals and varied attempts of policy reformulation ensued.

Research Methods

Given the choice of the ACF as a model, the most adequate method for gathering data was to conduct interviews with key actors from organizations that participated in the legislative process of the COL. Since the bill was formally presented in the Senate only when there was sufficient indication of a consensus around the text, the public documents pertaining to it tend to omit many of the prior disagreements between the actors involved. Therefore, the primary data obtained through interviews has proved revelatory and crucial to our findings.

One of the difficulties brought by this methodology lay in the prolonged time period elapsed since the beginning of the policy cycle that led to the approval of the COL. Indeed, because the first debates that led to the proposal of the PLS 150/06 took place in the early 2000's, many of the individuals involved in them could not recollect the events in minute detail. However, interviews with members of the technical staff of the organizations involved have usually been exceptions, since their expertise and thematic focus allowed them to retain a more thorough memory of the process. Political actors, on the other hand, tended to focus on the intricacies of the larger political scenario. A rule of thumb devised as a response to this pattern has been that the higher the technical expertise possessed by the interviewee, the more structured the interview.

However, the interviews alone have not been sufficient to allow a robust retelling of the entire legislative process; thus, complementary information has been obtained through secondary data, mostly through records available in the websites of both houses of Congress.

Access to many of the interviewees was obtained through a 'snowballing' process, i.e., through initial contacts with members of the selected organizations who were not directly involved in this particular bill, but knew about that organization's activities and could indicate the most appropriate persons to interview. The sample of interviewees thus became comprehensive, including actors from all the main organizations that took part in negotiating PLS 150/06.

Annex 1 presents a brief description of the main interviewees. All of them have authorised being mentioned in this work.

4. Overview of the anticorruption framework in Brazil

Traditional cultural approaches

In Brazil, a strong tradition of culturally-oriented models has evolved to explain corruption in the country. These models are an offshoot of grand efforts of interpretation about the origins and formation of Brazilian society, which have been a staple of the country's sociology literature in the twentieth century.

Gilberto Freyre (*The Masters and the Slaves*, [1933] 1947) claimed that the legacy of slavery and plantations has shaped post-colonial Brazil into a patriarchal and personalistic society, lenses through which one can understand the ingrained nature of corruption in the country. Sérgio Buarque de Holanda (*Roots of Brazil,* 1936) applied Weberian concepts such as patrimonialism to the Brazilian reality, by creating the archetype of the 'cordial man', and postulated that the overflow of emotions into the realm of politics is conducive to a confusion between the private and the public spheres, which poses difficulties to the implementation of impersonal democratic institutions and ultimately leads to corruption. Victor Nunes Leal (*Coronelismo: The Municipality and Representative Government in Brazil* [1948] 1977) analysed how quid pro quo dynamics between the central government and the *coronéis,* local oligarchs who dominated political machines, has allowed the latter to engage in widespread corruption. Raymundo Faoro (*Os Donos do Poder*, 1958) noted the persistence of patrimonialism as a trait inherited by Brazil from its former colonial power, allowing political elites to conduct state affairs with the predominant goal of satisfying their private interests. Roberto DaMatta (*Carnivals, Rogues, and Heroes: An Interpretation of the Brazilian Dilemma*, [1979] 1991) scrutinized the quintessentially Brazilian concepts of the *malandro*, a kind of charming scoundrel, and *jeitinho*, a friendly type of circumvention of rules and laws in order to attain personal benefits, often through petty corruption. Darcy Ribeiro (*The Brazilian People: The Formation and Meaning of Brazil*, [1995] 2000) introduced the notion of 'seigneurial corruption', whereby the ruling classes split its behaviour into two: first, a courteous and refined conduct reserved for one's upper class peers; second, an uncaring and condescending attitude towards those deemed to be socially inferior.

These canonical authors have given invaluable contributions to the understanding of the general formative traits of Brazilian society, as well as of the systemic corruption which permeates it. Common to their analyses is the notion that the 'original sin' of an exploitative type of colonization, coupled with the legacy of slavery, have given rise to a society in which the impersonal egalitarianism of a functional bureaucracy seems unfeasible. This is instead replaced by a deeply relational manner of conducting public affairs, out of which stems a multitude of dysfunctionalities, such as corruption. In a culture where personal relationships inform and contaminate the entire state apparatus, it is to be expected that the pillaging of public resources would be protected by a code of silence as solid as the Italian mafia's *omertà*. Hence the importance of tools designed to break this pact, such as plea bargaining.

Institutional approaches and the 'web of accountability'

Acknowledging the relevance of the aforementioned traditional approach, Power and Taylor (2011: 11) claim that "culturally oriented arguments are a wise reminder that institutions can never be analyzed out of context." Thus, it was building upon this legacy that modern approaches have critically analyzed the plethora of public sectors organizations which take part in anticorruption efforts.

This newer approach has been largely inspired by the innovative work of authors such as Rose-Ackerman (1999) who have geared the study of the causes of corruption away from prior approaches that identified correlations between levels of corruption and economic efficiency (Leff 1964; Huntington 1968) and closer to institutional ones. This new model posits that the adequate tweaking of institutional arrangements can deter corrupt behaviour – or at least provide disincentives for it. In their words, "institutional reforms can move a system in the direction of trust based on impartiality and honest dealings and away from one based on trust in connections and personal favors" (Rose-Ackerman 1999: 250).

Taylor and Buranelli (2007) have divided the Brazilian anticorruption framework into three different stages: 1) oversight, which focuses on the early detection and prevention of misuse of public funds; 2) investigation, in which there is an assessment of the details and search for culpability for past malfeasance; and 3) sanctioning, or the actual enforcement of accountability for illegal actions. These stages combine to form what Mainwaring (2003) and Power and Taylor (2011) call a 'web of accountability', that is to say, an intricate institutional matrix that allows the understanding of how "the interaction between individual institutions influences overall provision of the public good of accountability in its three stages" (Taylor and Buranelli 2007: 63).

Machado and Paschoal (2016) subdivide the third stage into two: holding accountable (or adjudication) and sanctioning. Adjudication takes place in the aftermath of investigations or monitoring activities, and is concluded when the competent authority attributes the violation of a law to a certain person or company. Once culpability is attributed, a second, distinct decision follows, as to what will be the punishment for that violation (sanctioning stage). According to them, the framework can be visualized as follows.

Table 1

	Administrative sphere (administrative sanctions and disciplinary actions)	**Judicial sphere (civil and criminal)**	**Support bodies**
Monitoring	CGU; Internal Affairs; TCU		Coaf/MF
Investigation	CEP; CGU; CPIs; Internal Affairs; Ethics Commission; CNJ; CNMP; TCU	Judiciary, MP; Civil Police; PF	Coaf/MF; DRCI/MJ

Adjudication	CGU; Internal Affairs; CNJ; CNMP TCU	MP; judiciary; AGU	Coaf/MF; DRCI/MJ
Sanctioning	CGU; AGU; CNJ; CNMP	Judiciary; MP; AGU	Coaf/MF; DRCI/MJ

Translated from Machado and Paschoal (2016: 21)

Prado and Carson (2014) find that institutional reforms in Brazil have proven efficient in regards to the oversight and investigation of corruption, but less so when it comes to its punishment. They argue that the institutional multiplicity existent in the stages of oversight (with bodies such as the CGU and the TCU) and investigation (with the MPF and the PF, for instance) has actually contributed to the successful detection of corruption. Conversely, they claim that concentrating sanctioning power as the ultimate prerogative of the judiciary has brought obstacles in the punishment stage of the anticorruption framework (Prado and Carson 2014: 4).

Machado and Paschoal (2016), however, have a less sanguine opinion about the institutional multiplicity. They find that this phenomenon is marked by the rigid frontiers – both legal and cultural – that separate from one another the many organizations that play a role in anticorruption enforcement. In their view, the insufficient cooperation between these bodies cannot be explained only by the lack of formal legislative regulation; in fact, collaboration between actors in Brazil depends on personal trust, which is not feasible in a system marked by constant changes in staffing and corporatism. This, again, is a nod to the cultural lenses traditionally employed to explain the prevalence of corrupt relations in the country.

In light of the contribution of the literature described above, the dysfunctionalities that mark the sentencing stage of the anticorruption framework in Brazil can be summarized as follows:

1) The excessive complexity and formalism of the criminal procedure causes trials to be cumbersome and slow. The wide variety of appeals at the disposal of defendants, for instance, causes proceedings to move so slowly that often statute of limitations prevents punishment from occurring. According to CNJ (2013), in 2010 and 2011, 2,918 cases of corruption were thrown out for this reason, a number which represents roughly 10% of the cases in those years (which does not mean that the remaining 90% were resolved, as most of them likely remained pending trial). Symbolically, the corruption charges against the former president Fernando Collor have been dismissed for reaching statutes of limitations in 2014, 22 years after his impeachment. Alencar and Gico (2011) have analysed cases of civil servants who have been fired due to corruption to estimate that the probability of an ensuing criminal lawsuit being filed is below 30%, while the probability of a final conviction is of an astonishingly low 3%.

2) The institutional concentration of punishment authority in the hands of the judiciary prevents its aforementioned underperformance in corruption cases from being

compensated by successful actions by other organizations, as occurs in the stages of oversight and investigation. Even with multiple agencies competent to punish corrupt agents administratively (see table 1 above), these decisions are often subsequently contested in courts, and the judiciary is then legally forced to act as the ultimate arbiter of the litigation. Prado and Carson (2014) interpret several recent initiatives as attempts to assuage the negative impacts of institutional concentration, by rendering the consequences of administrative decisions immediate. This is the case, for instance, of decisions by the TCU and CGU which seek to impose immediate financial and reputational costs to those convicted. It is also the case of the *Lei da Ficha Limpa* (Clean Record Law), by which electoral courts can prohibit those who have been convicted of corruption from running for office, even if that conviction is still being appealed.

3) There is a lack of inter-agency cooperation within the anticorruption framework, hindering the successful prosecution of cases. Besides the reasons pointed by Machado and Paschoal (2016) (namely, the overreliance on personal connections as a requirement for cooperation), there are also deep-rooted reasons for organizational insularity. One of the most obvious examples is the animosity between the MP and police agencies (such as the PF), a competition that can be traced back to the democratization process of the 1980s and to the enactment of the Constitution in 1988. According to Arantes (2012), during this period, police agencies were "harshly criticized for their association with the authoritarian regime, and also for their inefficiency in conducting criminal investigations." As we will see in the next section of this chapter, the MP has taken advantage of this vacuum to greatly increase its institutional role, leading to a long-standing dispute between the two organizations. The negotiations of the COL have been a clear example of this, as we will see in chapter 5.

Even though there is no evidence that plea bargaining was conceived with the specific intention of addressing these dysfunctionalities, ultimately it appears to do so, with varying degrees of success:

1) It reduces complexity and formalism in criminal procedure by introducing negotiation as an instrument for uncovering and proving crimes, as well as by expediting the trials of those who sign plea agreements. This prima facie improvement, however, will only be objectively demonstrable once a substantial number of final sentences is issued in the Lava Jato and in other criminal trials that rely on plea bargaining.

2) Although it does not transfer sanctioning powers to the MPF, it puts prosecutors in a position to bargain with defendants for reduced sentences, thus deconcentrating somewhat the authority of the judge, who merely oversees and issues a final approval of the plea bargain.

3) It fosters inter-agency cooperation, since the successful negotiation of the plea requires the PF, the MPF and the judiciary to coordinate actions. Since the instrument has been so effective, there is a strong incentive for them do so, thus overcoming the aforementioned cultural barriers and lack of a robust legal framework for

cooperation. The MPF itself, for instance, has acknowledged the increase in cooperation with the PF during the Lava Jato, by stating: "The Federal Prosecutor's Office and the Federal police worked in an integrated way. Both have been and continue to be essential to the success of the case. The measures requested to courts and implemented by the police have been made with the agreement of the Prosecutor's Office, and the activities of federal prosecutors have been agreed upon and supported by the PF. The case is an example of united efforts in the struggle against corruption, impunity and organized crime" (MPF 2016b). Nevertheless, there have been contentious disputes between these organizations during the negotiations of the COL (see chapter 5). Moreover, the MPF has filed a Direct Unconstitutionality Action (a legal remedy which challenges in the supreme court the constitutionality of a law) against portions of the COL which allow police commissioners (instead of only prosecutors) to negotiate plea agreements. PF commissioners have reacted to this by stating that "it seems very strange that in the exact moment when the PF is conducting the largest investigations against corruption, an action like this is filed", and that "it could lead to the annulment of important investigations, such as the Lava Jato", concluding that the "criminal organizations which affront Brazilians are celebrating" (ADPF 2016). These disagreements suggest that even if inter-agency cooperation does occur, it is concentrated at the implementation stage of the policy cycle, rather than at the formulation one.

An accurate and in-depth assessment of the effect of plea bargaining on the Brazilian criminal justice system can only be undertaken once a critical mass of data is available about the changes in the dysfunctionalities pointed by the literature in the institutional structure set up against corruption in Brazil, particularly at the punishment stage. However, the initial impact of this tool is evident. Considering that its implementation is not exceedingly complex and that it touches upon several of the specific problems pointed by the literature cited above, plea bargaining can therefore be seen as an example of the institutional tweaks suggested by Rose-Ackerman (1999).

The 1988 Constitution and the new role of the Ministério Público (MP)

As the COL entered into force and the Lava Jato operation ensued, the significance of the MP's institutional role within the Brazilian anticorruption framework became even more clear. The origins of the MP's eminence, however, can be traced back to the promulgation of the 1988 Federal Constitution of Brazil.

Following two decades of a military-led authoritarian regime (1964-1985), the Constitutional Assembly of 1987-1988 brought about an unprecedented renewal of the state apparatus and of its institutional design. Among the most important changes was the strengthening of the role of the MP and of its federal offshoot, the MPF. Some go so far as claiming that this change can be considered "the biggest institutional innovation in the last 30 years [*in Brazil*]" (Arantes 2007: 327).

Modelled after the French *Ministère Public*, the MP had existed in Brazil since the 1934 Constitution, but in 1988 it acquired a much more prominent standing in the country's legal

system. Tellingly, the constitutional text situated the norms pertaining to it in chapter 5 ('The Essential Functions of Justice'), which lies outside of the provisions related to the three branches of power, denoting the MP's unprecedented independence. Moraes (2015: 430) claims that "the federal constitution of 1988 has attributed the state functions to the three traditional branches (legislative, executive and judiciary) and to the MP, which, among other important roles, must ensure inter-branch balance (by acting as their watchdog) and the respect for fundamental rights." Article 127 of the Constitution defines the MP's role as "the defence of the legal order, of the democratic regime and of the social and inalienable individual rights", and its fifth paragraph establishes certain guarantees for its members, such as immovability (a prosecutor can only be re-stationed if they consent to it) and tenure (after two years in the MP, prosecutors can only be terminated by a final judicial decision).

This institutional independence was coupled with a powerful new instrument, rendering the Brazilian MP a uniquely active and autonomous body. This instrument was the Public Civil Action, a type of legal proceeding meant to protect 'meta-individual rights' (see glossary). Although other organizations can file such actions (e.g. the executive branch in all levels; government agencies; civil associations, etc.), the MP has become by far the most frequent plaintiff. Arantes (1999: 99) claims there are no reliable statistics, but Sadek (1997) estimates that approximately 90% of public civil actions are filed by the MP. Arantes (1999: 99) posits that this predominance is due to: 1) the comparatively greater experience acquired by the MP while acting as prosecutor; 2) the MP's prerogatives in accessing privileged documents and information; and 3) the MP's capacity to conduct civil inquiries, i.e., administrative investigations conducted to probe violations of meta-individual rights.

What were the reasons that led the Constitutional Assembly to offer such innovative and significant functions to the MP? The Assembly, formed in the aftermath of the democratization process, was notorious for opening space for various groups to lobby for their interests. Among the multiple government agencies and civil society organizations that did so, the MP was arguably the most successful. The literature points to several historical reasons for this, which Kerche (2010: 120) summarizes as follows: 1) the early and successful efforts by CONAMP, the MP's representative association, to unify the intra-agency position about the role the MP should have in the new Constitution, a position clearly and cogently consolidated in the 'Letter from Curitiba[5]'; and 2) the propitious environment found by the MP in the Assembly to promote the idea of a non-partisan agency tasked with defending society's interests. This environment was welcoming to the MP's claims because of the trauma caused by more than twenty years of an authoritarian regime, which left members of the Assembly particularly receptive to proposals that sought to strengthen democratic guarantees within the constitutional framework[6].

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[5] The 'Letter from Curitiba' (1986) was produced in the First Meeting of Prosecutor-Generals and Presidents of the MP Associations, in the capital of Paraná. It synthetized the MP's claims to the National Constitutional Assembly. This early unification of the MP's stance allowed key actors within the agency to organize a consistent and quasi-professional effort of lobbying, as described by Dal Pozzo (2002: 9-10).

[6] Besides Kerche (2010), for detailed accounts of the MP's lobbying efforts in the Constitutional Assembly, see Mazzilli (1998), Dal Pozzo (2002) and Sabella (2008).

With this newly acquired constitutional status, the MP began to expand its scope of activities and became a new protagonist in national politics, by introducing litigation in topics such as the provision of healthcare or environmental protection. The prerogatives granted by the Constitution "allowed the MP to act in issues that were traditionally reserved to political agents. That is to say, there has been a kind of 'substitution' of elected representatives for MP representatives, who derive their legitimacy from non-electoral mechanisms" (Kerche 2010: 109). This expansion, which includes a more active stance within the anticorruption framework, is the expression of a self-perceived role that Arantes (2007: 333) calls 'political voluntarism'. This ideology leads members of the MP to see themselves as the 'political agents of the law'. The main motivations for this are:

> "1. A pessimistic evaluation of the capacity of civil society to defend itself autonomously (…); 2. A pessimistic evaluation of the political-representative powers, which are, in their view, corrupted and/or incapable of fulfilling their roles; and 3. In light of this, an idealization of the political role of the MP, as a representative of this incapable society (although without an explicit mandate and with no accountability mechanisms) vis-à-vis inept governments which do not ensure the enforcement of laws" (Arantes 2007: 333).

Nevertheless, until recently this role was limited to the MP's constitutional right to petition courts. Indeed, the political voluntarism manifested itself through the filing of lawsuits that had political overtones and were often attempts to interfere in policy formulation, mostly through public civil actions. Power and Taylor (2011: 19) argue that the MP's necessary "reliance on proximate institutions such as the Federal Police (for investigation) and the courts (for trials) has also limited its efficacy." However, as we will see in chapter 6, the Lava Jato arguably brings pivotal qualitative changes in the role of the MP.

5. The Legislative Process Leading to the COL

The origins of the debate

The shift towards a model of criminal justice that contemplates negotiation as a means of evidence-gathering has been a pivotal element in the struggle to overcome the shortcomings of the Brazilian anticorruption framework, particularly in its punishment stage. Plea bargaining has been a key component of this shift. Plea bargaining, a key component of this shift (Mariz 2016, personal interview), had already been included in Brazilian legislation since the 1980s, but significant legislative flaws prevented it from being applied frequently by prosecutors and judges.

The excessively generic format of the instrument in previous legislation, which did not detail how negotiations should be made, led different judges to adopt different procedures, allowing appeals to successfully annul pleas or at least stall trials (Sanchonete 2016, personal interview). Additionally, Judge Sérgio Moro, who later became responsible for the Lava Jato cases, found that "plea bargaining is not frequently applied in the Brazilian judicial practice, perhaps because of the relatively inefficient criminal justice system. There is no reason for those under investigation to confess and try to obtain a benefit if there are low chances that they will be subjected to effective judicial action, now or in the near future" (Moro 2004: 59).

Aware of these shortcomings, several actors involved in initiatives against corruption and organized crime began to suggest changes in the legislation. The debate began to take shape during two Parliamentary Inquiry Commissions: the Public Safety CPI and the Banestado CPI.

In January 2002, a sudden increase in violent crimes, particularly of kidnapping cases[7], led to the creation of a CPI to assess the causes and promote measures to tackle the violence. In its final report, the Public Safety CPI proposed a bill dealing with criminal organizations (PLS 118/02). This bill already contained a thorough regulation of plea bargaining, but was ultimately rejected due to divergences between the MPF and the PF.

In 2003, the Banestado CPI was created. This inquiry commission originated from a PF operation that investigated illicit financial flows to the New York branch of the Banestado. Between 1996 and 1997, several *doleiros* had received funds in these accounts and subsequently transferred them to tax havens. These funds, which amounted to an estimated US$ 37.8 billion, allegedly came from various illegal activities, and the operations were rumoured to involve several prominent politicians. The investigations led to the creation of the CPI in the beginning of Lula's first term. However, the procedures only led to recommendations of indictments, but no politicians were ultimately prosecuted. Although some claim (Beirangê 2015) that the CPI was terminated by a backdoor deal between the PT and the PSDB, its president, former senator Antero Barros, insists that a political deadlock was the reason for this termination, but that its final report made several recommendations for legislative measures (Barros 2016, personal interview).

In any case, these two CPIs intensified debates about the need for a new law to deal with money laundering and the repercussions of organized crime, and the agenda was definitively set around this topic. The MPF was already very active and lobbied for a text that expanded its role in investigative proceedings. Members of the judiciary (including Moro) were also energetic in suggesting changes to the text and correcting its technical flaws (Odon 2016, personal interview; Barros 2016, personal interview; Sanchonete 2016, personal interview).

As previously mentioned, plea bargaining already existed in Brazil, and despite the incomplete and flawed legislation, judges were still carrying these negotiations out. Moro was one of the first to engage in these agreements during the Banestado CPI. The consensus was that the instrument needed to be further regulated in order to become more efficient, "without provoking doubts that would later cause procedures to be annulled by upper courts" (Sanchonete 2016, personal interview).

Although the MPF and the judiciary had cooperated with each other during the Banestado CPI, they could not agree on what attributions would be assigned to each body in this new law. Finally, a "mixed model" prevailed (Odon 2016, personal interview), in which the MPF negotiates plea bargains and the judge issues a final decision on the legality of the procedure.

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[7] The concern about kidnapping was due to the appearance of 'lighting kidnappings', in which the victim remains with the criminals for a few hours, withdrawing cash from ATMs, making purchases with credit cards, and often having their families contacted to send sums of money. Although there are no reliable national statistics referring to that period, there was a "wave" of such crimes in states such as São Paulo, according to Izumino and Neme (2002).

Lawmakers connected to these two organizations then began talks with the technical staff of Congress, in order to produce an official text and formalize the bill.

First controversies prior to the proposal of the bill

Before this happened, however, certain controversies took place. Members of the executive branch, particularly in the Ministry of Justice, felt that the text was too "excessive and authoritarian" (Odon 2016, personal interview) and could give rise to claims that it violated fundamental rights and due process of law. Previous versions of the bill, for instance, did not require lawyers to be present at all moments of the plea negotiation, something that was viewed as unconstitutional by many.

The leading organization in safeguarding the observance of fundamental rights was the Ministry of Justice's Secretariat of Legislative Affairs (SAL), which had undergone an institutional renovation in the previous years and was acquiring a more noticeable role in the formulation of criminal proceedings legislation. According to Marivaldo Pereira, a former Secretary who participated in the negotiations of the PLS 150/06, the Ministry of Justice's involvement in legislative processes in general is different than that of other ministries. Usually, ministries have both a legal department and a parliamentary office. The latter collects and unifies the information about the positions of the ministry and takes it to Congress. However, a lack of technical expertise means that this office tends to have limited capacity for conducting negotiations in Congress. In the Ministry of Justice, on the other hand, SAL is a body that unifies the Ministry's position, but also has a say on the matter, particularly in regards to its legal aspects. It has a final say, for instance, in issues related to criminal law and criminal proceedings. Therefore, SAL's staff have the capacity to not only take the Ministry's position to Congress, but also to negotiate matters therein (Pereira 2016, personal interview). This prominent role began when Márcio Thomaz Bastos was Minister (2003-2007), with the active participation of the then Secretary Pedro Abramovay.

When this institutional shift occurred, SAL's stance on matters of criminal proceedings began to adhere more vocally to the legal theory of *Garantismo Penal*, which posits that criminal law should be subordinate to the principle of human dignity and of fundamental rights, thus safeguarding ordinary citizens against State abuse (Ferrajoli 2006). Some members of SAL, particularly those connected to the University of São Paulo Law School and to lawyers' associations, tended to resist measures deemed excessively authoritative, especially in regards to the special technique of police infiltration in criminal organizations through undercover agents.

It is curious to note, however, that SAL's reluctance to accept the most forceful measures in the bill did not count with the vocal support of civil society organizations, since neither human rights NGOs nor those devoted to anticorruption initiatives participated actively in the process, which was restricted "to the legislative sphere and to agencies devoted to public safety issues and to combatting money laundering" (Sanchonete 2016, personal interview).

Pereira (2016, personal interview) claims that human rights NGOs were absent because there were other topics which at the time seemed more "attractive" to them. The *Lei das*

Cautelares (a law that defines when preventive detention can take place), for instance, was perceived by human rights organizations as important, given their concern with mass incarceration. On the other hand, proposals that had an exceedingly procedural and technical character were not actively followed by NGOs. Even in Congress, Pereira claims, many do not pay attention to these debates, which are then captured by parliamentarians who have strong ties to the organizations directly affected by the policies proposed, such as the MPF and the judiciary. It is only now, with the newly-acquired visibility of plea bargains, that civil society has begun to get involved in the debates.

As for the absence of NGOs active in the anticorruption agenda, Josmar Verillo, director of one of a leading anticorruption NGOs in Brazil, AMARRIBO, claims that this was due to the fact that plea bargaining appeared to be an instrument that did not fit into Brazilian culture. Since NGOs felt that Brazilian society would not welcome the behaviour of an informant, they wrongly believed that the instrument would be ineffective (Verillo 2016, personal interview).

On the other hand, SAL did face opposition to its *garantista* stance within the National Strategy for Fighting Corruption and Money Laundering (ENCCLA), a collegiate body composed by more than 60 public sector organizations that have a role in anticorruption strategies in Brazil. Members of ENCCLA have criticised SAL's posture as obstructionist and claimed that since SAL was the organization within ENCCLA that was entitled to liaise with Congress, its reluctance delayed ENCCLA's input about the bill to a certain extent (Sanchonete 2016, personal interview).

Nevertheless, due to its strength as the representative of the Presidency in the debates, SAL succeeded in removing measures that, despite being agreed upon by the MPF, the judiciary and police commissioners, were seen by the executive branch as violating fundamental rights. Ultimately, consensus was reached within ENCCLA, which then not only lent its support to the bill, but elected it as one of its priorities. Automatically, then, SAL (and therefore the Presidency) also prioritized the bill. This is usually a significant step in obtaining its approval in Congress. According to Pereira (2016, personal interview), "besides following every proposal in Congress that relates to topics within the competencies of the Ministry of Justice, SAL also works actively to ensure that its priority bills move forward as fast as possible in Congress."

The negotiations in Congress

At this point, a text was finalized under the auspices of the Senate's Subcommittee for Public Safety, which deals with violent criminality in Brazil. When the executive branch, through SAL, was convinced that a consensus about the text could be reached, the bill was officially presented in the Senate. Its authorship was attributed to the then PT Senator Serys Slhessarenko, a member of that Subcommittee. Although the senator claims to have been inspired by the outrage she felt while witnessing the inexplicable enrichment of her colleagues (Slhessarenko 2016, personal interview), there are no available indications that corruption was a topic with which she had a particular familiarity (Odon 2016, personal interview). In 47 speeches delivered at the plenary sessions of the Senate in 2006 (the year the bill was proposed), corruption was never her main chosen subject (although she did refer

to nepotism twice). This reinforces the argument that advocacy groups dedicated to public safety and the struggle against criminal organizations had formed a robust coalition around the text, merely looking for a member of Congress to take ownership of the bill.

The choices of rapporteurs in both houses of Congress indicates that the bill had indeed become a priority for the government. The rapporteur is a member of parliament designated to present a report to the subcommittees in Congress, which carries significant weight in the approval of the bill.

In the Senate, the rapporteur was Aloizio Mercadante, who then acted as the leader of PT in the house and would later become Minister of Science and Technology, Minister of Education and the President's Chief of Staff. The nomination of such a prominent figure was an important step in forming consensus, since he used his political capital to open space for other bodies to set the agenda and resist the lobby from the PF to increase its role in the negotiation of plea bargains. He increased the space, for instance, for ENCCLA to voice its opinion about the bill, by sponsoring public hearings on the matter, thus showing that a multitude of agencies were in agreement about it. Sanchonete (2016, personal interview) says that

> "We had the very good fortune of having Senator Mercadante nominated as the CCJ rapporteur. He was the one who decided to have a public hearing about the bill, in which ENCCLA was given space, so we went to the Senate and presented our view. In the case of plea bargaining, we wanted the tool to be ampler, in regards to the number of possible offers to be made to informants and to the moments in the procedures in which bargains could be offered."

This public hearing took place on June 2009. A mere 6 months later, the bill was approved in the Senate. The clout yielded by Mercadante ensured that the bill was swiftly approved (Odon 2016, personal interview).

After its approval in the Senate, the bill moved to the lower house of Congress, where the designated rapporteur was Deputy Carlos Vieira da Cunha. Three main reasons explain this choice. First, as a career prosecutor, Vieira participated intensely in debates and legislative initiatives related to public safety and the struggle against violent crime. Second, he was close to the then Minister of Justice, José Eduardo Cardozo, having formed a personal relationship with him when both were deputies in the prior legislature. He was thus assigned to work on bills deemed a priority by the Presidency, since Cardozo wanted to "make sure that priority bills fell into hands that they knew would give an adequate treatment to the subject" (Vieira 2016, personal interview). Third, even though he was a career member of the MPF (one of the organizations that vied for a stronger presence in criminal investigations), he was perceived by the competing bodies (the judiciary and the PF) as flexible enough to be able to build consensus around the text. Indeed, he claims that legislative proposals that changed procedures in criminal trials have always been contentious due to corporatist competition, which requires political actors with a high capacity for inter-agency dialogue to get bills passed. He says that divergences between the MPF and the Federal Police, for instance, "usually paralyze legislative processes" (Vieira 2016, personal interview), as had happened with the PLS 118/02. For Pereira (2016, personal interview), any "legislative

debate that involves criminal procedural matters causes tensions between the MPF, the judiciary and police commissioners", often leading the legislative process to a halt.

Despite this careful choice of names to handle the legislative process, there were still disagreements in Congress. Vieira cites as an example the care that had to be taken in ensuring that judges act as overseers of the entire plea bargain process, as a way to shield the instrument against accusations of violating constitutional rights. As it stands, judges do not participate directly in the negotiations of pleas, but only intervene in the final steps of the procedure to attest their legality. For this reason, also, Vieira vehemently rejects accusations that plea bargains serve as a tool of coercion that violates the defendant's civil liberties (Vieira 2016, personal interview).

However, the biggest obstacles faced in Congress were disputes over the roles to be played by each organization (the judiciary, the MPF and police commissioners). In these situations, an active intervention by representatives of the executive branch is often the tool required to break such deadlocks:

> "SAL always tries to have debates about legislative policy in criminal matters, in which compromises must be reached. This is the importance of having an active executive branch. If we let these matters run loose in Congress, the representatives of the careers begin to fight and the bill dies. At SAL, what we did was calling upon representatives of each of these organizations, individually, to seek agreements, with the participation of parliamentarians. Having capable rapporteurs is important precisely because they build such compromises" (Pereira 2016, personal interview).

Therefore, SAL acted as a consensus-builder and sought such agreements. Specific technical changes were proposed at the lower house (such as the reduction in penalties for crimes committed by persons under investigation, or the increase from three to four as the minimum number of people required for the crime of belonging to a criminal organization to occur). Accordingly, the bill returned to the Senate for a final vote.

The general perception seems to be that the divergences that did occur were never related to oppositions to the instrument of plea bargaining as such. Sanchonete (2016, personal interview) claims that by the time ENCCLA was called to participate more actively in the debates, through their presence in the 2009 public hearings, there were no voices that stood against plea bargaining. Barros (2016, personal interview) agrees that there was a consensus among the actors involved about the need and adequacy of plea bargaining as proposed. The bill was finally approved by the Senate and became a law on August 2, 2013.

In his final report in the Senate, the last rapporteur, Senator Eduardo Braga, wrote that "all of us who work with legislative processes know that we often waste opportunities to present important laws to the country, given the difficulties to reach an understanding between the different members of the criminal justice system. In the present case, it is laudatory that consensus was reached" (Braga 2013).

Thematic focus throughout the negotiations

The predominant role played by the Senate's Subcommittee for Public Safety in crafting the bill is already an indication that the text was an initiative of advocacy groups whose agendas revolve around the struggle against violent crimes, such as kidnapping or drug trafficking. Vieira agrees that originally, the focus of those participating in the debates about the bill was public safety, i.e., "the struggle against traditional criminal organizations" (Vieira 2016, personal interview). The COL has been used to this end as well, but the Lava-Jato Operation has reached such a dimension that the general public perceives a strong link between plea bargaining and the struggle against corruption. This has become the "visible face" of plea bargaining.

Even in the realm of activities of the ENCCLA, the focus was on the so-called 'special investigation techniques', "procedures habitually used in the investigation of complex cases of serious criminal activities, such as drug, arms and human trafficking; crimes committed through criminal organizations; financial crimes; money laundering; and terrorism and its financing" (Conteúdo Jurídico 2011). International organizations such as the FATF recommended these techniques, which include plea bargaining, and were pressuring Brazil to regulate them. The prosecution of money laundering was also troublesome, because Brazilian legislation required it to be accompanied by an 'antecedent crime' (the crime through which the money was illegally acquired, e.g., drug trafficking), and since there was no legal definition of 'organized crime', this could not be used as such. Therefore, the focus of the debates was not on corruption, but money laundering (Sanchonete 2016, personal interview).

Braga's final report to Congress as the last rapporteur of the bill is a further indication of this thematic focus, since it stated that "Brazil urgently needs to approve this bill. For years the problem of defining 'criminal organizations' is a burden in our legal system. Even with the ratification of the United Nations Convention Against Transnational Organized Crime (Palermo Convention), which recommends such definition, the Brazilian legal system is still lacking a clear law to close this gap" (Braga 2016).

When asked whether corruption had been a specific focus of the bill prior to its approval, its author said that for her, personally, it had, but that "she could not advertise this too much, or her peers would never pass the law" (Slhessarenko 2016, personal interview). Senator Barros claims that none of the actors in Congress involved in the bill "could have imagined that events would turn out as they did" (Barros 2016, personal interview), that is to say, that an operation of the magnitude of the Lava Jato would take place. Pereira (2016, personal interview) states that "in a scenario where several members of Congress are under investigation, the proposal of a measure such as plea bargaining in the context of anticorruption debates would not be approved", and that "this bill advanced quickly only because it was debated in a context of the fight against organized crime", to such an extent that "as soon as corporatist conflicts were resolved and consensus built, the bill advanced easily." For Vieira (2016, personal interview), if his former colleagues at the legislative knew the reach that plea bargaining would acquire, passing the law would have been significantly more difficult. If "well-known figures in Parliament, some of whom are themselves defendants in trials, had been aware that the law could serve as an instrument to all of the

advances we have witnessed in the investigation of corruption cases, approving the bill would have been very difficult, if not impossible. I even joke that some influential figures in Congress were 'taking a nap' and didn't realize at the time the reach that this piece of legislation could have" (Vieira 2016, personal interview).

6. Applying the ACF in the negotiations of PLS 150/06

The ACF components as revelatory of substantive consensus around plea bargaining

Disassembling the legislative process of the COL into the multiple elements that form the ACF reveals how unusual this policy process has been. Table 2 describes the positioning of each of the organizations active during the negotiations of the PLS 150/06, as follows:

Table 2

Organization	Main goals	Stance on plea bargaining
SAL	Consensus-building; civil rights; fundamental rights; due process	In favor, provided individual rights were preserved (*Garantismo*)
ENCCLA	Consensus-building; compliance to international treaties; legal definition of organized crime; regulation of special techniques of investigation	In favor
MPF	Stronger investigation instruments for prosecutors; increased role in criminal proceedings	In favor, with strong role for the MPF
PF	Stronger investigation instruments for the police; increased role in criminal proceedings	In favor, with strong role for the PF
Judiciary	Consensus-building; increased role in criminal proceedings for judges	In favor; agreed to act as overseer of procedures

Human rights NGOs	Civil rights; fundamental rights; due process	Absent during the legislative process. Today, they do not voice opposition to plea bargaining, but act as watchdogs against violations of fundamental rights
Anticorruption NGOS	Increased accountability; increased transparency; stronger investigation tools	Absent during the legislative process. Today, they are strongly in favor of plea bargaining.
Brazilian Bar Association (OAB)	Respect for due process; assurance that lawyers are present throughout criminal proceedings	Feeble presence during the legislative process. Today, it pressures for preventive prisons not to be used as coercion tool for plea bargains
Media	Divulging corruption cases; stoking popular opinion	Feeble presence during the legislative process. Today, it is central in promoting popular support for the Lava Jato, and is mostly against legal changes to limit plea bargaining

As for lawmakers, those who were closely connected to one of the aforementioned organizations have pressured for its interests to be contemplated (e.g., Deputy João Campos, a former police commissioner, lobbied for an increased procedural role for the police; Senator Demóstenes Torres, a former prosecutor, did the same for the MPF). Since the bill was largely viewed in Congress at the time as an exclusively procedural matter, in general the Members of Parliament without ties to such organizations were not actively involved in the negotiations.

Although the groups described in the table above are not monolithic, they have shown a remarkable integration in voicing their positions in the policy arena during this process. ENCCLA's unity, for instance, has been a notable achievement considering that this body is composed by over sixty organizations. Sanchonete (2016, personal interview) states that

> "ENCCLA worked very intensely in Congress and managed to approve the bill as it wanted. But this was only successful because all organizations in ENCCLA were united in spirit; there was an international demand for plea bargaining to be implemented as a special technique of investigation, as part of international agreements of which Brazil is a signatory *[such as the Palermo convention]*."

Indeed, the most striking trait of the legislative process has been the fact that the formation of a coalition has not faced substantive opposition or dissenting views about plea bargaining. Rather, disagreements have taken the form of corporatist competition. These inter-agency disputes dominated the process to the point of constituting the participant's very policy core beliefs, within the ACF's belief systems, as seen in table 3.

Table 3

ACF Component		Application in the COL
Relatively Stable Parameters	Basic Attribute of the Problem Area	Social revulsion against corruption and organized crime
	Basic distribution of natural resources	Malevolent, self-interested and rational lawmakers in dispute with anticorruption epistemic community and citizenry
	Fundamental cultural values and social structure	Accountability, transparency and state's sanctioning power vs systemic corruption, clientelism and corporatism
	Basic constitutional structure	Lack of inter-agency cooperation; complexity and formalism in criminal procedural law; low conviction rate in corruption cases
Policy Subsystem	Territorial scope	Federal legislation; international treaties; international scope of money laundering
	Substantive scope	Anticorruption policies; enforcement against organized crime
	Policy participants	SAL; ENCCLA; MPF; PF; judiciary; human rights NGOS; anticorruption NGOs; OAB
Belief Systems	Deep core beliefs	Zero tolerance policy against organized crime and corruption vs *Garantismo Penal* (respect for fundamental rights)
	Policy core beliefs	Increasing agency role in criminal procedure
	Secondary beliefs	Plea bargaining as efficient procedural instrument
Advocacy coalitions		MPF vs PF vs Judiciary
Policy broker		SAL as consensus-seeker and safeguard for fundamental rights. Senator Mercadante and Deputy Vieira da Cunha as rapporteurs
Resources		Legal framework provided by international treaties; experience acquired through Banestado and Public Safety CPIs
Venues		Federal legislature
Mechanisms of Policy Change	Accumulation of Evidence	Increase in impact of organized crime; observation of efficiency of plea bargaining abroad
	Hurting Stalemate	Prior bills dropped because of inter-agency deadlock
	External Shock	International pressure; increased capacity of judges and prosecutors; unity in ENCCLA's action; SAL's efficiency in seeking consensus

Adapted from Weible and Sabatier (2006: 125)

It is noticeable that the deep core beliefs found in the policy arena (namely, a dispute between *garantismo* and a zero tolerance policy against corruption and organized crime) did not develop into a feud about plea bargaining as such. Consequently, as the policy deadlock was due to a mere manifestation of corporatist clashes, the most central element in explaining the approval of the bill was the apt intervention of politically capable policy brokers.

The nomination of such capable brokers has resulted from SAL's decision to prioritize the bill. Therefore, visible control over the policy process can be exerted by the executive branch, since the detection of the importance of the bill has caused one of its ministries to throw its political weight upon the bill, which has been sufficient to overcome deadlock. Chen (2003: 60) finds that "the ACF approach tends to overplay the role of sovereigns as 'neutral arbitrators'", because "key sovereigns *[in his case, two ministers for communication; in ours, two rapporteurs of the bill, as well as SAL]* needed to act with only limited reference to subsystem actors and could effectively ignore the interests of the high and no regulation coalitions". We, on the other hand, find that policy deadlock brought about by corporatist competition can effectively be surpassed if there is enough political will in the executive branch (that is to say, if 'sovereigns' do not act 'neutrally') coupled with high inter-agency coordination (as seen in our case with ENCCLA).

The interplay between the anticorruption and public safety policy subsystems

Weible (2008) states that policy subsystems can be of three different types. Unitary policy subsystems include one predominant coalition that exhibits "high intra-coalition belief compatibility and high intra-coalition coordination" (Weible 2008: 622). Collaborative policy subsystems are marked by coalitions that do cooperate, have to a certain extent compatible beliefs and are well coordinated in and among themselves. Finally, adversarial policy subsystems are formed by coalitions that compete and are in conflict among themselves, "with low inter-coalition belief compatibility and high intra-coalition and low inter-coalition coordination" (Weible 2008: 622).

In the specific case of the COL, our analysis suggests that anticorruption and public safety initiatives in Brazil have to be examined in tandem, given the thematic proximity and frequent overlap among these two policy subsystems, as well as among the coalitions formed therein.

A perfunctory analysis of their relationship might lead one to categorize them as collaborative efforts. The very definition of organized crime provided by the COL includes offenses ranging from corruption to drug-related gang violence. The organizations whose stances on the debates were analysed above have a jurisdictional umbrella that comprises both topics. As for individual actors, there are those who focus on public safety initiatives (such as Campos) and those who concentrate on anticorruption (such as Moro and the head of the Lava Jato taskforce, federal prosecutor Deltan Dallagnol), but also those dedicated to both topics (such as Vieira). Additionally, an overarching glance at the legislative process of

the COL also points to the existence of cooperation (although often truncated by inter-agency disputes), coordination and belief compatibility.

However, a more nuanced scrutiny shows that our case does not fit perfectly into Weible's typology. This is mainly due to the inherent secretiveness of corrupt activities, as well as to the systemic nature of the corruption that affects the Brazilian Congress. Indeed, no account of the anticorruption policy process would be complete without reference to the resistance (and often covert opposition, if not sabotage) of influential political actors whose clandestine agenda is to protect the interests of those engaging in corruption. This influence changes policy negotiations, as well as the behaviour of the actors involved in it, in two main ways: 1) corrupt actors will attempt to steer outcomes according to their wishes, whether by infiltrating coalitions or by exerting external political pressure; and 2) benevolent actors may perceive a need to prevent their strategies from being revealed to malevolent ones, as seems to have been the case in the negotiations of the COL.

The first of these changes brings an element of uncertainty to the analysis, as one cannot gather reliable data to properly assess the influence of corrupt actors – a limitation which particularly affects qualitative research. However, the second change can be best understood by contrasting the role of actors within the judiciary and the MPF before and after the Lava Jato. This is what we will do next.

The role of the main beneficiaries of the COL: strategy or opportunism?

As exposed in chapter 5, there is enough evidence in the primary data to argue convincingly that the relatively smooth approval of the COL was only possible because lawmakers perceived it as devoted mainly to tackling violent organized crime. Even so, the advent of the Lava Jato allows the interpretation that certain actors within the policy subsystem were aware of the potential application of the law in corruption cases. Were these actors performing strategically from the beginning of the negotiations of the bill, or have they in fact acted opportunistically, taking advantage of the fortuitous approval of a law whose ample applicability had been underestimated by others?

The judiciary and the MPF have arguably been the main beneficiaries of the COL. The law has facilitated convictions in corruption cases, thus causing the image of these organizations among the Brazilian population to be significantly improved. An evidence of this is the status of national hero acquired by federal judge Sérgio Moro, who was recently named the tenth most influential person in the world (Bloomberg 2016).

Judge Sérgio Moro. Photo: Angelo/Sigmapress/Folhapress (2015)

Although interviewees have mentioned that Moro did participate in the crafting of the COL's text, it is telling that none of them were able to specify the contents of his contribution. Certainly, the hearings about the bill that took place at the time were not highly-publicized events with his participation, as they are now that the Lava Jato has given these actors a significant platform to set the agenda around anticorruption policies.

Nevertheless, a careful analysis of Moro's writings prior to the Lava Jato allows us to detect the existence of a strategic planning of the operation years before it came to be. In 2004, Moro published the article 'Considerations on the Operation *Mani Pulite*', about the causes for this major Italian anticorruption operation, noting the existence of "several institutional conditions required for a similar action in Brazil" (Moro 2004: 56). Comparing the claims made by Moro in this article with what ultimately occurred in the Lava Jato illustrates his astonishing foresight, ten years before the deflagration of the operation, as seen below.

Institutional conditions for operations

Moro (2004: 61)

"In Brazil, many of the institutional conditions required for a similar judicial action are present. As in Italy, the political class does not enjoy a good reputation among the general population, and the frustration with the unfulfillment of the promises made after the re-establishment of democracy is large. Additionally, Brazilian judges and prosecutors enter their careers through public examinations, have tenure and cannot be relocated from their offices against their will. The negative side is the ample access to superior courts, which are more susceptible to political factors."

Lava Jato Operation (2014 onwards)

As predicted by Moro, institutional traits of the Brazilian state allowed an operation of the magnitude of the Lava Jato. A negative view of politicians by the population (see chapter 1) granted political wherewithal to those conducting the operation. The constitutional protection of judges and prosecutors shielded the operation from political suffocation. Plea bargaining was the final ingredient of the equation, giving prosecutors access to information and indicating where and how to obtain evidence of the crimes. Moro's experience also allowed him to detect that upper courts could be an obstacle to the operation. Indeed, one of the many controversies around the Lava Jato has been the issue of the jurisdiction of the lower court presided by Moro in Curitiba. Law professor Geraldo Prado, for instance, claims that "for a long time, the 13th district court *[Moro's court]* has no longer had jurisdiction to try cases which emerged remotely in the Banestado investigation. Under current rules, practically all procedures would either fall under the state justice jurisdiction or that of the federal justice in São Paulo, because these were the places where, allegedly, the gravest and the majority of infractions were committed" (Lopes and Segalia 2016). Regardless of whether or not these criticisms are correct from a legal standpoint, it is clear that the lower court in Curitiba, backed by the MPF, has fought to prevent criminal lawsuits from being declared out of its jurisdiction.

Delegitimation of the political system

Moro (2004: 57-59)

"The delegitimation of the political system was worsened by the start of the arrests and by the publicity of corruption cases. Simultaneously to making judicial action possible, this delegitimation was also fed by it."

"The prisons, confessions and the publicity granted to the information obtained generated a virtuous cycle, being the only explanation for the magnitude of the results obtained by the Mani Pulite."

Lava Jato Operation (2014 onwards)

The highly-publicized arrests of prominent politicians in Brazil, even if on a merely preventive basis (that is to say, before their trials), has been a political novelty in the country. In prior corruption scandals, such as the Collor impeachment in 1992, no such arrests were made. The fact that Moro saw, as early as in 2004, these arrests as a tool to undermine the legitimacy of the political class lends credence to the interpretation that the Lava Jato has been using such type of arrests as a way to bolster its political strength, which is required for the operation to progress unencumbered.

Political resistance to the investigation

Moro (2004: 57)

"It is naïve to think that effective criminal procedures against powerful figures, such as government authorities or businessmen, can be conducted normally, without reactions. An independent judiciary, both from external and internal pressure, is a necessary condition to support judicial actions of this type. However, the public opinion, as revealed by the Italian example, is also essential for the success of the judicial action."

Lava Jato Operation (2014 onwards)

Much like in the Mani Pulite, the Lava Jato has been facing strong political resistance. This hails from actors who appear to have legitimate concerns for the legal limits which they claim have been crossed by the operation (see chapter 1), but also from those who are clandestinely attempting to interfere with the investigations. In a leaked phone conversation, for instance, a former Minister of Planning, Romero Jucá, suggested to a former president of Transpetro (a subsidiary of Petrobras), Sérgio Machado, that replacing president Rousseff by her then vice-president, Michel Temer, would allow the "bleeding" represented by the Lava Jato to be stopped, presumably because the new government would interfere politically in the PF. On October 2016, three members of Congress' security staff were arrested, for allegedly interfering with the investigations at the request of members of parliament.

Allegations that preventive arrests are used to coerce defendants into signing plea agreements

Moro (2004: 58)

"'The investigative strategy followed from the beginning of the inquiry confronted suspects with the pressing decision of whether to confess, sowing suspicions that others had already talked and raising the prospect of spending at least a period of preventive custody in prison in case of remaining silent or, vice versa, being released immediately in case of a confession (a situation analogous to the archetypal (sic) of the famous 'prisoner's dilemma') (…). Isolation in prison was critical to prevent suspects from learning of the confessions of others'" (Della Porta and Vannucci 1999: 268, as cited in Moro 2004: 58).

"There are those who may be against such strategy, and against plea bargaining itself. Here a few comments are necessary. One does not arrest with the intention of reaching confessions. One arrests when the requirements for determining a pre-trial arrest are present. In these cases, there is no moral obstacle to trying to obtain from the person under investigation or indicted a confession or plea bargain."

Lava Jato Operation (2014 onwards)

The reference to the prisoner's dilemma shows that Moro was aware of the theoretical underpinnings that explain a suspect's decision to cooperate. The importance attributed to the isolation of defendants as a premise of the game reinforces the claim that arrests are being used to pressure them into signing plea agreements. One of the Lava Jato prosecutors,

Manoel Pastana, even went so far as to claim, while giving his legal opinion in a habeas corpus filed by one of the defendants, that "the appropriateness of the arrest is manifest not only in the care taken to prevent the investigated from destroying evidence, but also in the possibility that isolation will influence his will to cooperate in the attribution of *[criminal]* responsibility, something that has proven to be quite fruitful recently." (Pastana 2014). Others, such as Dallagnol, have been careful to deny the misuse of preventive arrests: "It is clear that there is no cause and effect relationship between arrests and cooperation with the Lava Jato, because the alleged 'cause', namely, the arrest, was not present in over 70% of plea bargains, which were made with defendants in liberty. Linking arrests to cooperation, as critics have done, is a fallacy also because there are numerous cases in Brazil where preventive arrests have been maintained for months, without resulting in a decision by the defendant to cooperate" (Dallagnol 2015). As a rebuke, Mariz (2016, personal interview) has stated that "*none* of the plea bargains should be signed while the defendant is arrested" and that agreements obtained in this way should be "presumed to be untrue", given their element of psychological coercion. The bill proposed by Deputy Wadih Damous, which prohibits plea bargains from being signed by defendants while in custody, follows the same rationale. Tellingly, such bill has been publicly criticized by Moro, who framed it as part of the political pushback to the operation: "I ask myself whether we are not seeing some signs of an attempt to return to the status quo of impunity for the powerful" (Moro 2016). The judge also argued that plea bargaining is not merely an investigation tool, but also a defence prerogative available to those under trial, a line of reasoning repeatedly presented by supporters of the Lava Jato.

The need for multiple sources of evidence

Moro (2004: 58-59)

"What is appropriate here is not the condemnation of the use of plea bargaining, but the adequate precautions required in obtaining the confirmation of the facts revealed by it, through independent sources of evidence."

Lava Jato Operation (2014 onwards)

Moro was anticipating a debate that would emerge with the enactment of the COL. As mentioned in chapter 1, authors such as Pereira (2013) have highlighted the need for the evidence upon which a conviction is based to be external to the plea bargain. In other words, a suspect cannot be convicted simply because an informant has mentioned their name; the content of the informant's contribution must be the means to achieve the production of further evidence of the crime. This view has been endorsed by the author of the COL (Slhessarenko 2016, personal interview), as well as by the Supreme Court minister Luiz Fachin, who stated that "a plea bargain is an indication for evidence, i.e., it corresponds to an indication that collaborates to the formation of a body of evidence. Therefore, it needs to be seconded by another evidence, which must be taintless, pertinent and decisive" (Fachin 2015).

Use of the media and leaking information

Moro (2004: 59)

"Those responsible for the Mani Pulite have also made large use of the press. Indeed, 'much to the chagrin of the PSI leaders, who certainly never ceased to manipulate the press, the Mani Pulite investigation leaked like a broken faucet (...). The constant flow of revelations kept the public interested and the party leaders on the defensive.'" (Gilbert 1995: 134-135, as cited in Moro 2004: 59)

Lava Jato Operation (2014 onwards)

The Lava Jato has been notorious for using the press to gain popular support. As discussed in chapter 1, the practice of leaking information to the press has been a contentious issue. Moro's article suggests that this is an intentional and strategic component of the operation. Some have criticized what they perceive as a collusion between the Lava Jato and the media. Deputy Wadih Damous (2016, personal interview), for instance, has claimed that "what is being called 'the struggle against corruption' is in fact an instrument of the political game, operated by media conglomerates, sections of the judiciary and sections of the MPF."

Political consequences of the scandal

Moro (2004: 57-61)

"The operation Mani Pulite has redrawn the political scenery in Italy. Parties that had dominated the Italian political life in the post-war period, such as the Socialist (PSI) and the Democratic Christian (DC), were brought to collapse, receiving, in the 1994 elections, only 2.2% and 11.1% of the votes, respectively."

"The isolated judicial action has only the effect of increasing the risks involved in the practice of corruption, putting into evidence the consequences of its detection. A very effective judicial action, as was the case, can at the most interrupt the ascending cycle of corruption. Nevertheless, it is not feasible to believe that it can, on its own, eliminate corruption, especially if its structural causes are not attacked."

"Maybe the most important lesson of the entire episode [the Mani Pulite] was that judicial action against corruption is only effective with the support of democracy. It is this that defines the limits and possibilities of judicial action. As long as it counts with the support of public opinion, it has the condition to advance and present good results. If this doesn't occur, it will likely not be successful."

Lava Jato Operation (2014 onwards)

As discussed in chapter 1, the Lava Jato has had a tremendous impact in the political establishment in Brazil, even contributing to the impeachment of president Rousseff. In the municipal elections of 2016, the PT has seen its number of mayors fall from 644 to 256. Moro also shows an understanding of the limited impact that isolated judicial action, regardless of its magnitude, can have. This is, again, prescient, since many of the ensuing debates about tackling corruption have focused on changes to the criminal procedural code

that can be seen as intending to interfere with what Moro called the "structural causes" of corruption, as we will see below. In the ACF, these structural elements are called 'fundamental cultural values and social structure'. As seen in table 3 above, in our case they consist of a struggle between accountability, transparency and the state's sanctioning power versus systemic corruption, clientelism and corporatism. The fact that Moro was referring to elements which in the ACF are considered relatively stable parameters is indicative of the ambition of the reforms he expects to see in Brazil's anticorruption framework. Indeed, according to Weible and Sabatier (2006: 125-126), these parameters are "important because they structure the nature of the problem (…) and broadly frame the values that inform policymaking", but, given their "resistance to change, the relatively stable parameters are usually not strategically targeted by policy participants."

The analysis of Moro's article suggests that he (and, presumably, others in the anticorruption policy subsystem) did act with long-term, strategic foresight. Nevertheless, Moro, as well as key actors in the MPF, had a much lower profile at the time of the negotiations, thus resulting in their limited (but not inexistent) capacity to contribute to the shaping of the COL's text. This allows the conclusion that their actions were an amalgam of strategic planning with some exercises in agenda-setting; but, mostly, they have shown an insightful opportunism in the face of the serendipitous enactment of a highly effective legal instrument.

Table 4

Pre-Lava Jato			
Group	**Interest in the COL**	**Capacity to influence**	**Action taken**
Anticorruption policy subsystem	Strongly in favor	Low	Quiet support based on technical expertise; 'wait-and-see' attitude
Public safety policy subsystem	Strongly in favor	High	Active support
Corrupt actors	Disinterested	Did not detect need to influence	Absent

Table 5

Post-Lava Jato			
Group	**Interest in subsequent policies**	**Capacity to influence**	**Action taken**
Anticorruption policy subsystem	Strongly in favor	High	Active support
Public safety policy subsystem	Strongly in favor, except for corrupt defectors	High	Active support, except for corrupt defectors

Corrupt actors	Strongly against	High (covert influence)	Clandestinely (but actively) working against

After the Lava Jato, however, the profile of the judiciary and the MPF grew tremendously, and actors within these organizations did not hesitate to upgrade the nature of their participation in policy-making activities, thus taking over a prominent role in setting the anticorruption agenda.

The most evident example of this is the so-called 'ten measures against corruption', a bill crafted and advocated by the MPF and supported by Moro. It contains a complex set of new anticorruption norms, such as allowing preventive arrests to stop the evasion of funds acquired through corruption; the criminal punishment of political parties involved in corruption; the admissibility of illicit evidence obtained in good faith, among others.

Prosecutor Deltan Dallagnol and TV Globo actress Maria Fernanda Cândido during event to promote the 'ten measures against corruption'. Photo: Rosa/Agência Brasil (2016)

With regards to our analytical framework, the most striking feature of the 'ten measures' is the fact that they became a bill through a popular initiative proposal promoted by the MPF. In Brazil, the proposition of bills by popular initiative has stringent requirements: article 61, paragraph 2 of the Constitution states that "popular initiative can be exercised by the presentation to the Chamber of Deputies of a bill signed by at least one percent of the national electorate, distributed across at least five states, with no less than three percent of the voters in each of these states." Even when campaigners do succeed in obtaining this enormous number of signatures, the bill then has to go through the normal legislative process in Congress, where it can be rejected. In 28 years since the enactment of the

Constitution, only four popular initiatives bills have eventually become laws, none of which had been authored by the MPF.

In the case of the 'ten measures', over 2 million signatures have been collected across the country, and the proposals have officially become a bill (PLS 4850/2016) on March, 2016. The MPF cites over 1,000 entities as supporters of the proposal, among them "NGOs, universities, schools, religious entities, associations, private sector, public institutions, unions, artists, intellectuals and citizens" (MPF 2016c).

This initiative is evidence that the MPs 'political voluntarism', identified by Arantes (2007), has not only seen a perplexing growth, but also an expansion in the types of activities the organization engages in. Whereas prior acts of voluntarism were circumscribed to the MP's capacity to petition courts, mainly through public civil actions, now this agency ventures overtly into lawmaking territory. Before, its members were mostly restricted to acting on the levels of investigation and punishment for corruption, contributing in the formulation of specific policies mostly on a capacity of technical advisors, or as participants in turf wars aimed at increasing their agency's procedural prerogatives (an activity which they have mastered since the Constitutional Assembly). Now, the agency has actually drafted a bill and through direct engagement with citizens is forcing Congress to vote on it. This is a testament to the political capital gained by the MPF, alongside the judiciary, with the Lava Jato.

7. Conclusion

The legislative process that led to the creation of a devastating blow to corrupt politicians in Brazil has in some ways been accidental. The overlap between the public safety and the anticorruption policy subsystems has meant that the epistemic community devoted to the former crafted an ingenious policy that ended up benefitting the latter. However, certain members of the advocacy coalition that succeeded in approving the bill seem to have been aware from the beginning of its potency in cases of corruption, as indicated by the presence in the Banestado CPI and in the ensuing debates of some of the same prosecutors and judges now active in the Lava Jato. If a "long-standing critique of the ACF is that shared beliefs are not enough to overcome the temptation to free ride on the efforts of other coalition members" (Weible and Sabatier 2006: 132), then our findings indicate that something akin to 'inter-subsystem free-riding' is equally possible. In our case, actors within the public safety policy subsystem incurred the costs of forming a coalition around the bill, while the main beneficiaries have been actors in the anticorruption policy subsystem.

This capture of plea bargaining is evidenced by the nature of the debates that shaped the text of the COL. The beliefs of the main political forces that participated in them have mostly played themselves out in the policy arena in the form of inter-agency turf wars, as there seemed to be no opposition to plea bargaining in itself. The aforementioned 'free-riding' behaviour has arguably resulted from constraints imposed by the nature of corrupt activities. Thus, rather than representing a lack of willingness to participate in collective action, the behaviour instead reveals a strategic decision to refrain from drawing attention to the potential political consequences of plea bargaining. However, far from being frowned upon, the inspired opportunism of actors engaged in anticorruption initiatives was in fact

welcomed by the members of the public safety epistemic community, as indicated by the primary data. This was to be expected, given the thematic overlap of the two subsystems.

In any case, both the general public and the anticorruption epistemic community have entirely changed their perceptions of plea bargaining after the Lava Jato. A cycle of policy reformulation is under way, as evidenced by the multiple bills seeking to reform this instrument, which are a great cause for concern to many of those involved in the original debates, such as Vieira (2016, personal interview), who then acted as an essential policy broker. On the opposite direction, however, other correlated policies, such as the 'ten measures', are seeking to strengthen the changes brought about by plea bargaining. The heightened public attention given to the debate means that the locus of the policy arena has shifted from parliamentary commissions to the public sphere.

Whether regressive or progressive in nature, all of these attempts of adaptation are legitimate policy choices and conform to the tenets of the ACF, which posits that change in policy processes "might include changes in beliefs through learning, changes in coalition members and their interconnections, and changes in policy. Policy change, for example, is hypothesized to occur through some combination of policy-oriented learning and belief change, negotiated agreements among members of rival coalitions, and exploitive activities of coalition members after major events, such as crises in conjunction with a coalition that exploits the opportunity" (Henry et al. 2014: 300).

However, in addition to these two types of legitimate, policy-oriented learning processes, the astonishing initial success of plea bargains in corruption cases is also provoking behavioural changes in corrupt actors, a fast process of adaptation typical of surreptitious criminal activities[8]. Such covert manoeuvring poses serious difficulties for research, by rendering unfeasible the gathering of data aimed at revealing its policy consequences and effects on coalitions. This is yet another manifestation of the inherent obstacles of studies about corruption. Alas, it reinforces concerns about the applicability of the ACF in dysfunctional contexts, since the model does not seem to accommodate malevolent beliefs (in this case, propensity to corruption) as a clandestine element that affects policy formulation, a limitation particularly evident in contexts of systemic corruption.

At any rate, the impact of the COL in debates about criminal law in Brazil cannot be overstated. Deep core beliefs can still be framed as a dichotomy: on the one hand, a zero tolerance stance against organized crime and corruption; on the other, the defence of *garantismo penal*, i.e., prioritizing respect for fundamental rights. However, the effect of the Lava Jato on political interests and on the attention of public opinion has brought indelible qualitative changes to how actors manifest such beliefs. According to Pereira (2016, personal interview), "these debates in Congress will be divided in *before* and *after* the Lava Jato operation." Before, there was a minority defending fundamental rights and civil liberties, versus a majority, particularly hailing from police careers, energetically seeking more forceful punishments. The Lava Jato, however, has introduced a new component to this debate, since

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[8] The newspaper *Zero Hora*, for instance, published a story detailing how the Lava Jato wiretaps have changed the culture of confidential conversations in Brasília, causing politicians to go to extreme lengths to maintain the secrecy of their dealings (Schaffner 2016).

for the first time repeated arrests have been made in the upper echelons of Brazil's business class. From this moment onwards, aspects of the Brazilian criminal justice system that were perceived by human rights activists as violations of fundamental rights (such as arbitrary arrests, gathering and usage of illegal evidence, incarceration of non-violent criminals, etc.) have started to affect not merely the impoverished, disenfranchised population of the country, but also those who have access to private legal counselling and who engage in lobbying activities.

The spectacular repercussions of the Lava Jato operation and of President Rousseff's impeachment will surely mean that the next iterations of the anticorruption policy cycle will be fiercely contested. In the upcoming stages of this cycle, new actors and interest groups will not fail to recognize plea bargaining specifically as an anticorruption tool, adjusting their lobbying activities, reassessing existing coalitions and exerting their political clout accordingly. The decade-long policy change cycle described by the ACF will continue to provide a fertile analytical tool for understanding such evolution, but the inherently secretive and ever-adaptive nature of corruption will remain a perennial difficulty for research.

As a summary of our findings, and in reference to the research sub-questions, we can state the following:

- During the negotiations of the COL, those who would later become its main beneficiaries (the judiciary and the MPF) have acted with strategic foresight, but this was constrained by their limited capacity to interfere in policy formulation. Later, their insightful opportunism in employing plea bargaining has given them a much more prominent standing from which to affect the next iterations of the policy cycle.

 - The controversies and points of conflict between the actors during the legislative process mostly consisted of inter-agency battles to increase the procedural roles of the main organizations involved in enforcing the COL (the judiciary, the MP and police commissioners). No vocal opposition to plea bargaining as such was observed in the legislative process.

- The deep core beliefs of the actors involved in the bill can be summarized by the dichotomy between those who defend a zero tolerance policy against organized crime and corruption and those who seek to ensure respect for fundamental rights. Their policy core beliefs take the form of corporatist competition for an increased role of agencies in criminal procedures. Finally, their secondary beliefs were expressed as a practically unanimous understanding that plea bargaining is an efficient procedural instrument to fight organized crime.

- The political and social forces which allowed plea bargaining to be introduced in Brazilian legislation have been presented in table 2 above. A particularly prominent actor was SAL. Despite its forceful stance as a watchdog for fundamental rights, its political clout was yielded to overcome corporatist disputes that tend to paralyze such processes. Additionally, ENCCLA was invaluable in forming consensus around the bill and ensuring its approval in Congress.

Finally, with regards to the main research question, our findings indicate that Brazilian lawmakers approved plea bargaining because debates in Congress caused them to perceive this instrument as being mainly devoted to tackling violent organized crime. The overlap

between the anticorruption and the public safety policy subsystems prevented corrupt lawmakers from realizing the potential implications of plea bargaining in corruption cases, allowing the public safety coalition to lend its support to the bill unencumbered.

This research contributes to the literature on anticorruption policies in Brazil by showing how institutional tweaks can be implemented despite recalcitrance in the policy arena, whether from actors whose corporatist interests lead to policy deadlock, or from those whose corrupt inclinations lead to a covert antagonism towards effective anticorruption initiatives. Additionally, the research joins a significant body of literature that describes the overarching framework set up to fight corruption in Brazil, but with the original contribution of presenting a critical interpretation of the interplay of political forces involved in the early stages of policy formulation. In doing so, this work adds specific empirical elements to a modern institutional approach employed to study corruption, which is an offspring of classical theoretical oeuvres about the formative vices of Brazilian society.

Outside the scope of area studies, the research provides a practical application of the ACF in a politically unstable environment marked by systemic corruption. The flawless applicability of the model in such contexts remains doubtful, but this is a question that certainly deserves further scrutiny by additional research.

Promising areas for future research include analysing how discourses about corruption and about criminal law have shifted among lawmakers since the Lava Jato. In particular, the role of the media as a tool to stoke popular opinion about corruption cases could be the object of further comparative research. Additionally, since a constant point of contention is the alleged use of preventive arrests to coerce defendants into signing plea bargains, testing whether being temporarily incarcerated makes one prone to engage in these negotiations could be revelatory. Also, it is relevant to further assess the reasons for civil society's feeble presence in debates about criminal procedures. Finally, Soltes' (2016) investigation of the motivations for the behaviour of white-collar criminals, in which he did have access to and conducted extensive interviews with convicts such as Bernie Madoff, shows that it is in fact possible to produce qualitative data that illuminates a phenomenon as secretive as corruption; replicating his approach in systemically corrupt contexts could prove prolific.

List of References

Agência Estado (2002) 'Brasil sobe em ranking de risco de seqüestro' ('Brazil rises in ranking of kidnapping risk') *O Estado de São Paulo*, 03 July, Accessed November 05 <http://brasil.estadao.com.br/noticias/geral,brasil-sobe-em-ranking-de-risco-de-sequestro,20020703p18365>

Alencar, C. H. R. de and I.T. Gico Junior (2011) 'Corrupção e Judiciário: A (in) Eficácia do Sistema Judicial no Combate à Corrupção' ('Corruption and Judicial System: the (in)effectiveness of the judicial system against corruption'), *Revista Direito GV* 7(1): 075-098.

Angelo, M., Sigmapress and Folhapress (2015) *'Sérgio Moro'* (Image) Accessed 25 October 2016 <http://vejasp.abril.com.br/materia/juiz-sergio-moro-restaurante-aplaudido>

Arantes, R.B. (1999) 'Direito e Política: O Ministério Público e a Defesa Dos Direitos Coletivos' ('Law and Politics: the Prosecutor's Office and the Protection of Collective Rights'), *Revista brasileira de ciências sociais* 14(39): 83-102.

Arantes, R.B. (2007) 'Ministério Público Na Fronteira Entre a Justiça e a Política'*, Justitia, Ministério Público de São Paulo, São Paulo: Procuradoria-Geral de Justiça em convênio com a Associação Paulista do Ministério Público* 197: 325-335.

Arantes, R. B. (2012) 'Ministério Público à brasileira' ('Prosecutor's Office Brazilian-Style'), *Le Monde Diplomatique Brasil*, 01 June, Accessed 31 October 2016 <http://www.diplomatique.org.br/artigo.php?id=1194>

Associação dos Delegados de Polícia Federal (ADPF) (2016) 'Delegados Federais lamentam a notícia da propositura da Ação Direta de Inconstitucionalidade (ADI) nº 5.508/2016, pelo Procurador-Geral Rodrigo Janot', Press Release, 29 April, Accessed 31 October <http://www.adpf.org.br/adpf/admin/painelcontrole/materia/materia_portal.wsp?tmp.edt.materia_codigo=8039&tit=NOTA#.WBevyZMrLBI>

Avritzer, L. and F. Filgueira (2011) 'Corrupção e Controles Democráticos no Brasil'.

Banerjee, A.V. (1997) 'A Theory of Misgovernance'*, The Quarterly Journal of Economics* 112(4): 1289-1332.

Bastos, N. d. O. and M. d. O. Bastos (2013) 'A Restauração da Eficácia Punitiva Estatal: Estrutura e Teleologia Da Delação premiada' (The State's Punitive Effectiveness Restoration: Structure and Teleology of Plea Bargaining')*, Direito e Liberdade* 15(1): 223-240.

Baumgartner, F.R. and B.D. Jones (1993) *Agendas and Instability in American Politics*. University of Chicago Press.

Beirangê, H. (2015) 'A semente dos escândalos' ('The seed of the scandals'), *Carta Capital*, 03 November, Accessed 05 September 2016 <http://www.cartacapital.com.br/revista/874/a-semente-dos-escandalos-9478.html>

Beirangê, H. (2016) 'A delação compensa' ('Informing does pay'), *Carta Capital*, 13 July 2016, Accessed 05 September <http://www.cartacapital.com.br/revista/908/a-delacao-compensa>

Bersch, K., S. Praça and M.M. Taylor (2016) 'State Capacity, Bureaucratic Politicization, and Corruption in the Brazilian State'*, Governance*.

Bloomberg (2016) 'Bloomberg's Fifty Most Influential' *Bloomberg Businessweek*, 22 September, Accessed 24 October <https://www.bloomberg.com/features/2016-most-influential/>

Braga, E. (2013) 'Final CCJ report to the PLS 150/2006' *Senate's Committee for Constitution and Justice*, Accessed 15 September 2016 <http://legis.senado.leg.br/mateweb/arquivos/mate-pdf/128083.pdf>

Buarque de Holanda, S. (1936) 'Roots of Brazil'.

Carson, L.D. (2014) 'Deterring Corruption: Beyond Rational Choice Theory'*, Available at SSRN*.

Carson, L.D. and M.M. Prado (2014) 'Mapping Corruption & its Institutional Determinants in Brazil'.

Chen, P. (2003) 'Advocating Online Censorship', *Australian Journal of Public Administration* 62(2): 41-64.

Conselho Nacional de Justiça (CNJ) (2013) 'Em dois anos, Justiça deixa prescrever 2,9 mil ações por corrupção e lavagem' ('In two years, justice system allows 2,9 thousand cases of corruption and money laundering to reach statutes of limitation') *Gazeta do Povo*, April 15, Accessed October 30 <http://www.gazetadopovo.com.br/vida-publica/em-dois-anos-justica-deixa-prescrever-29-mil-acoes-por-corrupcao-e-lavagem-02xl7tgfjl8clitb31ck1yfda>

Conteúdo Jurídico (2011) 'Técnicas especiais de investigação' ('Special Techniques of Investigation') *Conteudo Juridico*. Accessed 01 September 2016: <http://www.conteudojuridico.com.br/?artigos&ver=23853.31140&seo=1>.

Da Matta, R. (1991) *Carnivals, Rogues, and Heroes: An Interpretation of the Brazilian Dilemma*. University of Notre Dame Press.

Dal Pozzo, A. A. F. (2002) 'O Ministério Público do Estado do Rio Grande do Sul e a Assembleia Constituinte' ('The Prosecutor's Office in the State of Rio Grande do Sul and the Constitutional Assembly'), interview by Ricardo Vaz Seelig. São Paulo: Memorial do Ministério Público do Rio Grande do Sul. Accessed October 29 2016 <https://www.yumpu.com/pt/document/view/12788175/antonio-araldoferraz-dal-pozzo-ministerio-publico-rs>

Dallagnol, D. (2015) 'Lava Jato não usa prisões para obter colaboração de réus' ('Lava Jato does not use arrests to obtain defendant's cooperation') *UOL Notícias*, November 17,

Accessed October 26 2016 <http://noticias.uol.com.br/opiniao/coluna/2015/11/17/lava-jato-nao-usa-prisoes-para-obter-colaboracao-de-reus.htm>

Datafolha (2015) 'Pela 1ª vez, corrupção é vista como maior problema do país' ('For the 1st time, corruption is seen as the biggest problem in the country') *Folha de São Paulo*, 29 November, Accessed 15 May 2016 <http://www1.folha.uol.com.br/poder/2015/11/1712475-pela-1-vez-corrupcao-e-vista-como-maior-problema-do-pais.shtml>

Della Porta, D. and A. Vannucci (1999) *Corrupt Exchanges: Actors, Resources, and Mechanisms of Political Corruption*. Transaction Publishers.

Edwards, R. and J. Holland (2013) *What is Qualitative Interviewing?* A&C Black.

Egeberg, M. (2007) 'How Bureaucratic Structure Matters: An Organizational Perspective'*, w: M.Egeberg (red.), The Handbook of Public Administration* : 77-87.

Fachin, L. (2015) 'Delação premiada não pode ser tratada como prova única, diz Fachin' ('Plea bargain cannot be treated as sole evidence, says Fachin') *Folha de São Paulo*, June 15, Accessed October 27 2016 <http://www1.folha.uol.com.br/poder/2015/06/1642290-delacao-premiada-nao-pode-ser-tratada-como-prova-unica-diz-fachin.shtml>

Falcão, R. (2016) 'Combate à corrupção não pode servir a violação de direitos' ('The fight against corruption cannot serve for the violation of rights') *Agência PT de Notícias* 21 June, Accessed 15 October <http://www.pt.org.br/rui-falcao-o-combate-a-corrupcao-nao-pode-servir-a-violacao-de-direitos/>

Faoro, R. (1958) 'Donos do Poder: Formacao do Patronato Politico Brasileiro, Os.'.

Fernandes, I.N. (2015) 'O Pacote Anticorrupção: A Flexibilização Da Prova Ilícita Em Nome Da "Justiça e Da Liberdade": Uma Inversão Total Das Regras do Jogo Democrático'*, Novatio Iuris* 7(2).

Ferrajoli, L. *Direito e Razão: Teoria do Garantismo Penal.*

Fonseca, R. (2015) 'A vergonhosa perseguição a Lula' ('The shameful persecution of Lula') *Brasil 247*, 02 November, Accessed 13 October <http://www.brasil247.com/pt/colunistas/ribamarfonseca/203394/A-vergonhosa-persegui%C3%A7%C3%A3o-a-Lula.htm>

Freyre, G. and S. Putnam (1947) 'The Masters and the Slaves, a Study in the Development of Brazilian Civilization'.

Gilbert, M. (1995) *The Italian Revolution: The End of Politics, Italian Style?* Westview Press.

Gomes, L.F. (2015) 'Teoria dos jogos e a viralização da delação premiada' ('Game Theory and the Viral Spread of Plea Bargaining'), São Paulo: 06 January 2015, Accessed 01 September 2016 <http://luizflaviogomes.com/teoria-dos-jogos-e-a-viralizacao-da-delacao-premiada/>.

Gomes, L.F. and M.R. da Silva (2015) 'Criminalidade Organizada E Justiça Penal Negociada: Delação Premiada', *Revista FIDES* 6(1).

Haas, P.M. (1992) 'Introduction: Epistemic Communities and International Policy Coordination', *International organization* 46(01): 1-35.

Haber, S. (2013) *Crony Capitalism and Economic Growth in Latin America: Theory and Evidence.* Hoover Institution Press.

Henry, A.D., K. Ingold, D. Nohrstedt and C.M. Weible (2014) 'Policy Change in Comparative Contexts: Applying the Advocacy Coalition Framework Outside of Western Europe and North America', *Journal of Comparative Policy Analysis: Research and Practice* 16(4): 299-312.

Huntington, S. (1968) 'Political Order in Changing Societies'.

Ibope Inteligência (2015) 'Índice de Confiança Social' ('Social Trust Index'), Accessed 15 September 2016 < http://www.ibopeinteligencia.com/arquivos/antigos/ics_brasil.pdf>

Izumino, W.P. and C. Neme (2002) 'Violência Urbana e Graves Violações De Direitos Humanos' ('Urban Violence and Serious Human Rights Violations'), *Ciência e Cultura* 54(1): 47-49.

Jenkins-Smith, H.C. and P.A. Sabatier (1994) 'Evaluating the Advocacy Coalition Framework', *Journal of public policy* 14(02): 175-203.

Jones, Charles (1977). *An Introduction to the Study of Public Policy*. Belmont, CA: Wadsworth.

Kerche, F. (2010) 'O Ministério Público e a Constituinte De 1987/88' ('The Prosecutor's Office and the Constitutional Assembly of 1987-1988), In Sadek, MT, org. *O sistema de justiça ('The justice system')*. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais.

Leal, V.N. (1977) *Coronelismo, the Municipality and Representative Government in Brazil (Coronelismo, Enxada e Voto, Engl. Transl.)*

Leff, N.H. (1964) 'Economic Development through Bureaucratic Corruption', *American behavioral scientist* 8(3): 8-14.

Lopes, P. and V. Segalia (2016) 'Documentos indicam grampo ilegal e abusos de Moro na origem da Lava Jato' ('Documents indicate illegal wiretapping and abuses from Moro in the origins of the Lava Jato') *UOL Notícias*, 03 April, Accessed 14 October <http://noticias.uol.com.br/politica/ultimas-noticias/2016/04/03/documentos-indicam-grampo-ilegal-e-abusos-de-poder-na-origem-da-lava-jato.htm>

Lula, L. I. da S. (2016), Speech delivered at the PT headquarters in response to indictment by the MPF (15 September 2016). Accessed 19 September 2016 <https://www.youtube.com/watch?v=xrbqsUsbO0w>

Macedo, F. (2016a) '134 políticos com foro privilegiado estão na mira da Lava Jato' ('134 politicians with privileged jurisdiction are targeted by the Lava Jato') *Estado de São Paulo*, 05 June, Accessed 21 September <http://politica.estadao.com.br/blogs/fausto-macedo/134-politicos-com-foro-privilegiado-estao-na-mira-da-lava-jato/>

Macedo, F. (2016b) 'Lava Jato acha superplanilha da Odebrecht com valores para 279 políticos e 22 partidos' ('Lava Jato finds Odebrecht super-spreadsheet with payments to 279 politicians and 22 parties') *Estado de São Paulo*, 23 March, Accessed 17 September <http://politica.estadao.com.br/blogs/fausto-macedo/veja-a-lista-de-politicos-na-contabilidade-da-odebrecht/>

Machado, M. R. and B. Paschoal (2016) 'Monitorar, investigar, responsabilizar e sancionar: A multiplicidade institucional em casos de corrupção' ('Monitoring, Investigating, Holding Accountable and Sanctioning: Inter-institutional Interaction in Cases of Corruption') *Revista Novos Estudos* 104: 11-36.

Mainwaring, S. (2003) 'Introduction: Democratic Accountability in Latin America'. In *Democratic Accountability in Latin America*, ed. Mainwaring and Christopher Welna. OUP Oxford.

Mazzilli, H.N. (1998) 'O Ministério Público e a Defesa do Regime Democrático' ('The Prosecutor's Office and the Defence of the Democratic System'), *Revista de Informação Legislativa* 35(138): 65-73.

Mazzilli, H.N. (2003) *Tutela Dos Interesses Difusos e Coletivos ('Protection of Diffuse and Collective Rights')*. Damásio de Jesus.

Ministério Público Federal (MPF) (2016a) 'A Lava Jato em números' ('Lava Jato in numbers'), updated on 19 September 2016, Accessed 20 September 2016 <http://lavajato.mpf.mp.br/atuacao-na-1a-instancia/resultados/a-lava-jato-em-numeros-1>

Ministério Público Federal (MPF) (2016b) 'Fluxo da investigação' ('Flow of the investigation'), updated on 19 September 2016, Accessed 14 October 2016 <http://lavajato.mpf.mp.br/atuacao-na-1a-instancia/investigacao/fluxo-da-investigacao>

Ministério Público Federal (MPF) (2016c) 'Dez medidas contra a corrupção – apoiadores' ('Ten measures against corruption – supporters'), Accessed 27 October 2016 <http://www.dezmedidas.mpf.mp.br/campanha/apoiadores>

Moraes, A. de (2002). *Direito constitucional ('Constitutional Law')*. Editora Atlas.

Moro, S.F. (2004) 'Considerações Sobre a Operação *Mani Pulite*' ('Considerations on the Operation *Mani Pulite*'), Revista CEJ 8(26): 56-62.

Moro, S. (2016) 'XII Simpósio Brasileiro de Direito Constitucional'. Presentation.

Pargendler, M. (2014) 'Governing State Capitalism: The Case of Brazil', *Chinese State Capitalism and Institutional Change: Domestic and Global Implications Benjamin Liebman & Curtis J.Milhaupt eds.Oxford University Press (Forthcoming)* .

Parsons, W. (1995) 'Public Policy', *Cheltenham, Northampton* .

Pastana, M. (2014) 'Legal opinion of prosecutor in *habeas corpus* 5029101-57.2014.404.0000', Ministério Público Federal (Federal Prosecutor's Office), November 21, Accessed October 26 <http://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2014/11/parecerduque.pdf>

Paz, M.J. (2015) 'Institutional Change and State-Owned Enterprises: Reflections from the Petrobras Case Study', *Public Management Review* 17(6): 791-811.

Pereira, F.V. (2013) 'Delação Premiada: Legitimidade e Procedimento'.

Peters, B. G. (1986) *American Public Policy*. Chatham, NJ.: Chatham House.

Power, T.J. and M.M. Taylor (2011) *Corruption and Democracy in Brazil: The Struggle for Accountability.* University of Notre Dame Press.

Prado, M. M. and L. Carson (2014) 'Brazilian Anti-Corruption Legislation and its Enforcement: Potential Lessons for Institutional Design', *Journal of Self-Governance & Management Economics* 4(1).

Ribeiro, D. (2000) *The Brazilian People: The Formation and Meaning of Brazil*.

Rosa R. and Agência Brasil (2016) '*Deltan Dallagnol and Maria Fernanda Cândido*' (Image) Accessed 25 October 2016 <http://agenciabrasil.ebc.com.br/politica/noticia/2016-02/mpf-registra-15-milhao-de-assinaturas-em-apoio-projeto-anticorrupcao>

Rose-Ackerman, S. and B.J. Palifka (2016) *Corruption and Government: Causes, Consequences, and Reform.* Cambridge university press.

Saalfeld, T. (1995) 'Rational-choice Theory in Legislative Studies: Models of Politics without Romanticism', *The Journal of Legislative Studies* 1(1): 32-64.

Sabatier, P.A. (1988) 'An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein', *Policy Sciences* 21(2-3): 129-168.

Sabatier, P.A. and C.M. Weible (2016) 'The Advocacy Coalition Framework: Innovations and Clarifications', *In: Sabatier, PA (ed.).Theories of the Policy Process, Second Edition, 189-217* .

Sabella, W. P. (2008) 'O MP na Constituinte da CR/88' ('The MP in the CR/88 Constitutional Assembly'), interview by *Carta Forense*, July 01, Accessed 29 October 2016

<http://www.cartaforense.com.br/conteudo/entrevistas/o-mp-na-constituinte-da-cr88/1850>

Sadek, M.T. (1997) *'O Ministério Público e a Justiça no Brasil'* (*'The Prosecutor's Office and Justice in Brazil'*), São Paulo. IDESP/Sumaré .

Santos, W. G. dos (2015) 'Lava Jato e o Partido dos Trabalhadores' ('Lava Jato and the Worker's Party') *Carta Capital* 07 August, Accessed 13 October <http://www.cartacapital.com.br/politica/lava-jato-e-o-partido-dos-trabalhadores-8527.html>

Schaffner, F. (2016) 'Enxurrada de gravações silencia rotina de conversas em Brasília' ('Flood of wiretaps silences routine of conversations in Brasilia') *Zero Hora*, 04 June, Accessed 05 November <http://zh.clicrbs.com.br/rs/noticias/politica/noticia/2016/06/enxurrada-de-gravacoes-silencia-rotina-de-conversas-em-brasilia-5826163.html>

Soltes, E., (2016) *Why They Do It: inside the mind of the white-collar criminal*. Public affairs.

Talento, A. and Departamento de Recuperação de Ativos de Cooperação Jurídica (DRCI) (2016) 'Repatriação bate recorde de US\$ 125 milhões em 2015 com Lava Jato' ('Repatriation breaks record of US\$ 125 million in 2015 with Lava Jato') *Folha de São Paulo*, 24 April, Accessed 13 October 2016 < http://www1.folha.uol.com.br/poder/2016/04/1764108-repatriacao-bate-recorde-de-us-125-milhoes-em-2015-com-lava-jato.shtml>

Taylor, M.M. and V.C. Buranelli (2007) 'Ending Up in Pizza: Accountability as a Problem of Institutional Arrangement in Brazil', *Latin American Politics and Society* 49(1): 59-87.

Transparency International (2015) 'Corruption Perceptions Index of 2015' Accessed 22 September 2016 <https://www.transparency.org/cpi2015>

Valente, R. (2016) 'Em conversa gravada, Renan defende mudar lei da delação premiada' ('In recorded conversation, Renan supports changing plea bargaining law') *Folha de São Paulo*, 25 May, Accessed 04 November <http://www1.folha.uol.com.br/poder/2016/05/1774719-em-conversa-gravada-renan-defende-mudar-lei-da-delacao-premiada.shtml>

Vishny, R.W. and A. Shleifer (1993) *Corruption.* National Bureau of Economic Research.

Weible, C.M. (2008) 'Expert-based Information and Policy Subsystems: A Review and Synthesis', *Policy Studies Journal* 36(4): 615-635.

Weible, C.M., P.A. Sabatier and K. McQueen (2009) 'Themes and Variations: Taking Stock of the Advocacy Coalition Framework', *Policy Studies Journal* 37(1): 121-140.

Weible, C.M. and P.A. Sabatier (2006) 'A Guide to the Advocacy Coalition Framework', *Handbook of public policy analysis*: 123-136.

Annex 1: List of Interviewees

Name	Position	Role in the PLS 150/06
Serys Slhessarenko	Former member of the PT; a senator from the state of Mato Grosso between 2003 and 2011	Author of the bill
Antero Paes de Barros	Former member of the PSDB; a senator from the state of Mato Grosso between 1999 and 2007	One of the leading parliamentarians in favor of the bill, due to his prior role as the President of the Banestado CPI
Carlos Vieira da Cunha	Member of the PDT; a deputy (member of the lower house of Congress) between 2007 and 2011; a career federal prosecutor from the MPF	Rapporteur of the bill at the lower house's CCJ
Marivaldo Pereira	Former Secretary of Legal Affairs of the Ministry of Justice.	SAL was one of the most important bodies to seek consensus around the bill
Tiago Ivo Odon	Career member of the Senate's technical staff	Took part in the writing of the bill and in its subsequent negotiations and procedural matters.
Salise Sanchonete	Upper court judge in the state of Rio Grande do Sul	President of the ENCCLA
César Bechara	Career federal prosecutor from the MPF	President of the CONAMP, the body that acted as the MPF's representative during the public hearings about the bill
Josmar Verillo	Director of AMARRIBO, one of the leading anticorruption NGOs in Brazil	Since civil society did not play a significant role in the approval of the COL, the reasons for this absence merited investigation
Antônio Cláudio Mariz de Oliveira	Criminal defense lawyer	Active critic of procedures deemed "excessive" during the negotiations of plea bargains
Alexandre Buck Sampaio	Federal judge in Minas Gerais	Responsible for the first sentences issued in the Mensalão scandal (2005).