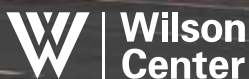


Lobbying Uncovered

**CORRUPTION, DEMOCRACY AND
PUBLIC POLICY IN BRAZIL**

Milton Seligman and Fernando Mello, organizers.





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Preface to the English Edition of Lobbying Uncovered

When this book was first published in Portuguese in 2018, the Brazilian National Congress was in the middle of a debate over the regulation of lobbying, the culmination of years of scandal and widespread frustration over the pervasiveness of corruption in business and politics in Brazil. Since then, the conversation over corruption, lobbying and political influence has evolved in new ways—yet no legislation has been passed, and lobbying remains largely unregulated.

Lobbying is legal in Brazil: the Ministry of Labor listed lobbying as an official occupation for the first time in 2018, defining the job as “to participate in policy making, elaborating strategies of relations with the government, analyzing risks created by regulations, and defend specific interests.” And although there is yet no legislation governing the activity, public demand for greater transparency has led to several initiatives by elected officials, senior public servants, business leaders, and other professionals to begin to establish certain protocols. The executive branch now requires senior officials and agencies to disclose more completely meetings with lobbyists and the special interests they represent. Lobbyists themselves are eager to shed some of the more negative associations with corruption and back-room deals. The Brazilian Association of Institutional and Government Relations (Abrig) declared its support in 2019 for the regulation of the industry, and the Brazilian government recently indicated it may revisit the topic in 2020.

The expectation in Brazil today is that elected officials and occupants of key positions in government will be honest in their dealings and accountable to society’s demands and interests, in contrast with a not-so-distant

past. Nonetheless, it will take time and persistence to establish a new culture of transparency in the country.

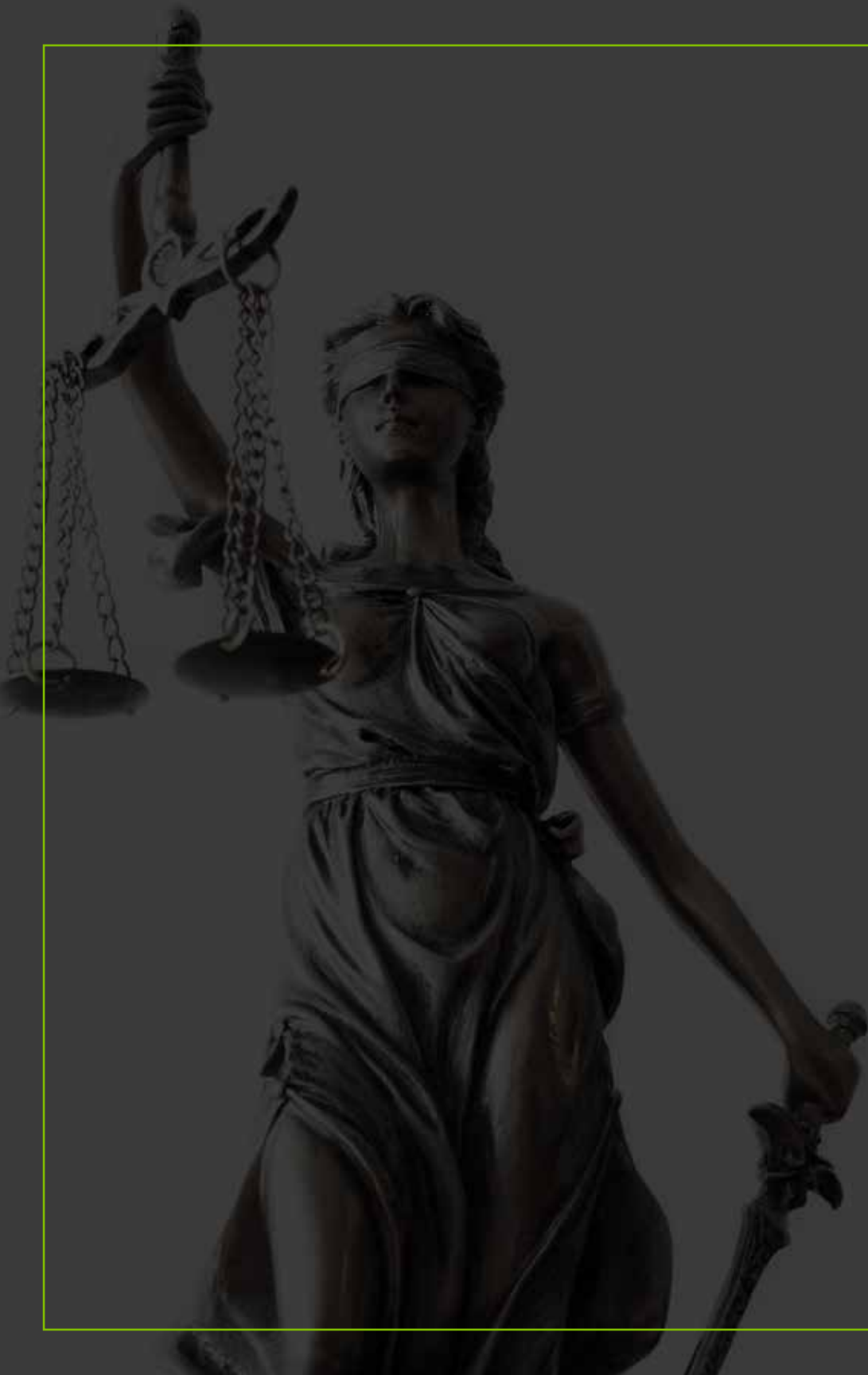
The fourteen chapters in this new English language edition of *Lobbying Uncovered: Democracy, Public Policy and Corruption in Contemporary Brazil* offers the wider public a window into Brazil's efforts to build a modern democracy, and what it will take to change the political culture in a lasting way. Going beyond historical analysis, the book provides policymakers and voters alike a framework for discussing the role and regulation of lobbying in contemporary, democratic Brazil.

The Wilson Center has been honored to work on this project alongside two other exceptional institutions: the BRAVA Foundation, committed to strengthening civic engagement and efficient public policies; and Insper, one of Brazil's leading universities and research institutions in the areas of business, economics, and public administration—under the capable leadership of the two organizers of this book, Milton Seligman and Fernando Mello. It is our hope that the English version of this excellent book contributes to the current global conversation on the intersection of money, power and influence, offering lessons—and optimism—from Brazil's history and its current fight to establish a more transparent and accountable democratic system.

Paulo Sotero and Anya Prusa

Wilson Center - Washington, DC

September 2020



Preface

MARCOS LISBOA

We live in interesting times. Brazil has tired of the old methods and is taking up discussions that would once have been unthinkable. After much delay, we are beginning to talk about the differential treatment accorded to select groups by the government. The retirement laws are considerably more favorable to government employees than to other individuals. Half of the loans in Brazil charge market interest rates, while the rest carry subsidized rates for select businesses or sectors of the economy. The tax laws vary significantly from one sector to another, and even among professional services providers.

Pressure groups and special treatment do exist in other countries. The surprising thing in Brazil, though, is that they are so widespread, and this has resulted in a complex set of laws governing taxes, foreign trade and access to credit. For many years, the Brazilian government's distribution of discretionary benefits and protections to organized groups was looked upon by society as surprisingly natural.

The enormous policy failures of the past decade, a serious economic crisis, and scandals arising from improper relations between the government and the private sector are the collateral effects of the development model followed during much of the past century.

The nationalism of the 1950s attributed our poverty to open borders and exploitation by wealthy countries, particularly the United States. People believed that foreign companies such as Light were reaping massive

profits that were then sent out of the country. Brazil was exporting raw materials and importing industrial goods. International prices for our exports were seen as dropping over time, thus condemning the country to rising poverty.

What had been, during the Getúlio Vargas administration and the Revolution of 1930, a reaction to the severe crisis of 1929 in the midst of a world closing in on itself, gradually turned into a national strategy starting in the 1950s. Development was thought to be achievable by curtailing relations with the outside world and increasing local production capacity. The government would take charge of decisions about private investment, choosing which businesses and industries would benefit, and protecting us from foreign exploitation. Tight controls were placed on foreign trade, foreign companies were nationalized, restrictions were placed on immigration and remittance of profits abroad was limited. National developmentalism increasingly dominated the country in the following decades, through democracy and the military dictatorship. The same held true in other emerging countries during that period, from neighboring Argentina to distant Egypt.

We opted for the national-developmental narrative despite its shaky arguments. But, as we know, the principal flow of international trade was not between the northern industrialized countries and the underdeveloped countries to the south. To the contrary, most of the trade flowed between the wealthy countries. Trade and profit remittance were almost irrelevant to the revenues and development of the United States and Europe.

And we also know that raw materials prices did not experience a downward trend. Instead, those prices remained stable during the second half of the 20th century, while the prices of industrial goods for investment have declined more than 3% per year since the end of World War II.

The wealthy countries were enriched, not by trade with underdeveloped countries, but rather because of their higher productivity in producing goods and services domestically and trading with other wealthy countries. There were a few strategic raw materials such as oil, but that was

not the case in Brazil, which remained poor while it closed itself off to foreign trade and earned a per-capita income of 20% to 30% of that of the U.S.

Decades later, economist Paul Krugman gave the best explanation of all for the greater volume of north-north trade as compared to that of north-south. The wealthy countries specialize in a few activities that yield increasing returns to scale. Each country produces only part of what it consumes and imports the rest, especially from the other wealthy countries. Specialization ensures productivity gains and more revenue for all. The secret lies not in doing a little of everything, but in being more productive than other countries in some activities. And, from the sale of those goods, buying what the other countries make best.

This does not mean spurning development policies, but the evidence does indicate that successful interventions are quite different from advocating for national developmentalism. The objective should be to identify activities in which the country can become competitive and be as productive as other countries. Sooner or later, this process calls for a broad-based set of public policies.

In the case of Norway, for example, the discovery of oil led to several government interventions, such as the establishment of a university to train technical specialists, and sophisticated sector governance. South Korea made a notable investment in education, and followed that with policies aimed at stimulating some export sectors through performance goals. In Germany, a combination of education, academic research and the country's proximity to industry enabled it to develop companies that are competitive in capital goods. And Singapore invested large sums in education while opting for a limited number of activities in which it had competitive advantages, such as logistics and certain services.

These actions could not have strayed any further from national developmentalism, which supported the idea that purely domestic production is preferable to foreign trade, and sidestepped any discussion of productivi-

ty gains, outcome assessment or the design of rules for governing public intervention. Brazil's intellectuals ignored advances in applied research.

Recently, Brazilian economics professors Mauro Boianovsky and Leonardo Monasterio told the story of a meeting with American economist Douglass North and Brazilian economist Celso Furtado in Brazil in the early 1960s. At the time, Furtado headed the Northeast Development Authority (Sudene) and was in charge of an extensive plan for the Brazilian Northeast that adhered to the approach of the Economic Commission for Latin America and the Caribbean (ECLAC) and supported the idea that industrialization is the only strategy to pursue for development in the region.

North disagreed. The shortage of skilled labor, a limited consumer market and a lack of natural resources made large-scale industrialization plans unfeasible. He recommended that the program develop local advantages by incentivizing research on tropical agriculture, fishing and the water resources intrinsic to the region. Certain manufactured goods for the local market, such as textiles, might be feasible. In addition, he advocated for an ambitious plan to expand access to elementary education.

During an intense 20-day stay in Brazil, North was surprised at the extent of government intervention and the proliferation of regulations and restrictions he observed in that country. And he wondered, "Do the Brazilians like this kind of control? Is Gudin the only disciple of individual freedom around here?"

We opted for Furtado and ignored North, and what we got from it was nothing but a string of failures. For decades, elementary education saw very little progress. A closed-off Brazil lost its way, and the Northeast remained undeveloped. North, for his part, was awarded the Nobel Prize in 1993.

There was a brief interval in the late 1960s. The government of Castelo Branco confronted the economic crisis he inherited from the Juscelino Kubitschek administration—which had been aggravated by the tumultu-

ous presidency of João Goulart—through a reform agenda that combined many of the proposals put forth by the intellectuals in the orbit of the Joint Brazil-U.S. Commission. The result was the Government Economic Action Program (PAEG), which promised to modernize our economy and played a role in the economic miracle.

Despite these advances, the subsequent years saw enormous setbacks. It was an era of dictatorship, and national developmentalism resurfaced under the Geisel administration and the Second National Development Plan (II PND). We strengthened the welfare state and opted for a return to nationalism and discretionary government expansion into the economy.

This produced the short-lived growth of the 1970s, in a context of social inequality. There was no economic development. To the contrary, in 1980 we entered into a long-term crisis from which we did not emerge until 1994.

The national development agenda was gradually resumed in the 1990s, as the country opened its borders to foreign trade, prices stabilized and state-owned companies were privatized. The government began to strengthen social policies, and reforms were instituted to improve the business environment. We were slowly converging towards the normalcy of other countries. In the midst of occasional crises, a few missteps and many successes, the country began to grow once again and extreme poverty was reduced.

In my discussion with the Brazilian university professor Fernando Haddad in the journal *Piauí*, I present my schematic interpretation of the evolution of social and economic policy since 1990. Beginning in 2008, there was a break and a return to national developmentalism. We are all well aware of its consequences.

The revived national developmentalism of recent years was characterized by the government's capacity for discretionary intervention by granting incentives and benefits to select groups. Apart from any analysis of the role of the State in promoting development, there is a subtle debate over

the intervention methods used. To the extent that government agencies are able to grant discretionary benefits to some, to the detriment of the rest, it opens the door to improper exchange of favors.

Government intervention may be defensible in some cases, and successful examples of this certainly exist in other countries. Even in the case of Brazil, the impressive growth of the agriculture sector over the past four decades came about through collaborative public policies aimed at stimulating production and technological innovation, with the help of research studies conducted by the Brazilian Agricultural Research Corporation (Embrapa) and the Luiz de Queiroz College of Agriculture (ESALQ). But these were policies that benefited an entire sector without choosing the winning companies, and they promoted increased productivity.

Public policies require rules of governance that reduce the possibility of wrongdoing, be it by the improper exchange of favors or by distributing benefits to the private sector without any social gains that might serve as a counterweight to such public expenditures. Good governance involves principles and protocols. Any granting of benefits should be preceded by independent studies that look at the facts and data to assess the potential benefits and opportunity costs of public funds. Proper methodology provides the tools for evaluating the expected outcomes.

Good governance also requires that these policies contain outcome goals, and that they be evaluated by independent agencies according to clear-cut rules that provide for a policy review in the event of failure. Above all, protective policies should have an end date, whether they are ultimately successful and thus no longer needed, or they fail and should be discontinued.

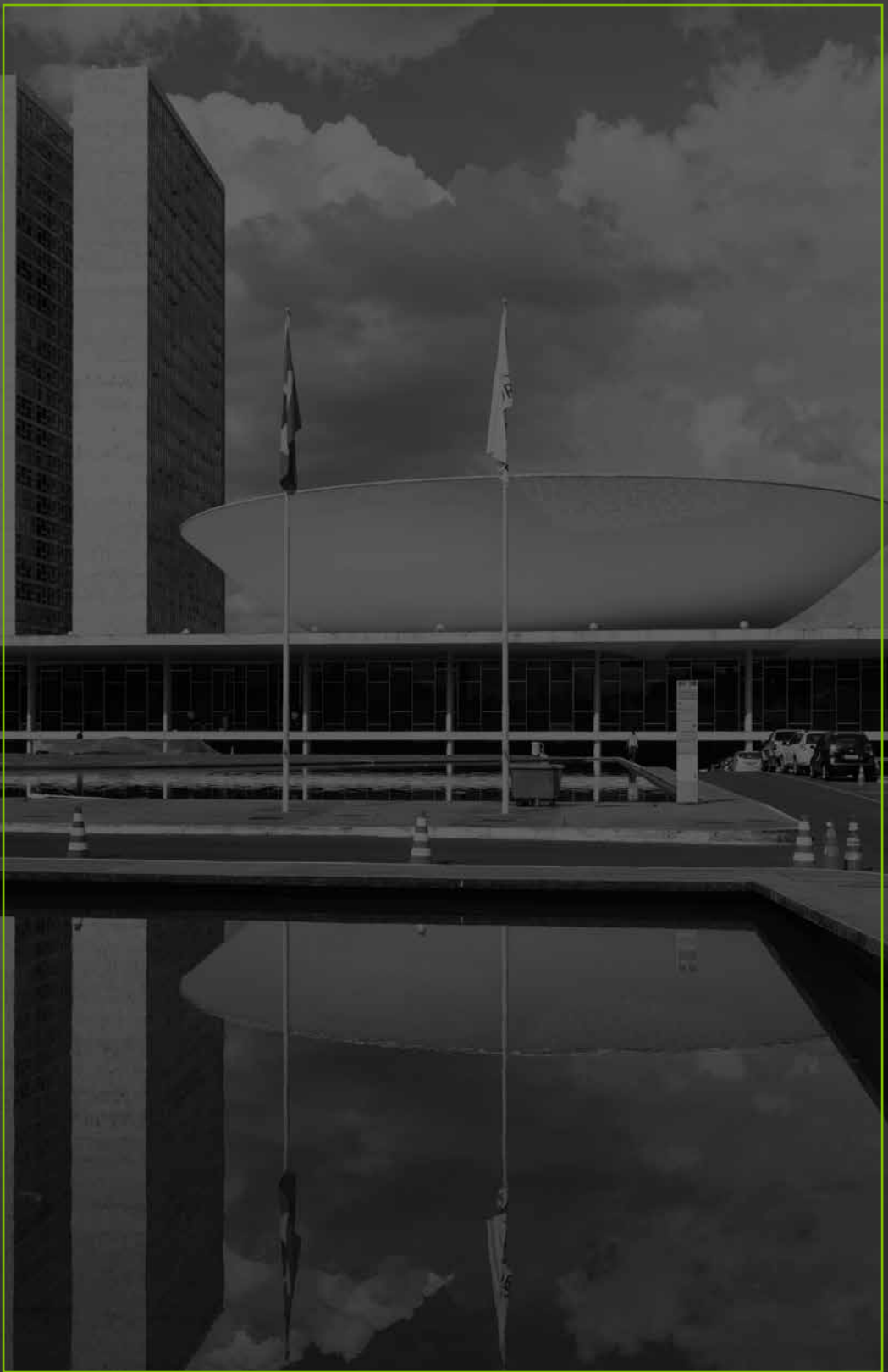
The collateral effect of national developmentalism was the proliferation of discretionary policies that created institutional complexities in our economy, now dominated by tax exemptions and various credit subsidies, along with many exceptions and special cases. The extension of existing benefits lies in contrast with the lack of outcome assessments

and the enormous setback we have experienced in the past decade as a result of government interventions that scorned careful methodology and governance.

That scenario is a testament to the importance of this book, edited by Milton Seligman and Fernando Mello. Some of the chapters examine the regulation of lobbying in other countries and in Brazil. Others outline the gradual strengthening of relations between the government and private companies over the past decade. Considerable space is also given to analysis of the causes of corruption and its relationship to the rules of politics in Brazil. The book highlights the need for transparency and proper regulation for structuring relations between the government and the private sector.

There is even a proposal, mentioned in several of the chapters and essays in this book, that was originally put forward by Sérgio Lazzarini, Carlos Melo and Milton Seligman in their article, “O lobby e a política” [Lobbying and politics], which appeared in the journal *JOTA* in October 2015. Private-sector proposals for government interventions should create value for society, make organizations more competitive and accord public recognition to government employees for having made that development possible.

We are paying an enormous price for the incompetent, discretionary public interventions that resulted in the major crisis of the last few years, in addition to the abuses that are constraining the country. The public sector matters—for the good and the bad. This book will help assess the causes of our failure, and it proposes a number of ways to improve institutional relations between the public and private sectors. Perhaps this time, we will learn from our failures.



Introduction

Lobbying: democracy, public policy and corruption in contemporary Brazil

MILTON SELIGMAN AND FERNANDO MELLO

Dear Reader. What's the first thing that comes to mind when you hear the word "lobbyist?" For most people in Brazil and elsewhere, the image is that of a disreputable individual. Even in the United States, where lobbying is a common practice and follows clear rules, a significant part of the public thinks of archetypes based on actual people, such as Artie Samish who operated out of California in the 1930s and 1940s. Representing the beverage, tobacco, film, highway, banking and chemical industries—and even horse racing magnates—Samish had the kind of power that no one else in that field had ever achieved (Rosenthal, 2000).

The truth is, Samish was the ideal caricature of a lobbyist. He never got past the seventh grade but built a career in several areas of the California state government, including the state revenue authority, where he learned how to collect taxes and deal with politicians. When he was already one of the state's most powerful men, he attracted attention because of his straw hat, fat cigars, and bulging stomach. For decades, he was able to get politicians elected or, alternatively, defeated by steering large sums of money to their opponents' campaigns. Much of that money, by the way, was in the form of cash stashed in briefcases (an image not unfamiliar to Brazilians).

At six foot two and weighing 310 lbs., Samish was said to be able to tell instantly whether a politician needed a "baked potato, a pretty girl, or money."¹ He became famous in 1949 after agreeing to be profiled in an influential magazine. During the interview, he told the reporter: "I'm the governor of the Legislature; to hell with the governor of California." Being

1 See further: Rasmussen (2008).

featured on the cover of that magazine put him under the spotlight and ultimately ended his career, which went on to include a few years in prison. Samish was depicted sitting with a puppet on his lap that the magazine editors had dubbed Mr. Legislature. The metaphor was pretty simple. Lobbyists were the ones who commanded politicians just as ventriloquists controlled puppets like Mr. Legislature.

Characters like Artie Samish can capture the public's imagination. Certainly, operators like him can still be found. But the reality of relationships between governments and companies cannot be defined by such cases alone. Understanding the role of governmental relations in the current Brazilian context—the challenges, best practices, and relationship with corruption on the one hand, and the need to increase productivity and competitiveness on the other—is one of the objectives of this book.

This project got its start in April 2015 among friends having a few beers at a bar in New York. Late that afternoon we were talking about our new experiences in academic life. Milton Seligman had been invited to give classes at Insper, [Insper Institute of Education and Research – Insper Instituto de Ensino e Pesquisa]. Fernando Mello was about to receive his Master's degree from the Georgetown University School of Foreign Service and getting ready to begin work on a PhD in political science at the University of California. One conclusion was reached by the end of our conversation. It was time to study the relationships between private and public agents by blending practical perspectives of respected market professionals with rigorous academic analyses by Brazilian and international professors.

Furthermore, the project would get off the drawing board only if we were able to put together what we promptly referred to as a Dream Team. After all, the subject is complicated and full of preconceived notions, and it would be addressed at a political moment marked by post-truths on social networks, polarization, and a shortage of rational debate. If it were to be done, it had to be done right. Within a few weeks, we received enthusiastic support for this bold undertaking. Paulo Sotero, director of the Brazil Institute of the Woodrow Wilson International Center for Scholars

in Washington, invited Seligman to be a Wilson Center Global Fellow and offered him assistance as well as the use of the institute's facilities. Sooner than expected we found ourselves in Washington in a conference room at the Wilson Center, chatting with authors and drafting the outlines for the first chapters based on suggestions made by those experts. Many afternoons of heated debates followed, during which Sotero contributed valuable ideas, dedicating time (that he often did not have) toward the progress of the project.

The second offer of assistance came from the BRAVA Foundation, a pioneer in supporting public management improvement projects. Founded in 2000, the BRAVA Foundation has a tradition of supporting transformative leaders committed to building efficient public policies. Lastly, Marcos Lisboa, president of Insper, offered his unfettered support in permitting Insper faculty members to become involved in the work.

With support from the BRAVA Foundation, Insper, and the Wilson Center, it did not take us long to decide that the first chapter would be written by Paulo Sotero. When in February 2016 Sotero introduced the project in an article published on the Brazilian legal news portal JOTA² the piece went viral in just a few days, receiving thousands of comments and “likes”—an imperfect yardstick from the post-truth world of social media but one that we must admit really energized us. Beginning on page 23, Sotero, writing in partnership with Anna Prusa, presents the starting point for a discussion of lobbying in Brazil. In a critical and detailed comparison of that activity in the United States he answers the question of whether, in the final analysis, U.S. rules can serve as a basis for countries like Brazil. Sotero's prose is appealing in yet another way: it flows easily, sometimes introducing some humor but without a hint of melancholy.

The authors of Chapter 1 write: “Seen from the perspective of the broader interests of society, the lobbying experience in the U.S. can and indeed must be used as a paradigm for the discussion about institutionalizing the activity in Brazil and its neighboring countries, where it has gained

2 Sotero (2016)

particular relevance and space in recent years as a result of the impact of corruption scandals fed by exacerbation of the ancient practice by Latin American elites that mixes private and public interests. Empowered, in the Brazilian case, by having done away with the impunity once ensured to those who occupy positions of influence and their connections in the political and economic spheres, the debate about the institutionalization of lobbying is forcing society to define competencies and responsibilities in order to lend transparency to the activity.”

During that same visit to Washington, we confirmed participation by Professor Matthew Taylor, one of the most prominent experts on controlling corruption in institutions in Brazil. Taylor does not challenge the optimistic claims that institutions fostering accountability have improved in Brazil, but seeks to contextualize the evidence of gradual progress in the battle against political corruption, assess the obstacles to reform, and identify some limitations that work against reforms in the realm of accountability in Brasília. Professor at American University in Washington and a former professor at the University of São Paulo (USP), Taylor speaks Portuguese exceptionally well. His studies on the relationships among different enforcement agencies (such as the Office of the Prosecutor for the Public Interest and the Judiciary) shed light on the institutions that fight corruption in Brazil.

Three leading Insper professors also joined the team: Carlos Melo, João M.P. de Mello, and Sérgio Lazzarini. Not only are these men on the list of Brazil’s influential researchers, they are important shapers of public debate in Brazil, leading discussions about public policy in the most influential Brazilian media. In seminars held at Insper, they helped evaluate each other’s papers and made suggestions about the book in general.

Carlos Melo is one of the most active voices in the debate on Brazilian politics and the influence wielded by political parties and organized groups on that country’s public policies. In precise and incisive prose, he explains that it is perfectly natural for companies to seek to get their demands and projects onto the desks of government officials and any accessible

government agency—and that society wins when clichés and prejudices are overcome. Melo clearly states however that: “It is equally legitimate to expect that those interests will not be restricted to natural egotism or allowed to prevail over the broader interests of society. Otherwise it is not lobbying—in the historic sense of the word—much less does it mean promoting good and healthy ‘institutional relations.’ Rather, it should be called favoritism, cronyism, corporatism or—to call a spade a spade—corruption.”

It fell to João M. P. de Mello, in a chapter co-authored with Fernando Mello, to examine the question of corruption in quantitative terms. Is corruption related to lobbying? Is it related to a lack of regulation of the activity or to the quality of institutional relations? Or is corruption associated with campaign costs that increase incentives for certain lobbyists and politicians to get involved in illegal activities that include payments of kickbacks or donations in exchange for favors? As an economist with a PhD from Stanford, João de Mello used his stint as a researcher at Harvard to perform the calculations that are part of this book.

Sérgio Lazzarini, also a full professor at Insper, holder of a PhD from the University of Washington and former visiting professor at Harvard, led the research on the capitalism of the Brazilian State. In Chapter 3, he discusses how that mode of capitalism affects institutional relations. The chapter is co-authored by Aldo Musacchio, a former professor at Harvard Business School and current director of the Brazil and Latin America Initiatives at Brandeis University’s International Business School.

Other chapters were written by experts who combined practical experience with a meticulous approach to research. Nelson Jobim, a member of the 1988 Constituent Assembly, former Cabinet member and once chief justice of Brazil’s Federal Supreme Court, for years has been thinking about the subject from the comparative standpoint. We felt that Jobim was the natural choice to answer the question of whether the constitutional differences between Brazil and the United States permit a comparison of the ways the private sector influences governments. Can the Brazilian experience be compared with the experiences of other countries whose

constitutional cultures are different? Jobim joined attorney Luciano Souza, an authority in governmental relations who majored in that subject at Georgetown University. They concluded, “In our view, there will be no room in this new world for irresponsible practices carried out in the shadows.

Also educated at Georgetown, Joel Velasco brings a unique view of the subject directly from Washington. Velasco is a partner in the Allbright Stonebridge Group, one of the largest global business strategy firms in the United States, headed by Madeleine K. Allbright, the first woman to become U.S. Secretary of State. Thoroughly familiar with the subject, Velasco joined forces with Alana Rizzo, a fellow of the Stigler Center at the University of Chicago Booth School of Business and responsible for the first multimedia survey about lobbying in Brazil, published by the Brazilian magazine *Época*. The Rizzo/Velasco duo answers an intriguing question: will companies caught engaging in illegal practices such as those revealed by Operation Car Wash be able to shift from those practices to ethical, legal, and healthy relationships with the government? To them, the answer is “yes”—but that does not mean it will be an easy task.

Their chapter also serves as a transition to the second part of the book, in which we shift from an analytical focus to supplying a practical manual for institutional relations in Brazil. The idea is that the second section would serve as a manual of best practices in the field of governmental relations. In producing that manual, the authors called on Mateus Affonso Bandeira, former CEO of Falconi Consultants for assistance. Bandeira spent almost 20 years in public life, amassing experience in the Ministry of Finance, the Brazilian Senate, and Rio Grande do Sul state government, where he was secretary of planning and management and president of the State Bank of Rio Grande do Sul.

When this project started, Seligman was already teaching a course at Inesper on Government Relations in Brazil. At the time, with Operation Car Wash taking shape and making history, hundreds packed classrooms hoping to take the course. Clearly they were not looking for hints about

how best to conceal illicit practices in relations with the government. Had that been the case, they would have sought out alternatives to attending dozens of weekly classes—given at night, by the way—at a business school. Students’ curiosity and interest in the topic showed that a lot of people were interested in learning how to lobby—ethically, legally, and effectively in Brazil.

The second part of this book is to some extent the outcome of those classes. In it, we present a unique method for conducting institutional relations. It is a method developed from years of experience and study. We don’t argue that ours is *the* method, but our purpose is to present it in a well-organized and systematic format so that interested persons can learn and, if they wish, apply it in their own work.

The set of chapters written by the team introduced above does not offer a unique response to the problems and challenges of institutional relations in Brazil. But it shows that lobbying is a function that can indeed have both a positive and a negative influence on public policy. Throughout our months of study in preparation for this book, we conducted opinion polls in the Brazilian Congress on the subject of lobbying regulation. The results show that there is support for the idea of regulating that activity, support that varies from month to month. Support, by the way, that is shared among parties both in power and in the opposition, on both the left and right. In February 2017, for example, 65% of congressmen supported the regulation of lobbying. In July 2016, that support was 57%. One constant in all the polls was that only an insignificant number of legislators said they did not know what they thought or did not want to respond to the questionnaires. In other words, the subject was always on their radar.

The bill on lobbying is ready to go to the floor of the Chamber of Deputies, but after almost two years it has not yet been voted on. Interestingly, organized groups are becoming more important and apparent in Brazilian politics. In 2019, with important economic reforms on the agenda, the number of organized groups that received authorization to work inside the Congress more than doubled compared with the years before, achieving

the largest number ever registered. Now there are at least 360 organizations officially registered in Congress to try to influence congressmen and congresswomen.

Organized groups were very influential during the recent debate over the Pension Reform. Some of them used techniques such as protests inside the Congress, making a lot of noise in the corridors of the Chamber of Deputies. Groups of teachers and police officers were among those who tried to block specific points of the legislation. At the same time, business organizations established offices in Brasilia and held meetings to try to push for the reform.

Companies active in the financial market system organized weekly field trips so Brazilian and international investors would talk face to face to deputies. There was also a clear dispute over the public opinion. A survey experiment conducted by JOTA with a sample of the Brazilian population showed that, for the first time since the 1990s, voters promised to punish not the politicians who voted in favor of the Pension Reform (as the common sense would expect in Brazil), but rather those who voted against it.

Influence groups are part of modern democracies. Moreover, the subject is being studied more and more frequently and growing in relevance. At the same time, the contemptuous and stereotypic image of the lobbyist is losing ground, at least in academia, among professionals and politicians.

In the United States, for example, a recently published book by political scientist Sarah Anzia (2014) received several awards for demonstrating the influence exerted by pressure groups—even on matters such as selection of the dates of city and state elections. The author shows that off-cycle elections in the states (held in years when there is no simultaneous election for president) usually attract fewer voters. For that very reason, interest groups such as municipal teachers' and civil servants' unions try to arrange for them be held in years other than presidential years. In such cases, the issue is purely mathematic. Since fewer people will be voting, the influence of those organized groups at the ballot box tends to be greater and they can exercise more control over those who are elected.

Another example is the well-known School of Political Parties of the University of California at Los Angeles (UCLA). A group of academics points out how pressure groups play an essential role in U.S. political parties. One reason is that ordinary voters do not pay much attention to the primaries. This is why those academics (Bawn et al., 2012) argue that interest groups, lobbyists, and activists are the lead actors in the nomination of candidates.

Looking at democracy also means looking at different interest groups. Studying the role of organized groups is becoming more and more important for democracies and public policies. This is what Christopher H. Achen and Larry M. Bartels, two of the most influential political scientists in the U.S., call “democracy for realists.” Studying the topic meticulously and without prejudice is the objective of this book. Lobbying is not synonymous with corruption, but neither is it synonymous with good public policy. The issue, as we intend to demonstrate, is that influence groups can have important tangible effects (positive or negative) on whatever governments are currently in power.

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Part 1: Articles





1



Lobbying in the U.S.:

The transparency of an imperfect system

PAULO SOTERO* AND ANYA C. PRUSA**

Alfred Mottur, senior partner in the consulting firm Brownstein Hyatt Farber Schreck, one of Washington’s lobbying powerhouses, raised US \$1 million for the presidential campaign of former Secretary of State Hillary Clinton in 2016, and he was sure that she would be elected the first woman president of the United States. Donald Trump’s surprising victory in the November 8 election was an enormous personal disappointment to Mottur. Professionally, though, the new political landscape did not affect the lobbyist’s mood. His company had people in both the Democratic and Republican campaigns. Some of the partners worked on the Trump transition team. With a single party—the Republican Party—in control of the executive and legislative branches for the first time in decades, Mottur told *Newsweek* that his company would only have to “switch [its] marketing emphasis” to do well.¹ The title of that magazine article summarizes the expectations of the field’s professionals: “Why President Trump is a Godsend for Lobbyists.”

The lobbyist’s shrewd calculation is widely shared among the industry’s executives. Most work for firms that bill themselves as “bipartisan” to let current and future clients know that they have easy access to the

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two dominant parties in American politics. Trump's campaign promise to "drain the swamp" of incestuous relationships between influential politicians and powerful economic interests—and "end the cycle of corruption" in Washington—was never taken literally by lobbying professionals, and the composition of Trump's Cabinet and other nominations has only confirmed that view.

Obviously, lobbyists do not accept the assumption that they take part in illicit or illegal activity. They are aware that part of the price they pay to engage in this activity is that they serve as targets for attacks by both parties, especially during the run-up to elections, when blaming lobbyists for the country's political ills is a sport practiced with gusto. They also know that once their terms end, many politicians, including those who look down on lobbying activities, go through the revolving door that takes them to the other side of the power game, where they can become well-paid attorneys for the interests of large firms and associations representing influential sectors of industry, trade, services, trade unions and non-governmental organizations devoted to a variety of civic causes. In other words, a strong element of hypocrisy underlies any criticism of lobbying.

Hypocrisy in criticism of lobbying

There is also hypocrisy and demagoguery in official acts adopted for the apparent purpose of prohibiting the activity. One of the first executive orders signed by President Donald Trump renewed and even expanded the restrictions on lobbying issued by his predecessor, President Barack Obama, a Democrat. Since January 2017, occupants of positions of trust in the new administration are prohibited from lobbying at federal agencies for five years after leaving the government. The previous prohibition of two years was more than doubled. But it is unlikely that the restriction will in any way inhibit the resurgence of the "advocacy industry" in the Trump era, as envisioned by former Republican Senate Majority Leader

Chester Trent Lott, a Mississippi politician who today is an influential lobbyist in Washington.

The Lott case is emblematic. After more than 30 years serving in Congress as both a representative and a senator, he resigned from office in 2007 to escape the two-year anti-lobbying cooling-off period imposed on lawmakers by a law evocatively named the Honest Leadership and Open Government Act approved that same year. The senator calculated the precise time to resign in order to benefit from the previous law, which had limited the cooling-off period to one year. In 2008, then out of Congress, Lott and former Senator John Breaux, a Louisiana Democrat, became partners in the Breaux-Lott Leadership Group, a strategic consulting firm, which operates under the umbrella of Squire Patton Boggs, one of the largest in the field. A Freemason and singer in an *a cappella* group in his free time, Lott has since become one of the most active lobbyists in Washington. He gained notoriety for his new profession in 2012, when he began lobbying for the U.S. to ratify the Law of the Sea Treaty, which he had vehemently opposed as Republican leader of the Senate.

The expectation for lobbying in the Trump era is that the trend predicted by Lott's example will be confirmed. Instead of limiting the activity, the administrative measures announced by the Trump White House will likely go unheeded and the country will see the end of the lean years the industry had witnessed during the Obama administration. It should be made clear that the lobbying industry's drop in revenues during the eight years of Democratic-led government was less a result of the administration's restrictions imposed on the industry's activities in Washington than on the severe political gridlock caused by irreconcilable differences between the Democratic White House and a Republican Congress intent on blocking the president's initiatives. When politics is hampered, there is less room for lobbying. That is why a caveat is needed with regard to the rosy outlook on lobbying in the Trump era. In less than six months in power, the government of the new Republican president has ground to

a halt: in place of advancing his legislative agenda, Trump has alienated support among conservatives and mobilized his opponents with erratic initiatives that reflect his lack of preparation for carrying out the program of government that led him to power. It cannot be ruled out, for example, that the Republicans may lose control of the House and Senate in congressional elections in November 2018, which would only maintain polarization and political paralysis in Washington. In that scenario, lobbying could be difficult.

Evidence of the negative effect of political gridlock on the industry is in the numbers. In 2016, earnings by firms recognized as part of the so-called “advocacy industry,” fell for the third year in a row, to US\$3.12 billion. The number of contracts was the lowest seen since the year 2000. Similarly, the contingent of registered lobbyists qualified to operate at the federal level continued to shrink, totaling 11,143 in 2016 compared to 14,822 lobbyists in 2007. The drop is also illustrated by the cancellation or non-renewal of the lobbyist registrations required by law. The number of registrations dropped from 13,367 when Obama took office to 11,509 by the end of his eight-year administration.²

None of this means that less lobbying is taking place in Washington compared to previous years, however. As a recent example, in the wake of the scandal caused by Russia’s alleged surreptitious interference in the 2016 presidential campaign on behalf of Trump, three Senators—Republican John McCain and Democrats Amy Klobuchar and Mark Warner—announced a bill to mandate the disclosure of the identity of anyone who purchases online political advertising, such as on Google or Facebook. The two companies, overwhelmingly powerful due to the reach of their social networking technology and their financial stature, immediately responded by mobilizing their counterparts in the tech industry in a million-dollar lobbying campaign aimed at preserving the exemption for political activity conducted on the internet from decades

2 Eilperin (2015).

of regulations for political ads on television, radio and in the press. The mechanism, known as “internet exemption,” derives from a 2006 interpretation by the Federal Elections Commission, the U.S. agency that regulates campaign financing, according to which the internet is “a unique and evolving mode of mass communication and political speech that is distinct from other media in a manner that warrants a restrained regulatory approach.”³

A crucial test to determine whether lobbying will be able to shape the country’s political rules, the fight is seen as a possible game changer for regulating web content. It will inevitably be influenced by the conclusions of the criminal investigation into Russian interference being carried out by Special Prosecutor Robert Mueller, a highly respected former director of the Federal Bureau of Investigation (FBI). Ironically, one of the leaders in lobbying to maintain the status quo on the internet is Marc E. Elias, senior legal advisor on the presidential campaign of Democrat Hillary Clinton, who lost the election to Trump.

Yet the evidence that lobbying activity is continuing in full force is not reflected in the official figures, which, as mentioned previously, have declined in recent years. Changes introduced to federal regulations on lobbying in the last decade are, in part, responsible for the decline in the number of registered lobbyists and spending on lobbying in Washington. Under the Lobbying Disclosure Act (LDA) of 1995, which regulates lobbying in the legislative and executive branches of the federal government, lobbyists are required to register themselves, their clients and their activities, based on the principle that the public has the right to know who is trying to influence the government.

In practice, however, there are loopholes or legal gaps that allow the influence-peddlers to avoid the label “lobbyist.” Former Senate Majority Leader Tom Daschle, co-founder of DLA Piper, was perhaps the most famous recent case of a lobbyist who presents himself as an “advisor”

3 Vogel and Kang (2017).

to business corporations and who, as a business consultant, engages in facilitating connections between government officials and the private sector—taking care to maintain these lobbying activities below the 20% limit of the total reported.⁴ Many analysts—including American University professor James Thurber, an expert on lobbying in Congress—argues that these loopholes, combined with increasingly more onerous restrictions (such as the extension of the cooling-off period between government work and lobbying to five years, under the Trump administration), has hindered registration and has done little to reduce the practice of lobbying in practical terms.⁵ Revealingly, Daschle decided to register as a lobbyist in 2016, only after having decided he was unlikely to return to government service.⁶

Nevertheless, as Washington became less effective at passing laws due to growing political gridlock, there was also some movement in the direction of lobbying at the state and municipal levels of government across the country. This trend is encouraged by the federal system of government in the U.S., whereby the states are responsible for enacting policies in areas not explicitly reserved by the U.S. Constitution for the government in Washington. Decisions by state governments may have

4 The Lobbying Disclosure Act of 1995 (LDA), amended in 2007, requires that all lobbyists register with the federal government. Under this Act, a lobbyist is classified as someone (1) who is employed or retained by a client in exchange for compensation, financial or otherwise; (2) who has more than one contract for lobbying services; and (3) who devotes at least 20% of his or her service time to that client in a three-month period.

Lobbying firms must register each client separately (unless total income for a particular client is below a certain amount, which in 2017 was \$3,000 per quarter). Organizations with internal lobbyists are also required to register. Lobbyists need to file quarterly reports that disclose all their lobbying activities, including donations made to political campaigns and income and expenditures for each client. One important note: any individual who represents a foreign political or semi-political entity (such as a foreign government or a state-owned company) before the U.S. government is subject instead to the rules of disclosure under the Foreign Agents Registration Act, or FARA.

5 Thurber (2015).

6 Serino (2016).

a significant impact on companies and other entities on a wide range of topics, from regulating health insurance to environmental and educational standards. According to a study conducted by the Center for Public Integrity, from 2010 to 2015, the number of entities that hired lobbyists in the states has grown more than 10%.⁷ Nearly all the large lobbying firms are active not only in Washington, but in state legislatures and governor's offices as well, and many are expanding their teams of influencers at the state level. McGuireWoods LLP, one of the 20 largest lobbying firms, reported that in 2016 most of its earnings came from lobbying at the state and municipal levels. The legal requirements for transparency and disclosure vary significantly between states, which makes comparison difficult.⁸ But the sums involved are certainly substantial. From 2013 to 2014, in the 28 states that make their data public, lobbyists reported spending US\$ 2.2 billion.⁹

Lobbying is clearly a well-established part of the American political system, and the expectation is that it will continue to be so for many years to come. A unified Republican government in control of the White House and Congress marks a "once-in-a-generation opportunity to advance your agenda," said Matt Johnson, a Republican lobbyist at the prominent and bipartisan Podesta Group.¹⁰ The firm was established and led by Tony Podesta, brother of John Podesta, who was chief of staff for President Bill Clinton and presidential campaign director for Hillary Clinton. To

7 Whyte and Wieder (2016).

8 Despite their agreement on the definitions of what lobbying and lobbyists are, state regulations regarding the activity vary widely, a fact that complicates attempts to compare federal activity and state activity. Even within a single state, restrictions may vary between the state senate and lower chamber, or between the executive branch and the judicial branch, since individual government entities pass their own regulations to support state decrees. In Florida, for example, recent changes in State Assembly rules prohibit Assembly members from taking private flights with lobbyists or communicating with lobbyists during legislative sessions or committee meetings (even by email or text). However, Florida State Senate members may do both without any repercussions.

9 Wilson (2011).

10 Schoten (2017).

industry experts in Washington, there is nothing strange about a Republican like Johnson working for a firm headed by the brother of a leading Democrat. After Trump's victory, companies and lobbying firms began to seek out a third type of lobbyist: people with access to the president. As bizarre as this may sound to Brazilian ears, this arrangement is possible because the activity is viewed as indispensable in a country where the art of influencing the government is accepted as normal.

A bipartisan trade, lobbying was founded with the Republic

Lobbying is in the nation's DNA: it arose at the time of the Republic and was legitimized by the Constitution. It is an activity guaranteed by principles written into the first 10 Amendments to the U.S. Constitution, known as the Bill of Rights, which took effect March 4, 1789—the same year as the *Inconfidência Mineira* [Minas Gerais Conspiracy] and the French Revolution. Originating in English law, “the right to petition the government for a redress of grievances” is the twin brother of the other fundamental freedoms enshrined in the First Amendment, which are part of the country's national identity: freedom of religion, freedom of speech, freedom of the press and freedom to peaceably assemble. The First Amendment expressly prohibits Congress from curtailing these freedoms.

A branch of the same leafy tree that protects the rights of its citizens, the right to engage in lobbying has found its modern expression in the actions of citizen groups and associations formed for the purpose of influencing the drafting and implementation of laws and rules that govern life in a democratic society, as well as the allocation of public resources required to move the machinery of government. These actions are carried out within the process of the institutionalization of civil rights, which is a distinguishing characteristic of the historical experience on which American democracy is founded. The first 14 amendments to the U.S. Constitution, together with case law derived from Supreme Court

decisions in cases in which the rights envisaged in these amendments were invoked, constitute a unique set of social norms. They ensured the establishment of an environment conducive to the country's institutional development as a democratic nation, built from the ground up, on the basis of the shared experiences of its citizens.

Trump's arrival has increased the risks this particular set of norms faces in the era of globalization, where information technologies are changing the role of traditional forms of political mediation, such as the elected representatives of the people. The new U.S. leader probably never read the Constitution to which he swore loyalty when he took office, and he has already had several of his executive decisions held by the courts to be unconstitutional. The fact that Trump ignores the Constitution and its laws and is not guided by strong convictions regarding the virtues of democracy is a source of concern, especially for those dedicated to the legitimate occupation of influencing the process of drafting and implementing laws and regulations.¹¹

The fear is not only on the part of those who sympathize with the president. It is palpable, too, among lobbying professionals involved in promoting causes seen as benign or virtuous by a significant part of society, such as the defense of citizens' rights to an ecologically sustainable economy, safe food, safe medicines, civilized coexistence in urban spaces, and to the enjoyment of natural spaces whose existence and preservation are essential elements for their quality of life.

On a broader scale, lobbying activities are a fundamental part of the production and dissemination of information in society. They are inherent to the country's governance, adding information and perspectives generated by those interested in the decisions as well as their application to real life. With this focus, lobbying is the gateway for society's groups to engage in advocacy on behalf of a variety of causes, including those that the authors of this chapter consider to be important causes, such as

11 Ackley (2017).

the defense of human rights established in the United Nations Charter and of a plural and competitive democracy. The activity of lobbying helps organize these groups and gives them a voice.

Seen from the perspective of the broader interests of society, the lobbying experience in the U.S. can and indeed must be used as a paradigm for the discussion about institutionalizing the activity in Brazil and its neighboring countries, where it has gained particular relevance and space in recent years as a result of the impact of corruption scandals fed by the exacerbation of the ancient practice by Latin American elites that mixes private and public interests. Empowered, in the Brazilian case, by having done away with the impunity once guaranteed to those who occupy positions of influence and their connections in the political and economic spheres, the debate about the institutionalization of lobbying is forcing society to define competencies and responsibilities in order to lend transparency to the activity.

Like any other right, the right of citizens to form interest groups to influence the decisions of government is not absolute. It was regulated over the last century by laws adopted by the U.S. Congress beginning in 1938. The legal standards that govern the actions of lobbyists reflect the size and growing complexity of the government structure and the scope attained by the activity over the past half-century. During this period, it has become a service industry sector with its own identity.

A less than stellar image

“Lobbying is both a dynamic big business and a grossly misunderstood practice in American culture today,” summarizes Gary Andres in the introduction to his book, *Lobbying Reconsidered: Under the Influence*.¹²

12 Popular perception of the industry is, in fact, extremely negative. And it is not just today. Steve Billet, director of the master’s program in Legislative Affairs at the George Washington University, where he conducts a seminar on lobbying, knows that the problem is as old as the activity itself. In 2012, he recalled for the *Washington Post* a memorable episode, 30 years ago, when he was a registered lobbyist, just starting out at AT&T

Andres is vice-president for research and policy at Dutko Worldwide, one of the major firms in the industry, as well as a fellow at the Center for Congressional and Presidential Studies at American University. Lobbying “plays an increasingly important role in public policymaking and electoral politics in the United States, yet it remains a mysterious and murky enterprise in the minds of most citizens,” he writes. For Andres, the industry’s image problem, an easy target for politicians from the two major parties, especially during election season, “results from poor definitions of the practice and a variety of flawed assumptions concerning their impact on public policy.”¹³ A simple change in the activity’s description elucidates the argument.

Although it is an occupation that is perfectly legal, indispensable and even desirable as it publicly exposes the positions defended by the various interested parties and increases the transparency of the debate, being a “lobbyist” definitely does not look good. It is perfectly acceptable to be a *stakeholder*: someone, in other words, who is directly involved and interested in the outcome of debates and negotiations about public policies, whether in the field of health, energy, the environment or human rights. The *stakeholder* is viewed in a generally more favorable light, because it includes the notion of political and social engagement in defending or rejecting rules or laws that affect the life of the community.

The current debate concerning the role of lobbying has been reinforced in recent years by a growing interest in studying and understanding its impact in a more nuanced way. Washington has had a National Institute for Lobbying and Ethics since 2016, and before that it had a Lobbying Institute. But the latter only flourished after being renamed the Public Affairs and Advocacy Institute and finding a home at American University. It was one of the academic programs introduced in university curricula to promote the study of lobbying and the training of lobbyists. There are

Telephone. On his way to work, he pulled up behind a car and noticed the bumper sticker: “Don’t tell my mother I’m a lobbyist. She thinks I play piano in a whorehouse.”

hundreds of books about the advocacy industry. Those that are most critical of it are more successful because they correspond to popular perception. That is why scholars of lobbying are not highly looked upon by traditional academics in political science. Even so, growing interest in the subject on the part of new generations has paved the way for the practice of lobbying to become the topic of seminars and university courses.

One of these sought-after courses is “Lobbying and Government Relations,” offered to master’s degree students in the McCourt School of Public Policy at Georgetown University, a prestigious Jesuit institution, in Washington, DC. The eight-week program is given by Scott Fleming, associate vice-president in charge of federal relations. Like most professors of these courses, Fleming is not a typical academic. He learned to lobby by lobbying. He teaches the skills he acquired and later systematized over the course of his career as a congressional and presidential advisor in Washington, as well as in the Legislature and Governor’s Office of his home state of Kansas.

Besides American and Georgetown Universities, Harvard, Princeton and the George Washington Universities also offer courses in lobbying, and Dartmouth is currently setting up a program. The common denominator among these courses is the study of lobbying as an activity that is, and will forever be, a part of the country’s political scenario, and that is why it has to be studied and well-understood: so that it can be conducted responsibly.

All of the courses teach that the cornerstone of the laws and rules that govern lobbying in the U.S. were drawn up under the banner of transparency. The assumption is that, since it is a legal activity guaranteed by the Constitution and motivated by the constant quest for influence and participation on the part of companies, business and professional associations, civic and religious groups and political factions, it must be carried out in the open.

Transparency, however, is far from a guarantee that economic power will not influence government decisions. A report on the lobbying industry published in April 2015 by *The Atlantic*, titled, “How Corporate Lobbying Conquered American Democracy,” showed that, in 2014, industry activity generated US\$2.6 billion—and, of the 100 organizations that spend the most on lobbying, 95 consistently represent business.¹⁴

That sum was US\$600 million over the combined amount of federal funds approved by Congress and allocated in the budget that year to sustain the operations of the House of Representatives (US\$1.18 billion) and the Senate (US\$860 million). Corporate lobbying has been growing since the early part of the last decade when payments to lobbyists began to exceed the operating budget of Congress.

These numbers, already high, likely underestimate the amount of lobbying that goes on in Washington. Indeed, one of the more significant concerns is the growth of the so-called “shadow lobbyist.”¹⁵ No one is certain of the actual size of this unreported segment of the lobbying industry. The Government Affairs Yellow Book lists more than 23,000 “government affairs professionals” in Washington.¹⁶ In a study written for the American Bar Association Task Force on Lobby Reform, James Thurber posited that the true number of lobbyists in the U.S. capital could be closer to 100,000, with a total of more than US\$9 billion in spending, or nearly triple the US\$3.21 billion reported. Lee Drutman, a lobbying expert at the Sunlight Foundation—an organization dedicated to making government more transparent and accountable to the public—estimated in 2016 that the lobbying industry spent at least double what

14 Drutman (2015a).

15 Watson (2016).

16 Government Affairs Yellow Book. Available at: <<http://www.leadershipdirectories.com/Products/LeadershipinPrint/Business/GovernmentAffairsYellowBook>>. Accessed: 24 August 2017.

was officially reported under the LDA.¹⁷ Tellingly, a 2012 report by the Center for Responsive Politics found that “more than 46% of the active 2011 lobbyists who did not report any activity in 2012 are still working for the same employers for whom they lobbied in 2011—supporting the theory that many previously registered lobbyists are not meeting the technical requirement to report or have altered their activities just enough to escape filing.”¹⁸

It is important to note that the Lobbying Disclosure Act of 1995 represented an important step forward in regulating lobbying in the United States. According to a 1991 study by the General Accounting Office (GAO), over 94% of registered lobbyists did not submit the necessary paperwork.¹⁹ The LDA clarified the definition of lobbying and the requirements for disclosing the activity, simplifying the federal system that regulates lobbying. The problem is that the 20% limit—which requires that lobbyists register if they spend at least 20% of their time on lobbying activities—is relatively easy to circumvent, as the case of Tom Daschle illustrates. Daschle, who argued for years that he was not a lobbyist, despite working on prominent political issues and making connections on behalf of clients, told the *New York Times* in 2009: “I’m very proud of the fact that I’ve drawn a very hard line with regard to advocacy on the Hill. I’ve not made a call nor made a visit since I left the Senate on behalf of a client. And I don’t have any expectation that I’ll do that in the future.”²⁰

Former Speaker of the House Newt Gingrich is another example: although Gingrich had received millions for his advocacy work on behalf of

17 Fang (2014a).

18 Auble (2013).

19 Watson (2016).

20 Calmes (2009).

conservative policies and facilitated access to influential lawmakers, he never registered as a lobbyist.²¹

More recent reform efforts have had the adverse effect of promoting the use of legal loopholes, most likely contributing to the increase in shadow lobbying. The 2007 Honest Leadership and Open Government Act, for example, extended the cooling-off period, or the number of years former lawmakers or senior legislative officials needed to wait before becoming lobbyists, and strengthened the disclosure requirements and corresponding penalties. The Obama administration continued the trend in 2009 when it implemented a two-year ban on former lobbyists working for the government on topics for which they had lobbied. At the start of his mandate, President Trump increased the ban to five years. On paper, these measures seem positive since they are aimed at improving transparency and limiting inappropriate relationships between lobbyists and members of the government. In practice, however, most analysts agree that lobbyists are choosing to not register in order to avoid having to comply with the new restrictions.

Given the abuse of this legal loophole, a proposal currently in vogue involves completely eliminating the 20% limit: anyone who engages in lobbying should be required to register as a lobbyist, regardless of the amount of time devoted to the activity and the compensation received. The American Bar Association Task Force on Lobby Reform recommended an amendment to the LDA in 2011, mandating the disclosure of all “lobbying support activities,” including the work of strategists, pollsters, and consultants paid in connection with lobbying campaigns.²²

A more fundamental question, however, is how to enforce the law. Federal resources allocated to this task are limited. Perhaps that is why

21 Eggen (2011).

22 Campaign Legal Center (2011).

the U.S. Department of Justice has never prosecuted anyone for failing to register as a lobbyist under the LDA.²³ Instead, according to journalist Lee Fang, who investigated the topic in 2014, the Department tends to prosecute only those lobbyists who registered but had “failed to update a quarterly statement or fallen delinquent, and the House clerk or Senate secretary has spotted the error.”²⁴ Similarly, government audits for LDA compliance tend to examine only registered lobbyists instead of taking a broader look at all government-related activities. Lobbyists therefore have few reasons to register and they continue to avoid doing so.

Another concern that has become inextricably tied to lobbying is the increase in money intended for political campaign financing. Not included in calculating the figures specified above are the billions that propel political campaigns and feed the perception that corruption is institutionalized today in American politics. This gained particular exposure after the Supreme Court ruled in January 2010 in the case of *Citizens United v. Federal Elections Committee (FEC)*, by a vote of 5 to 4, that companies have the right to the same freedom of speech as individuals. Based on this controversial interpretation, the U.S. Supreme Court declared unconstitutional a 2002 law authored by Arizona Republican Senator John McCain and Wisconsin Democrat Russ Feingold, which had restricted “soft money” contributions to “political action committees” that finance campaigns along with the limited contributions individual voters are legally allowed to make to the candidates of their choice.

Although donations to individual political campaigns continue to have a cap (US\$2,700 per donor per candidate in 2016), the *Citizens United* decision opened the door to unlimited donations to the so-called “SuperPACs” and to certain political groups authorized to use the money to support a particular campaign or candidate—as long as these remained officially independent from the beneficiary’s election campaign, an obvi-

23 Watson (2016).

24 Fang (2014b).

ously difficult limit to establish with any clarity. In practice, the Sunlight Foundation notes that the FEC rarely penalizes SuperPACs or political campaigns for coordinating their activities. This allows businesses to give huge sums in support of political advertising for or against different candidates and causes—essentially allowing this money to have the effect of upstaging the public and excluding its voice. This is why Citizens United remains controversial, even among lobbyists. Many complain about the growing pressure to raise funds for congressional campaigns following the Supreme Court’s 2010 decision.²⁵ In 2011, the American Bar Association approved a resolution recommending that lobbyists be prohibited from engaging in fundraising for political campaigns.

Despite all of this, there is still a genuine role for lobbying in the U.S. system of governance. Not only is lobbying guaranteed by the constitutional right to petition the government, but it also serves as an important channel of communication for lawmakers to become informed about the concerns of those whom they represent in Congress. Rather than simply “buying votes” through campaign donations, lobbyists invest significant time and resources building relationships with legislative advisors and conducting research in order to argue convincingly for this or that cause. Congressional staff offices frequently ask for specific statistics from their constituencies to assess the potential impact that bills may have on those they represent before deciding on how to vote. Lawmakers and their advisors are chronically overworked and often rely on lobbyists to provide them with necessary information and advice regarding the issue at hand, which generally involves complex questions and obscure public policy details. In addition to that, lobbying covers a broad range of interest groups—not only the interests of giant corporations, but also the voices of non-profit entities and citizen organizations concerned about human rights and environmental protection, as well as joint efforts with

25 Based on conversations the authors had with several Washington lobbyists and statements made by people like Tony Podesta, who said: “It’s unfortunate that we have the decision Citizens United, but as long as that’s the law of the land, then Democrats and Republicans are both active in these kinds of endeavors.” Blumenthal and Grim (2015).

local communities to encourage voters to contact their respective congressional representatives directly, like the campaign that nearly derailed the Senate confirmation of Betsy DeVos as Secretary of Education in the Trump administration.²⁶

This process has been part of the U.S. political system since its founding as a Republic. Problems emerge when the system allows the interests of those who have more money to stifle or exclude the interests of the majority of citizens, or when the lack of transparency conceals connections between special interests and the legislation at stake. The rapid growth of the lobbying industry in the last four decades—the official or reported activity as well as the hidden—has become an increasingly more complicated and expensive political game. The result is that special interests with the greatest number of lobbyists have an advantage in the arena of developing and adopting public policy. In this environment, it is no surprise that Americans look to Washington with contempt.

In 2016, the idea that corruption is institutionalized in American politics and requires systemic change drove the presidential campaign of Independent Senator Bernie Sanders, a social democrat from the state of Vermont who ran for the Democratic Party nomination against Hillary Clinton, and the victorious Trump, a real estate mogul and reality television star who became president of the most powerful country on earth with no previous experience in government or politics.

Seen—whether justifiably or not—as one of the ingredients in the increasing social inequality in the United States, the influence of money in politics feeds middle class frustration with regard to politicians and traditional parties. The feeling is that the institutions operate only to reproduce a system that no longer corresponds to the interests of the

26 For an example of lobbying on behalf of non-profit organizations, see: Stephanz (2014).

majority.

In newer democracies, such as those in Brazil and Latin America, that feeling has always existed, and lobbying is viewed as a suspicious and illegitimate activity. Efforts to promote its regulation must therefore avoid naive assumptions about the reality of the industry in the United States. At the same time, they should incorporate the American approach to the attitude that views lobbying as an activity that is not only indispensable, but even desirable, if conducted in the open as the authors of this chapter recommend.²⁷

Building a legal framework that embraces that vision will inevitably enjoy acceptance that the activity of lobbying and the occupation of lobbyist are based on legitimate principles and practices that can be taught, studied and refined.²⁸

27 Sotero (2016).

28 Goldman (2012).

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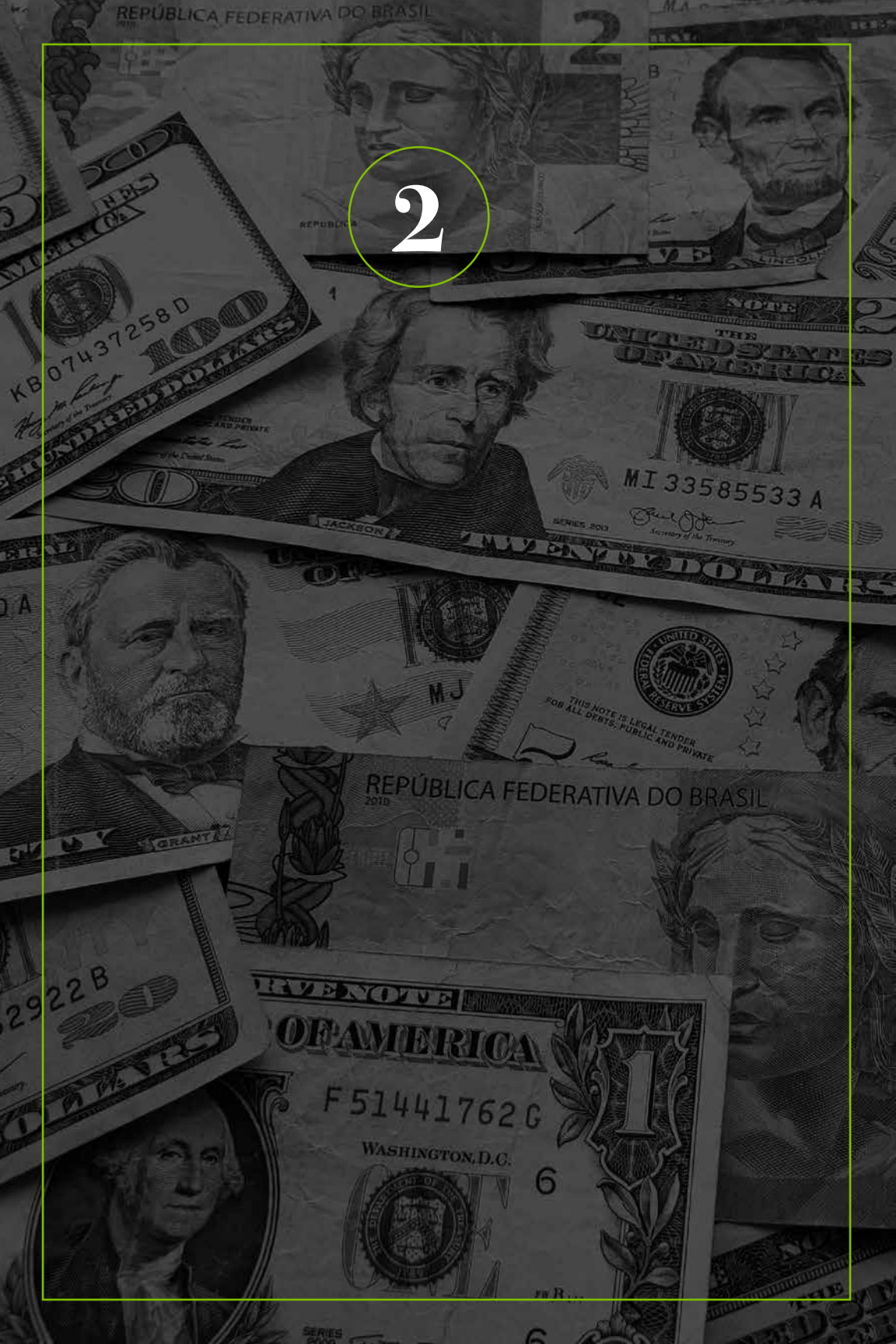
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2



Regulation of lobbying activities:

A comparative analysis of Latin America, Brazil and the United States

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Introduction

Relations between government and interest groups perpetually attract a great deal of attention, from both professionals and the community at large. This focus stems from a peculiar situation that straddles the boundaries between right and wrong, lawful and unlawful, fair and unfair. The question we pose in this chapter, however, is a much broader one: how are these relations influenced by cultural and legal/constitutional aspects?

Through an analysis of these two factors and the ways in which they influence relations between government and interest groups, we will endeavor to present a comparative study of lobbying in Latin America, Brazil and the United States, highlighting the cultural and constitutional differences in which their respective regulatory provisions are rooted.

With that objective in mind, we will begin with an examination of the origins of lobbying and discuss a more modern term, *government relations*, as well as the meanings of the terms *interest group* and *pressure group*.

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These important definitions will set the parameters that will be used throughout the chapter.

Next, we will explore an important concept that, to some degree, serves as a backdrop to the entire discussion: the question of whether or not

transparency is vital in the entire context of regulation, and to what degree cultural aspects influence the development and implementation of transparency measures. The fact is that in democratic countries, the principal objective of transparency in government activities and public accounts is supposed to be to make existing relations and the channeling of public resources clearer and more accessible to citizens. But how has the implementation of transparency measures resulted in effective rules governing public-private relations?

In the wake of recent events in Brazil, transparency has become a fundamental concern. We believe that the new Brazil, which will rise from the ruins of the debacle unfolding every day in the innumerable repercussions of Operation Car Wash, will demand a more responsible way to defend interests. In our view, there will be no room in this new world for irresponsible practices carried out in the shadows.

In that context, we will also discuss the need for specific regulations for lobbying activities in Brazil. And we will consider at what point such regulations might also kindle a reinvigoration of public-private relations, such that people place greater value on fair and open democratic participation in the legislative process and public policy-making, and on strengthening the democratic institutions responsible for fighting corruption in our country.

This chapter is assuredly not intended to present an exhaustive discussion of the issue. We hope the analysis proposed here can contribute to the debate, especially at this crucial and sensitive moment for Brazil. It is oftentimes important to understand the past, the road already traveled, so that we can envision a path towards the future.

The origins of lobbying

Despite much discussion focused on lobbying activity itself and on ethical boundaries, the practice is actually not new to modern society. Although the term *lobby*, as it is used today, originally meant *anteroom or entrance hall* and referred to an intermediate room at the British Parliament for people seeking to influence policies or convince officials to approve or reject measures of interest to them,¹ some writers say that the first mention of such activity appeared in the Bible.

According to Farhat (2007), the first record is believed to have appeared in the biblical episode of Sodom and Gomorrah. In this well-known episode, the devastation in those cities caused the Lord to order Abraham to leave his home because He was going to destroy the two cities. Taking a bit of poetic license, the author says, "Abraham's response would have been, more or less, 'Alright. If that is Your decision, I will obey. But could we talk for a moment?' Abraham then sought to negotiate with the Lord, so that He might save the inhabitants of those cities. There were more than 50 righteous men living there, and it would not be right to punish them all through the fault of a few misguided, corrupt or unfaithful citizens."

Although Abraham was unable to change the fate of the two cities, we can indeed say that this was the first record of lobbying activity.²

Literature from more recent times defines lobbying as "the process whereby representatives of interest groups, acting as intermediaries, make legislators or decision-makers aware of the wishes of their groups. Lobbying is, consequently and above all, the transmission of messages from a pressure group to decision-makers through special representatives."³

1 Pensando o Direito Series (2009).

2 Schimidt (2008).

3 Bobbio et al. (2004, p. 563).

However, due to a combination of the average person's lack of awareness and distortions by its practitioners, lobbying has been the target of defamatory campaigns in the media. Not infrequently do we see the headlines of major newspapers reporting on corrupt acts that are the product of influence trafficking but regarded as lobbying.

For this reason, and also because of the increasing sophistication of lobbying activities in recent years, many people consider the best way to describe the actions of interested parties in the legislative and executive branches is to use the term *government relations*. This term, in fact, differs slightly from *lobbying*. *Government relations* is purported to be an umbrella term that includes not only contact with legislators (lobbying in the strict sense), but also a more complex activity involving analysis of risks and opportunities and of economic, legal/regulatory and social scenarios. Communication techniques are introduced into this activity with the goal of convincing decision-makers.⁴ For purposes of this chapter, we will use the term *lobbying* as a synonym for government relations, even though, in our opinion, the latter term better describes the complexity of activities undertaken to defend interests.

Thus, it can be said that lobbying is a fact of public life in democratic countries,⁵ and, when ethical boundaries and good conduct are observed, it has the potential to promote democratic participation in the legislative process, provide decision-makers with valuable insights, and offer stakeholders an entry into public policy development and legislative implementation.

The actions of a few practitioners, however, often distort the true meaning of lobbying activity, rendering it opaque and clouding its integrity. This can give rise to undue influence, unfair competition, partialities and public policies targeted to the interests of certain economic groups. For these reasons, there is a need for transparency measures that will ultimately ensure an enduring democracy.

4 Galvão (2016, p. 81–85).

5 OECD (2015).

Interest groups versus pressure groups

As mentioned earlier, lobbying practitioners have used increasingly sophisticated practices and techniques over the years. One way of interfacing with public policy decision-makers is through groups.

The process by which groups form, implement and evaluate public policies, and their efforts to define government agendas and interact with politicians have been studied by academics and scholars in the fields of policy and law.

For educational purposes, the literature has divided these groups into *interest groups* and *pressure groups*. In the opinion of Galvão (2016), an interest group is an organized assemblage of people whose primary focus is on collective action, and who represent objectives compatible not only with the purpose of the group, if it is very specific, but also with the interests of society as a whole. Interest groups do not seek to influence public policy or even to participate in the legislative process. Pressure groups are an organized assemblage of people with specific shared interests who seek to influence public policy. In other words, their primary focus is on direct input with decision-makers. In this chapter, both types of groups will be referred to as interest groups.

Interest groups emerged largely as a result of the vast array of societal rights and needs, and thus the number of groups, or indeed issues, is unlimited. There will be as many interest groups as there are contradictions, general or individual interests, and societal demands that derive from the complex web of human relations. Indeed, whenever two or more people come together and have or discuss commonly-shared interests in a certain area or category, and then share these interests through public-private-sector communications, an interest group is born.

It is important to mention that interest groups operate through associations whose purposes are similar or equivalent to their own interests. These associations are nothing more than the embodiment of a collec-

tivity seeking an outcome or a law backed by the public policies they wish to be adopted by the government. In most cases, interest groups operate openly in debates involving society, with the true intention of demonstrating their rights and rationale. This type of activity is one of the most transparent forms of lobbying, combining social appeal with public exposure of its members and interests to the entire society.

But in these activities, too, we can find distortion, and this creates a need to implement transparency measures that will at least diminish, if not completely prevent, the emergence of attitudes that contaminate the entire democratic mechanism of participation in the legislative process. Until recently in Brazil, these interest groups—whose interests often lie in such business-related fields as industry, trade, infrastructure or services—raised funds to finance the campaigns of political candidates. That modus operandi opened the way for un-republican relations to become established, and created a virtual form of bargaining aimed at subsequent compensation in the form of help with legislative issues.⁶

Transparency: importance, evolution and development

As we have seen above, transparency plays an extremely important role in lobbying activities, and therefore we need to define the term at the outset. According to the Organization for Economic Cooperation and Development (OECD), transparency is a vital factor in strengthening the relations between government and citizens. This can be achieved through information that is complete, objective, reliable, relevant, and easy to obtain and understand.⁷

6 Farhat (2007).

7 OECD (2015).

In the context of lobbying activities, efforts to increase transparency and to include it in public policy development will ensure that the principal stakeholders in this democratic process have free access to up-to-date, public and relevant information about the decision-making process.

In regard to the countries and the region we examine in this chapter, however, we can perceive a certain imbalance in the development of transparency measures. As will see, issues surrounding cultural and societal development do indeed influence whether or not such measures are implemented.

Latin America

From a historical perspective, after 30 years of democratic transition and a number of attempts at political transparency, corruption still exists in the majority of Latin American countries. It is worth remembering that, during most of its recent history, Latin America has lived under authoritarian rule, in which public decisions were often created “in the shadows” by ministries and legislatures, to the benefit of a small minority. The recent development of participatory political systems has brought some transparency into the process of creating public policies and laws.

As democracy becomes established in Latin America, the expectation is that there will be more transparency and that we will see fewer corruption scandals. Increased awareness among citizens regarding the importance of transparency measures has resulted in broad-based political support for regulation of lobbying and for transparency in lobbyists’ policy agendas.⁸

Among the Latin American countries, Chile has one of the lowest levels of corruption, according to Transparency International,⁹ which ranked it 24th of 180 countries studied.

8 *Journal of Public Affairs* (2014).

9 Transparency International (2016).

This strong showing is the result of the government's efforts to improve governance and transparency in public life. In November 2006, the government of then-President Michelle Bachelet launched a set of measures called the Agenda for Integrity, Transparency, Efficiency and Modernization of the State. The measures included restrictions on the "revolving door" practices of government officials, as well as a prohibition on corporate contributions. In addition, the dissemination of information by the government became law in mid-2008.¹⁰

The same scenario, however, is not observed in other countries in the region, such as Paraguay and Bolivia.

Paraguay is one of the least economically and politically developed countries in Latin America. In 2012, it ranked 150th on Transparency International's Corruption Perceptions Index.

In addition to corruption, there is an observable lack of competitiveness between party systems, as well as election fraud, media restrictions, non-enforcement of human rights, militarism not yet divorced from politics, and minimal requirements for transparency in government. Paraguay has few prospects for change as it relates to transparency, since the country lacks players committed to changing that perception.¹¹

Bolivia, ranked 105th on the Transparency International index, has a highly fragmented society and has experienced a long period of political instability, which has prevented the development of strong political institutions. Although the government of President Evo Morales has a Ministry of Institutional Transparency and the Fight Against Corruption to address issues related to transparency and open government, those matters still create an impasse for the country.

10 Law No. 20.285 of August 2008. Available at: <<http://www.leychile.cl/Navegar?idNorma=276363>>. Accessed on: May 31, 2017.

11 *Journal of Public Affairs* (2014).

Brazil

Even within the context of Latin America and all that this implies from a historical perspective, as we saw earlier, beginning in the 2000s Brazil has been particularly successful in adopting transparency measures.

One of the first initiatives aimed at lending greater transparency to public-private relations was implemented in May 2002 in response to corruption scandals uncovered at the time. Presidential Decree No. 4.232/2002 provided for hearings and meetings between government representatives and those who represent private interests.

In 2012, another important measure was adopted. The Access to Information Act (Law No. 12.527/2011), in conjunction with the Anticorruption Act (Law No. 12.846/2013) and the Conflict of Interests Act (Law No. 12.813/2013), formed the legal framework underpinning transparency in Brazil. In addition, there are a number of initiatives before the Brazilian legislature that seek to improve transparency in the country's public accounts.

As noted earlier, Brazil has had success on this front. On September 9, 2015, according to a study released by the International Budget Partnership (IBP) in collaboration with the Institute of Social and Economic Studies (Inesc), the country ranked sixth among 102 countries examined. The study focused on progress in areas such as transparency and social participation in the channels that disseminate the budget of the Brazilian government, such as the portal of the Federal Budget, the Federal Budget Office's Virtual School, and the Citizens' Budget, among other platforms.

United States

In the United States, promotion of the public interest and transparency are the principal elements permeating all types of regulation.

Looking back through U.S. history, around 1938 there was already some concern at the federal level about regulating the pressure systems in the U.S., embodied by the Foreign Agents Registration Act (FARA). The law was instituted to prohibit agents of foreign governments from engaging in activities before the national Congress. The purpose of the FARA was to create sufficient transparency mechanisms for foreign practitioners so as to prevent problems related to sovereignty.

In fact, the regulation of lobbying did not occur until 1946, when the Federal Lobbying Regulation Act (FLRA) and the U. S. Administrative Procedure Act (APA) were passed. The objective of the FLRA was to introduce a system of records at the House of Representatives and the Senate that would ensure greater transparency and would apply to every individual who seeks to influence the Congress.

The APA established rules and procedures for regulating the decision-making process at the top offices of government agencies. By stipulating that government agencies could not implement a new policy without prior announcement of the intention behind it ensured greater transparency and citizen participation in the decision-making process.

It is important to note that the aforementioned U.S. laws regulated not only interest groups, but also the strategies they used with regard to the American political system itself. Consequently, what these laws created is more akin to a system for monitoring the publication and transparency of information than one that regulates lobbying activity per se.¹²

There has indeed been an observable ongoing evolution and refinement of U.S. rules on transparency, particularly those related to lobbying, seeking whenever possible to make them clearer and more accessible.¹³

12 Gozzetto (2012).

13 Rodrigues (2012, p. 92).

The present status of lobbying regulation

As we have discussed, the overall context in which transparency measures are implemented is directly tied to socio-cultural issues in each country. And as we will see, that factor has a direct impact on the development of clear-cut rules for lobbying practices, and even for disciplines connected to interest groups.

Latin America

The regulation of lobbying and other activities conducted through interest groups has not yet become firmly established in Latin America. To be precise, discussions about regulating lobbying activities in Latin America are known to occur in only a handful of countries, such as Argentina, Chile and Peru, but always discretely and on an isolated basis. Such discussions are limited to only a few laws that increase transparency between the public and private sectors. There is no record of any similar discussions in countries such as Paraguay or Bolivia.

Indeed, in Latin American political culture, lobbying is not valued as a part of democracy. Even a country like Chile, which exhibits a degree of development and engagement in implementing transparency measures, spent more than 10 years internally debating the need to regulate lobbying. The first bill to regulate such activities made it to the legislature in 2003, but it did not become law until 2014.¹⁴

The law that was passed in the Chilean Congress stipulates that professionals who lobby through interest groups must register when they schedule their first meeting with public officials. Persons thus listed in the database will have to meet requirements such as disclosing whom they represent and whether or not they are receiving any kind of remuneration for the business they conduct. Public officials, however, are the ones responsible for disclosing information on meetings, participants and the main issues that were discussed.

14 OECD (2014, p. 138).

To be sure, Chile's lack of progress on lobbying legislation in the past 10 years contrasted with the fact that other laws governing transparency and the integrity of public authorities did go into effect. These included laws that regulate the disclosure of personal assets and interests by public officials and that govern public information in Chile. Moreover, the country's constitutional reforms recognized transparency as one of the principles of the Chilean legal system, and this resulted in the creation of a Transparency Council in that country.¹⁵

A number of bills seeking to regulate other aspects of lobbying, still under discussion in Chile, are built upon three objectives. The first of these objectives creates an obligation to disclose to the public any information on lobbying activities that representatives of private interests conduct before public officials, regardless of the individual or institution doing the lobbying. The rationale here is that accessible information helps to prevent wrongdoing and strengthens social control over all interest groups. The second objective focuses on the stakeholders and seeks to offer them equal opportunity to present their comments to the authorities or to the regulatory agency and the decision-makers. And the third objective of the bills before the Chilean legislature focuses on the regulatory authority, with the intention of providing it with all available information so it can make decisions for the common good.¹⁶

Brazil

Brazil does not yet have law created specifically to regulate lobbying activities. Nevertheless, an analysis of the evolution of regulatory measures on the books reveals a legislative track record of attempts to formalize such practices in the Brazilian Congress.

The first record of such efforts, led by then-federal congressman Marco

15 *Ibidem.*

16 *Idem*, p. 139.

Maciel, appears in 1977–78, when he was chairman of the Brazilian Chamber of Representatives. According to Santos,¹⁷ Maciel headed an effort to reform the Chamber’s by-laws for credentialing congressional advisors to ministers, indirect bodies of the federal government and other civil institutions.

Representative Maciel continued to engage in efforts to regulate lobbying. After his election to the Senate, he introduced Bill No. 25 in 1984, aimed at regulating the credentialing of individuals and legal entities who sought to influence the decision-making process in the legislative branch. The bill failed, was introduced again in 1989,¹⁸ and was passed by the Senate in 1990. It was sent to the Chamber of Representatives on January 23, 1990, but only now has that chamber completed its analysis.

Several other bills were introduced in subsequent years,¹⁹ but the only one still active is No. 1.202/2007 from Congressman Carlos Zarattini, which was approved by the lower chamber’s Constitution and Justice Committee in late 2016 and still awaits a vote in the full chamber. The approved bill is the third version introduced by the rapporteur, Representative Cristiane Brasil of the Brazilian Labor Party/Rio de Janeiro (PTB-RJ), following negotiations with several parties and entities that represent lobbyists. The congresswoman agreed to include more suggestions from Zarattini in the final plenary voting. The bill approved by the committee defines lobbying as “representation of interests in government relations.”

17 Santos (2007).

18 Reintroduced in 1989 as Bill No. 203/1989.

19 The web portal of the Chamber of Representatives lists the following bills: Bill No. 619/1995, introduced by Representative Davi Alves Silva of the Liberal Front Party/Maranhão (PFL-MA), on activities of interest groups; Bill No. 6.928/2002, introduced by Representative Vanessa Grazziotin of the Communist Party of Brazil/Amazonas (PCdoB-AM), on a statute governing the exercise of participatory democracy; Bill No. 1.713/2003, introduced by Representative Geraldo Resende of the Popular Socialist Party/Mato Grosso do Sul (PPS-MS), on activities of pressure agents; and Bill No. 5.470/2005, introduced by Representative Zarattini of the Workers’ Party/São Paulo (PT-SP), on lobbying activities. All have been shelved.

In a recent interview, Brasil commented, “But in reality, the defense of interests is a constitutional right, inscribed in the article on fundamental rights, so that each and every citizen has a guaranteed constitutional right before the government to defend his interests. And in the face of such demonization of every relationship, we urgently need to affirm how to conduct relations between public and private that are based not on bribery but on defense of interests.”²⁰

Even without specific legislation in force, however, lobbying activity does occur in Brazil and is regulated indirectly through the Federal Constitution, under provisions that govern freedom of association, meetings, collective representation, the right to obtain information from public agencies and the right to petition, as well as the principles of freedom of expression and political pluralism; and through by-laws and codes of ethics of the Chamber of Representatives and the Senate. But the existing regulations are still insufficient, and this creates room for illegal practices and misguided objectives to take hold without any significant oversight.

United States

Because of its historical and political significance, it is important to study the Americans’ pioneering experience in addressing this issue. The principal lobbying regulations in the United States are embodied in the Lobbying Disclosure Act (LDA) of 1995, subsequently amended by the Honest Leadership and Open Government Act of 2007. It should also be kept in mind that lobbying activity is regulated indirectly through laws governing the prevention of conflicts of interest and the disclosure of financial information by government agents, as well as codes of ethics and other measures. More broadly still, the U.S. Constitution guarantees the right to petition to citizens who participate in a broad range of pressure groups.

The LDA deals with the registration of lobbyists, either on their own account or for contracting entities. It calls for more effective disclosure of data on lobbying activity in the United States, introduces important definitions and provides for the preparation of reports on the outcomes of policy negotiations and the sums involved.

The Honest Leadership and Open Government Act is a somewhat more comprehensive law that amends the prior legislation. It is intended to prohibit lobbying by former legislators and staff of the legislative branch and establishes a “cooling-off period” to distance them from the political negotiation process. It also seeks to deter legislators and public officials from influencing the contracting of people in the private sector or from negotiating for jobs before the election of their successor. The law also increased the previous sanctions to up to five years in prison for failure to comply, in addition to loss of a civil pension. This law is regarded by many as overregulation; a cold analysis of the data on registered lobbyists shows a verifiable increase in the number of shadow lobbyists—individuals who, in theory, do not qualify as lobbyists under the law and are operating in the shadows.

Is the regulation of lobbying and interest-group activities in Brazil really necessary?

In a number of countries, lobbying activities are regarded as one of the most troubling issues for society, and particularly for government authorities, because of corruption. Interest groups clearly play an important role in the political landscape and democracy of a country because they increase societal participation in the political decision process.²¹

Discussing the need for something involves weighing the positives and negatives of the issue, so as to arrive at a common denominator that points to an objective outcome. The regulation of lobbying in Brazil should not be treated any differently.

21 Junqueira (2009, p. 2).

There are presently two currents of thought around this issue. Some people maintain that the activities of interest groups help to promote the public interest, insofar as they are exercising their right to petition before the legislative or executive branches.²² According to the other, more negative way of thinking, such activities create a strong economic argument for the defense of special interests, such that they interfere with and harm the collective interest.

In addition to these considerations, legal and ethical debates also arise, and here it becomes necessary to examine the behavior of the practitioners. It should be emphasized first and foremost that, even in the absence of specific regulations on lobbying activity, there are general rules and laws, codes of ethics and of conduct, and by-laws, drawn up by the contracting institutions or associations, that provide for lobbying activities to be conducted transparently, lawfully and with discipline.

In a comparison between systems for adapting to the regulation of lobbying, the model devised for the United States stands out as one of the most effective systems in use today, although it is not considered perfect.

The laws created and developed to limit and control lobbying activity are evolving towards ever-increasing expansion of the levels of transparency called for, not only by regulations, but by society as well.²³

Given this context, can we possibly conceive of regulating lobbying activity under the Brazilian Constitution? Initially, the answer is yes. The right of representation before the authorities has been expressly recognized in articles of the Federal Constitution since the Empire.²⁴ In the Constitution of 1988, which is currently in force, certain provisions of

22 Rodrigues (1982).

23 Junqueira (2009).

24 Santos (2007).

Article 5 (Fundamental Rights and Guarantees) stipulate that any professional acting within the purview of the legislative process or interfacing with the executive branch, by virtue of individual or collective rights or duties, has a basis for carrying out lobbying activity,²⁵ even though there are no legal provisions governing such activity in Brazil. Thus, there is legal basis in sections IV, XIV, XVI, XVII, XVIII, XXI, XXXIII, and XXXIV, Article 5 of the Federal Constitution of 1988.^{26, 27}

Beyond the legal basis already noted, activities in defense of interests are supported by Article 37 of the Constitution, which establishes general rules of public administration, including legality, impartiality, morality, probity, and other provisions.

Based on that premise, Brazil could approve experiences and models derived from practices used in other systems, particularly in regard to

25 Junqueira (2009, p. 3).

26 Gonçalves (2012, p. 55).

27 Federal Constitution:

Art. 5. All are equal before the law, without distinction of any sort. Both Brazilians and aliens resident in Brazil are guaranteed the inviolability of the right to life, liberty, equality, security, and property, under the following terms: (...) IV — Thoughts may be freely expressed, but anonymity is forbidden; (...) XIV — Access to information is assured to all, and the confidentiality of the source is safeguarded when necessary for the exercise of a profession; (...) XVI — All may assemble peacefully without weapons in places open to the public and do so without authorization, provided that they do not disrupt another meeting scheduled for the same site; advance notice to the appropriate authority is all that is required; XVII — There is freedom of association for legal purposes, but association of a paramilitary nature is forbidden; XVIII — Authorization is not required for the creation of associations or, pursuant to law, of cooperatives, and government interference in their functioning is forbidden; (...) XXI — Associative entities may, when expressly authorized, legitimately represent their members in and out of court; (...) XXXIII — All are entitled to receive information from government entities when it is of private interest to them or of collective or general interest; such information, except that whose confidentiality is essential to the security of society and the State, shall be furnished within the interval established by law. Those who violate this principle may be held liable; (...) XXXIV — All are assured of the following, without payment of a fee: a) The right to petition the governments in the defense of rights or against illegality or abuse of power; b) The ability to obtain authenticated copies of documents and records at government offices in order to defend rights and clarify situations of personal interest.

conduct and rules of transparency, professional oversight, records of entities, accountability models, and other fundamental matters.

The OECD enumerates important characteristics, based on experiences of other countries, that may contribute to effective regulation, such as: (i) definition of the practices of professional lobbyists and interest groups in clear, unequivocal provisions; (ii) rules for disclosing information on the work performed by lobbying professionals; (iii) establishment of rules and guidelines for conduct, such as, for example, avoiding the improper use of confidential information, causing conflicts of interest and avoiding practices that raise suspicion among agents on both sides; (iv) procedures for strategic assurance, as well as implementation of rules of compliance, integrity and transparency.²⁸

In view of the considerations discussed up to this point, the ultimate question that comes to the fore is: to what extent is the regulation of lobbying activity in Brazil really necessary?

In an ideal scenario, if we were to improve relations and interactions between the public and private sectors, and if we defended interests in proper compliance with all of the above-mentioned existing Brazilian laws, even in the absence of a specific law, the regulation of lobbying would become a mere formality.

Nevertheless, it becomes necessary to examine the importance of regulation from the standpoint of the public interest. Modern regulations that follow present-day international patterns, done openly and aimed at benefitting all stakeholders who participate democratically in the legislative and public policy-making process, can only help both the sectors and the professionals involved.

And, bearing in mind the recent revelations in Brazil surrounding Operation Car Wash,²⁹ since lobbying is an activity that touches on strategic

28 OECD (2015, p. 138).

29 Operation Car Wash is the largest corruption and money-laundering investi-

sectors and specific demands, the existence of clear-cut rules of the game to be played, instituted through regulation, might make the most diverse segments of society feel sufficiently comfortable and secure to once again bring their demands before decision-makers.

In the wake of recent events, there is no more room to operate in the shadows. It is essential that lobbying activity be regulated. It is essential that we have rules that bring to the table a full discussion of democratic participation in the legislative and public policy-making process.

Even from the perspective of professionals who act in defense of interests, regulation offers advantages, including indirect ones such as greater respect for the profession. The Brasília-based Brazilian Association for Institutional and Government Relations (ABRIG),³⁰ which brings together professionals active in government and institutional relations, has advocated for regulation in a document that explains their activities to legislators.

Conclusion

As we have seen, a country's cultural issues play a decisive role in the evolution and implementation transparency measures. Countries such as Bolivia still face serious barriers to opening up the Pandora's box of governance and public accounts. Such scenarios have repercussions on the implementation of rules governing public-private relations.

Even Latin American countries that have achieved a substantial degree of development and transparency—Chile and Brazil are clear examples of this—have had difficulty implementing rules that

gation in Brazilian history. The investigation stemmed from embezzlement at Petrobras, but the repercussions have touched a third of the politicians in office, as well as business executives. For more information, see: <lavajato.mpf.mp.br/entenda-o-caso>. Accessed on: 1 June 2017.

30 For more information, see: <<http://www.abrig.org.br>>. Accessed on 1 June 2017.

facilitate transparent relations between the public and private sectors.

As we have shown, it took more than 10 years of debate in the Chilean Congress to regulate lobbying. In Brazil, regulation is still in its initial stages, while the practice of lobbying grows exponentially. Although it is a legal activity that is protected indirectly by the Federal Constitution and that generates benefits for the building of a participatory, pluralistic democracy, it can also create negative circumstances when it takes place in the shadows without proper regulation.

Owing to the fact that Latin America has lived under authoritarian rule, in which government decisions were often made “in the dark” by ministries and legislators to benefit a small minority, the region appears to still be experiencing structural consequences. And these effects ultimately lead to democracies that are still being formed, with little capacity for profound change towards transparent rules. This transitional stage is accompanied by a certain amount of fear.

Even the United States, a country with a long-standing tradition of implementing measures that regulate lobbying and strive for transparency, sometimes finds itself in the position of having to revise and strengthen its policies.

In our view, the development of rules and an understanding of lobbying practices, not just in Brazil but also in Latin America or even the United States, must be based on concepts presented as transparently and comprehensively as possible. As good as the rules might be, however, they clearly do not prevent people from circumventing them. Nevertheless, more information and better regulation of public-private relations will lessen the potential damage.

We believe that it is important, from a public-interest standpoint, for Brazil to regulate lobbying and interest groups. But beyond that, we believe that the game must be played in the open. In the wake of the recent events in Brazil, there is no more room for irresponsible conduct

that could, as we are witnessing, bring the country to a standstill and trigger a serious economic crisis that cancels out social and economic achievements won through so much sacrifice. Clearly, the events now coming to light through the countless repercussions of Operation Car Wash can in no way be considered a technical phenomenon or the result of a defense of legitimate interests. What we are seeing is deliberate criminal behavior, sometimes labeled in the media as “defense of interests” or “lobbying,” in the worst sense of the word. For this reason, it is essential that lobbying activity be regulated. It is essential that we have rules that bring to the table a full discussion of democratic participation in the legislative and public policy-making process.

Regulation will also result in indirect benefits for the professionals who advocate for the defense of interests—in the form of a better image, for example. We believe that regulation of lobbying activities will strengthen public-private relations and will ultimately build respect for all of the stakeholders involved, including lobbying professionals.

Experience in other countries offers important lessons, such as the need to register lobbyists, advisors and the companies that hire them, and to issue reports that ensure transparent practices. These reports should be produced and circulated in an understandable form; failure to do so could impair the effectiveness of the law. Another important factor to be considered is the stipulation of sanctions to ensure enforceability.

Bringing the process out of the shadows is a necessary step in order to create a symmetrical flow of information and to keep society informed of the practices of all elected officials and the groups with which they are involved. This kind of transparency in the rules that govern democratic participation in the legislative and public policy-making process will enhance and increase the effectiveness of the practices of interest groups and lobbying professionals. Through such measures, we can indeed strengthen democracy.

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3



Leviathan as business in Brazil:

Past practices, future changes

SÉRGIO G. LAZZARINI* AND ALDO MUSACCHIO**

For generations, the Brazilian State has been very influential in the economy, not only dictating regulatory policies but also providing capital and participating in corporate financing mechanisms. This kind of linking between public capital and private entrepreneurship is not exclusive to Brazil, however. There has been much discussion about how governments, especially after the 2008 financial crisis, have expanded their involvement in a variety of industries and businesses (for example, see Bremmer, 2010).

The reality is that there has always been significant government participation in business, be it in Brazil or elsewhere. The so-called neoliberal reforms that proliferated in the 1990s created new ways for the State to get involved in business, but rather than eliminate the close public-private relationships that had existed before then, they often enhanced them (Lazzarini, 2011). Many “privatizations,” for example, actually involved changing from majority government participation to minority ownership, but still preserved elements of significant influence.

This chapter will focus on the resilience of the Brazilian State in its interactions with the private sector, and the consequences that this process produced in terms of economic efficiency and public governance. We will examine the period that began with the wave of privatizations in Brazil in the 1990s, and continue on to the escalation of State involvement following

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the crisis of 2008. Lastly, we will present a few thoughts about institutional changes in the Brazilian economy in more recent years, and how these changes can potentially alter the traditional patterns of interaction between public and private capital in Brazil.

The Brazilian Leviathan

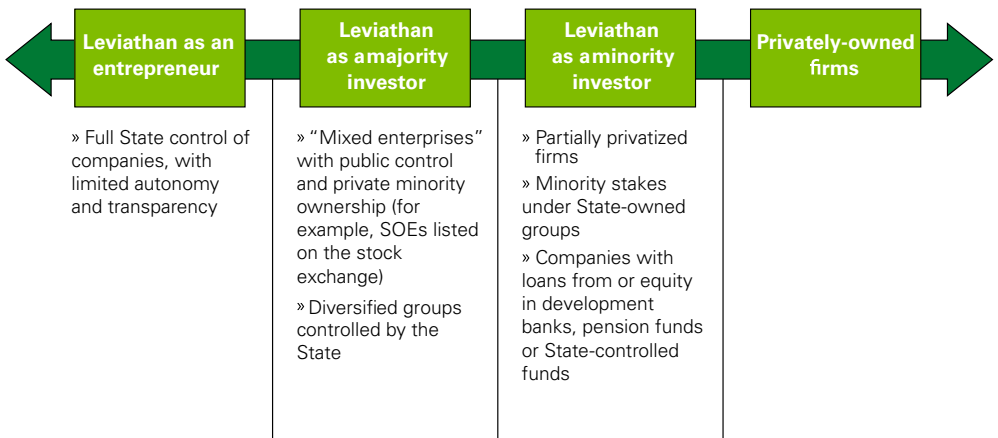
Figure 1 illustrates our conception of alternative models for State involvement as a provider of resources and capital to companies—a phenomenon that has been called *State capitalism* (Musacchio and Lazzarini, 2014; Musacchio et al., 2015). The best-known and most-discussed models are located at the far ends of the spectrum. In the *Leviathan as entrepreneur* model, the State controls, finances and manages companies, many of which even operate as internal units of the bureaucracy—schools, post offices and public hospitals, for example. At the other end are companies financed and run completely by the private sector.

The State reforms that spread throughout the world in the late 20th century, however, supported two new models that were not as well-studied or understood. The *Leviathan as majority investor* model involves State-owned enterprises (SOEs) or groups that are controlled by the State but have other investors as well, many of them private, that provide capital and managerial monitoring of company activities (Gupta, 2005). Such is the case, for example, of the SOEs that are traded on the Brazilian stock exchange, such as Petrobras, Eletrobras and Sabesp—also called “mixed enterprises” (Pargendler, 2012). There is also the *Leviathan as minority investor model*, which involves State minority ownership in enterprises controlled by private investors and managers (Inoue et al., 2013). These minority ownerships occur either through shares owned by the federal government (such as, for example, companies that have been partially privatized), or indirectly through development banks, pension funds linked to the public sector or other state-owned investment vehicles.

In Brazil, for example, Vale and Embraer are companies in which the government owns a minority share.

We go on to argue that the privatization process in Brazil did not result in a swerve to the private model at the far end of the spectrum; rather, it reinforced the minority Leviathan model, through the proliferation of small holdings by state-owned vehicles in a number of enterprises. After 2003, this model was bolstered by an increase in public capital available for such investments. From 2012 on, a different movement reinforced the majority Leviathan model, involving more-direct interventions in the economy using large State-owned enterprises such as Petrobras and Eletrobras. This process resulted in increased public expenditure and indebtedness, and awakened new discussions about how to reduce the size and manner of State involvement in the economy.

FIGURE 1. Alternative models of State involvement in business



Source: Musacchio and Lazzarini (2014).

“Privatizations” or reinforcement of minority Leviathan? (1991–2002)

In Brazil, about 165 SOEs were privatized between 1990 and 2002, bringing in total revenue of about US\$87 billion (BNDES, 2002). Evidence indicates that the privatization process ultimately reduced public debt (Carvalho, 2001) and increased productivity and profitability for Brazilian companies (Anuatti-Neto et al., 2005). There was also a certain shift in the patterns of ownership, with more participation by foreign investors. Between 1995 and 2002, more than half of the revenue from the sale of SOEs came from foreign companies. In sectors such as electric power and telephone, it was not unusual to have multinational corporations controlling consortia by acquiring blocks of companies and associations from local groups (Perkins et al., 2014). This brought more private capital into the economy and, according to data from the Brazilian Institute of Geography and Statistics (IBGE), SOEs’ stake in fixed capital formation fell from 13.1% to 8.9% between 1997 and 2002.

But this process did not render the State less important to the economy. The case of Vale illustrates this point well. The company was already publicly traded and structured as a mixed enterprise with private minority participation—or, using our own terminology, it was already an example of a majority Leviathan. Vale, which was privatized in May 1997, was purchased with the largest check ever signed in Brazil’s history, for R\$3.3 billion. The company then came under the control of a consortium headed by Benjamin Steinbruch, which had just bought other privatized companies (CSN and Light). Within this consortium, a group of public, private, domestic and foreign actors emerged—Nations Bank on the foreign side; Brazilian banks Opportunity and Bradesco, in addition to Steinbruch; and from the public sector, state-controlled pension funds, including Previ (for Banco do Brasil), Petros (for Petrobras) and Funcef (for the Brazilian Federal Savings Bank). The Brazilian Development Bank (BNDES) managed the privatization process, with additional financing from many privatized companies. In reality, therefore, the privatization of

Vale represented a change from a majority Leviathan to a minority Leviathan model. Also noteworthy is the complex linking of local private capital with public and foreign capital—the “tripod” already adopted during the process of developing Brazilian industries in the past and long identified by authors such as Cardoso and Faletto (1969) and Evans (1979).

The composition of Vale continued to change over time, but always preserved that tripod of investors seen in the minority Leviathan model. It then came under the control of a block known as Valepar, whose shareholders were Bradespar (controlled by Banco Bradesco), the Japanese multinational company Mitsui, BNDESPAR (investment arm of BNDES) and a company called Litel, which comprises state-controlled pension funds. This composition preserved not only the government’s capital participation, but also its influence. Although the State is not a majority investor in Vale, the total stake owned by BNDES and the pension funds exceeds 60% of the controlling block. Thus, by forming a coalition, these two actors are able to exert considerable influence in the company.

How to explain the continuing presence of State capital even during and after the privatization period? It should be noted that privatization is unpalatable in the eyes of the public. There is always contention over who will be the bigger winner, or whether there are benefits for private buyers. Moreover, privatizations often occur as a matter of urgency—as a way to reduce public indebtedness—but the process requires a broad-based mobilization of actors with diverse and wide-ranging interests. Employees’ unions and left-leaning parties, for example, usually oppose such initiatives. Paradoxically, one way to ensure that the process is politically sustained is to bring *public* actors into the center when transferring shares to the private sector (see Stark, 1996).

In Brazil, the first step in that regard was to establish the BNDES as privatization manager as well as effective investor in a number of consortia. That process occurred largely through bank professionals’ indisputable competence and knowledge of Brazilian industrial sectors and companies. But it was also a way to ensure the attractiveness of

the privatization auctions. Suppose, for example, that a company set to be privatized is valued at a certain amount, at normal capital cost and market rates. With State capital subsidized and “patient,” that amount could increase substantially, thus increasing the price that the private investors would be prepared to pay for the company. This is of political consequence to the government, since it carries indications that the auction was successful, even if somewhat artificially so, through benefits conveyed by public participation in and of itself. At a later point, we will discuss how this same desire to “improve” the outcomes of concession auctions caused even greater reinforcement of this type of state participation in private businesses.

The large-scale involvement of state-controlled pension funds was also not an accidental occurrence. In 1997, the monies in pension funds amounted to R\$90 billion, 79% of which involved pension funds connected to State-owned entities such as Banco do Brasil and Petrobras. It is striking that, in Brazil, these funds invest more in corporate stock than do the pension funds linked to private companies. Pension funds, whose management is normally strongly influenced by the government, operate as a hybrid actor that interconnects employees of State-owned enterprises, government and capital markets. In the allegory proposed by Oliveira (2003), they would be a “platypus,” a hybrid model sustaining an unusual confluence of work and capital. To counter critics of potential “privatism,” there is nothing more advantageous than to promote the inclusion of a State-connected actor and union groups into the corporate fabric of privatized companies.

The involvement of these funds, however, did not occur without controversy. For example, in the auction of telephone companies in 1998, the then-Minister of Communications of the Fernando Henrique Cardoso Presidency was accused of influencing the formation of a consortium of companies by bringing in pension funds. The minister was subsequently removed from the position when telephone conversations brought that activity to light. With such enormous sums of capital made available by

these funds, various political groups of every stripe went on to broker contacts between the funds and potential private groups interested in the companies being privatized. In addition to several other benefits granted to the buyers, these liaisons led critics to label the process as *privataria*, a combination of the Portuguese words for “privatization” and “piracy” (Gaspari, 2000).

The confluence of these assorted public and private actors occurred largely because of the way the privatizations were carried out in Brazil. Unlike countries that focused on disseminating SOE shares to many investors, the process in Brazil was done by selling control blocks. This model, bolstered by the sale of Usiminas in 1991, involved a network of shareholders assuming control of the new privatized company. Around 53% of the buyers of privatized companies organized into *mixed* consortia along the likes of the “tripod” described earlier, accounting for 86% of the total value of the privatizations in Brazil (De Paula et al., 2002).

One more push towards the minority Leviathan: The national champions (2003–2010)

The expansion of State participation in companies had direct consequences for the new government of Luiz Inácio Lula da Silva, who came to power in 2003. In 2005, journalist Josias de Souza wrote an article with the suggestive title, “What Cardoso pretended to privatize is being renationalized under Lula.” The article talks about cases in which companies were privatized but increasingly came under State influence. Such was the case for Eletropaulo, controlled—in typical fashion—by a tripod of actors: international (EDF, AES and Reliant), domestic (steel-maker CSN) and State-owned (the buyers had received a US\$1.2 billion loan from BNDES). Unable to honor their debts, the foreign investors designed a new corporate agreement that defines a new debt contract with the BNDES as a convertible loan. At the end of this process, writes Josias de Souza, “BNDES representatives occupy half the seats on the

pseudoprivatized company's board. They attend the meetings, they offer suggestions on business transactions, and they keep track of the company's accounting performance" (Souza, 2005).

Even so, Lula's first term followed a more orthodox approach by signaling greater concern with fiscal balance. At the end of his first term, and especially during the second term (which began in 2007), there were stronger, more deliberate initiatives aimed at increasing State investment and participation. This was true in the case of the movement to create what were called "national champions"—large companies created through industry mergers with a broad combination of public resources. It is important to note that many of these moves took place *before* the financial crisis that hit the country in late 2008. In other words, the intensification of State participation during this period cannot be justified solely by the need to provide capital to companies during a time of shortage and crisis.

As an example, in early 2008, with extensive government involvement, Brasil Telecom was acquired by Oi (formerly Telemar), both with stock ownership by pension funds and the BNDES. There was even a change in the then-current law prohibiting mergers between telephone companies operating in different parts of the country. This process resulted largely in corporate disputes involving pension funds and Opportunity, which were part of the control block of Brasil Telecom. In 1998, Daniel Dantas, who controlled Opportunity, acquired a consortium that would become Brasil Telecom. As usual, the transaction was built upon a tripod of shareholders that included not only Opportunity, but also a foreign actor (Citibank) and state-owned actors (pension funds). The president of Previ, Sérgio Rosa, with a history of union connections, then began to lead a movement to give the fund a greater voice in the control block. In 2004, the fund led a movement to reduce Opportunity's influential power and joined forces with Citibank in that effort. In the end, Opportunity was ousted from the management of the company, and the subsequent merger with Oi ended up being a way to consolidate the presence of

the pension funds in the newly established company. Thus was created a national champion in the telephone industry with substantial State influence.

This trend continued in several other sectors. One of the most controversial cases was meat-processing company JBS-Friboi. When the company went public in 2007, BNDES invested R\$1.4 billion. Then, in 2010, it acquired another R\$3.4 billion through debentures. JBS was using an aggressive strategy of internationalization, having acquired U.S. meat-products companies Swift and Pilgrim's Pride. At the same time, BNDES management was beginning to look favorably on strategies for creating large companies that could become important actors in the international arena. There was a confluence of two complementary forces. On the one hand, heterodox economists at the head of the bank were preaching the view that, similarly to what had happened in South Korea, Brazil needed large groups with industry weight and importance. On the other hand, the business community was interested in obtaining State capital in order to pay for its expansion initiatives. This led to the creation of companies such as Fibria in the paper and cellulose industry, the result of a merger between VCP (part of the Votorantim Group) and Aracruz. Sadia and Perdigão merged into a new group, Brasil Foods, with a large equity stake held by Previ, which already held shares in the two companies. In both of these cases, the process was also accelerated because of the companies' problems arising from the misuse of derivatives, which overexposed them to the effects of the financial crisis of 2008.

There was also an attempt to influence the management of other companies through state participation, even if as a minority investor. Such was the case of Vale, which, as we discussed earlier, fits the Leviathan as minority investor model. In 2009, shortly after the financial crisis hit, the Lula administration decided to intervene in the company, largely due to its prominent position in the control block. At first, there was opposition to the company's decision to fire employees in the midst of the crisis. Vale's strategy of acquiring Chinese instead of Brazilian ships also

roiled the government, which wanted to boost its naval industry. There was also pressure on Vale to invest in products that had more “value added” in Brazil, rather than just export ore. Despite evidence that some commodities sectors are more productive than sectors closer to the end of the chain (Lazzarini et al., 2013), the government continued to pursue its policy of trying to stimulate links between production chains in the domestic context. Although many of these demands were not quickly heeded, the conflict between the government and company management eventually led to the firing of its then-CEO, Roger Agnelli.

In addition, although the Lula administration had put the brakes on privatization and concession initiatives, large projects with initially private investment began to come under increasingly significant State influence. Consider the case of Hidroelétrica Belo Monte, on the Xingu River in the Amazon Region. The consortium that initially won the auction in 2010 was headed by the Bertin Group, which had started out in the meat-processing industry. However, the group did not have the financial wind to make the necessary investments. In the end, the composition of the consortium changed as other partners came in, including the Stated-owned company Eletrobras and the pension funds of Petros, Funcef and Previ—the latter indirectly, through a company controlled by Neenergia, in which Previ owned a stake along with Spanish company Iberdrola.

The above examples indicate that the minority Leviathan model that was firmly established during the privatization period in Brazil, and stepped up during the Cardoso administration, was ultimately reinforced during the Lula administration. Far from representing a discontinuity, therefore, the phenomenon of national champions was actually a consolidation of the new State participation model put into practice during the privatization period.

That point can be viewed more objectively if we look at data on company ownership. Lazzarini (2011) compiled a database of more than eight hundred companies observed between 1996 and 2009 (thus expanding the

time span initially analyzed in Lazzarini, 2007). The author uses concepts from social network analysis to map interlocking connections between shareholders in Brazil. He traced in particular the ties between two or more shareholders by dint of their membership in the same “clusters” or control blocks. Using the above example of Vale, at the end of the Lula era there were ties between large shareholders in Brazil participating in the company’s control block: the BNDES, pension funds, Mitsui and Bradesco. These shareholders are interconnected because they own shares in the same company. Owing to the proliferation in Brazil of mixed consortia that are sustained by a tripod involving local, state and international shareholders, the country has extensive shareholder networks in which a handful of actors have prominent shareholding.

Of particular note, Lazzarini (2011) divides the mainstay shareholders into five different types: government actors (federal government, states, municipalities and State-owned agents such as BNDES); SOE pension funds (Previ, Funcef, Petros and several others); institutional investors and private funds (investment firms and pension funds of privately-owned companies); individuals, families and local firms; and foreign firms and investors (multinationals and funds based outside Brazil). Over the period examined in the database, the *centrality* indicators for each of the shareholders in the networks were calculated. Using the centrality measure proposed by Bonacich (1987), a highly central shareholder is one who not only participates in control clusters with several other shareholders in the economy, but who has ties to other partners who themselves are central. The analyses indicate that, from 1996 to 2009, there was a substantial increase in the centrality of pension funds and government actors (notably BNDES), and that this increase was relatively greater in the period after 2003. The other groups of shareholders did not have marked increases in centrality, instead sitting at the average for all shareholders in the economy. This result confirms that the minority Leviathan gained momentum during and after the privatizations under the Cardoso administration, but it received a significant push during the Lula administration.

It is also instructive to make a more direct examination of the size of the shareholdings of these actors during the time that the minority Leviathan and its national champions were being advanced. In late 2010, Eike Batista was Brazil's wealthiest businessman, with about US\$30 billion, according to a Forbes survey. Next came Jorge Paulo Lemann, a shareholder in Anheuser-Busch InBev and several other firms in Brazil and other countries, with US\$13 billion. These are sizable sums of wealth, but less so when compared with the volume of investments held by Previ and BNDESPAR at the time (US\$ 92 billion and US\$42 billion, respectively). In the case of BNDES, that volume includes only the corporate shares. If we consider BNDES' volume of loans as a whole, the State's participation is even more massive. In 2010 alone, BNDES disbursed the equivalent of US\$101 billion, more than triple the amount that the World Bank loaned throughout the world in that same year (US\$26 billion) (Musacchio and Lazzarini, 2014).

The case of Eike Batista is also an interesting one for analysis. Having started out as an entrepreneur in the mining industry, he raised funds in the private sector and gradually began to look upon the State as an attractive source for leveraging his investments. He established political contacts, made campaign contributions, fervently advocated for State participation in the economy and built a conglomerate with business dealings established at the public-private interface (in addition to mining, he established companies in oil, energy, ports and several other sectors). In a controversial move, at the same time that the Lula administration attempted to intervene in Vale in 2009, he tried to gain control of the company and oust its CEO, Roger Agnelli. Ultimately, having been beset by crises involving companies in the group, Eike ended up selling many of his holdings and saw his initial wealth progressively dwindle. Consequently, his group can be added to the list of national champions that received a boost during Lula's second term but were not sufficiently robust and competitive to grow in sustainable fashion.

Capitalism of ties and the selection of national champions

Such cases naturally raise the question of how these public investments were chosen. For example, what caused BNDES to loan more to one firm or sector, to the detriment of others? Although many politicians and business owners supported State expansion in the economy at the time, a handful of voices began to challenge allocations by BNDES and the pension funds, and started questioning what was guiding the selection of companies. An executive at BNDESPAR, when questioned about the criteria that led the bank to invest in a dairy company, responded that it was looking for companies “that have good return prospects, are committed to good governance practices and are going public” (Grando, 2010).

There were many large companies, however, that fit these criteria. JBS-Friboi realized that going public would be an important step for attracting funds from the bank. Lazzarini (2011) proposed a model to explain these allocations based on corporate ties to the political system. Evidence already existed that Brazilian companies more heavily invested in parties—particularly through election campaign contributions—had more access to credit and other benefits (Claessens et al., 2008; Samuels, 2002).

This model is shown in Figure 2. On the upper left, we have the winning political coalition in the elections, which includes several parties that gain influence over the government in power. These politicians will occupy positions in ministries, secretariats, companies and State-controlled funds. Moreover, those that remained in the Legislature will have a distinct voice in budgetary and regulatory discussions. They can open or close doors to the business community on their requests for project approvals, tariff advantages, credit or trade protection.

The government in power, in turn, controls the entire State apparatus involving public banks, large State-owned entities and government-linked

funds (including pension and other funds such as the investment arm of the Unemployment Compensation Fund, or FGTS). As we saw in the previous section, this entire apparatus expanded and opened up to the government—and politicians—a direct channel for controlling wealth and exchange of benefits. There were no significant restraints on direct interference by the government in that entire apparatus. Politicians could appoint sponsors in the pension funds and regulatory agencies, while the government populated the SOEs with political partners and members of their coalition. Virtual siphons were created in these funds and companies, dominated by parties and groups interested in the State's sizable wealth and in how it could be distributed.

With all of that apparatus and vast wealth, it was possible for politicians and the government to invite entrepreneurs to become involved in projects of mutual interest. With the advent of the national champions, companies and sectors could be chosen to receive more infusions. Large State-owned enterprises such as Petrobras created “local content” projects and new companies tied to the public sector. Such was the case for Sete Brasil, for example, which supplies oil-drilling rigs through financing from pension funds and share ownership by banks and construction firms. With the expansion of the BNDES and State-controlled funds, there were practically no limits to the transfer of public capital to the private sector. This period witnessed the discovery of a new mechanism for supporting such financing: the Treasury would accumulate debt and transfer funds to the BNDES and public banks, which could then provide more loans. It was even suggested that this was a self-sustainable cycle, since the necessary increase in indebtedness would be more than offset by the tax gains generated by new investments (Pereira et al., 2011).

Eyeing this widespread distribution of resources, the business community reacted in two ways. First, it adopted a discourse aligned with the government, praising the expansion of the State and declaring that Brazil had found an alternative, State-activated mechanism for stimulating business projects. This discourse usually came with the argument that the United States, in theory a more “market-based” economy, had

suffered a major crisis that revealed the limitations of an economy with no significant State involvement. Even though a few business owners exhibited concern about increased State interference in the economy, it was ultimately in their interest to align themselves strategically with the government, since the risks of greater interference would be offset by an array of subsidies and benefits.

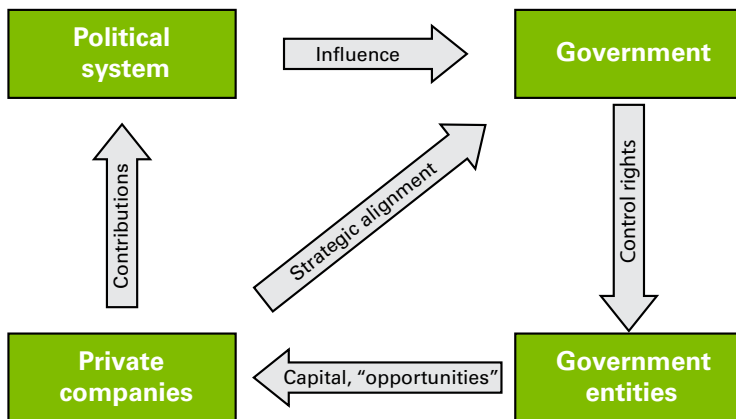
In a second kind of reaction, and closing the cycle illustrated in Figure 1, the business community ramped up its strategies for establishing connectivity to the political system. Here, the principal mechanism was not necessarily organized lobbying through associations or trade unions (Schneider, 2004), albeit those channels might be important in some contexts (Mancuso, 2004). The connections were established on a more specific, patronage-based model, created through the contacts that each particular firm nurtured with the political coalition in power. The principal mechanism used in this case was political campaign contributions. Around 75% of declared campaign contributions came from private companies (Mancuso, 2015), a figure that could run higher if there were data on contributions made through informal channels such as slush funds.

There is abundant empirical evidence in Brazil to show that companies that make campaign contributions have a number of advantages, including more financing (Claessens et al., 2008; Lazzarini et al., 2015; Sztutman and Aldrighi, 2013) and preferential access to public concessions (Arvate et al., 2013; Boas et al., 2014). In the case of the BNDES, a study that we conducted with Rodrigo Bandeira de Mello and Rosilene Marcon, based on data from some 30 publicly-traded companies between 2002 and 2009, showed that each winning congressional candidate supported by the bank brought in about US\$46 million more in loans from the BNDES (Lazzarini et al., 2015). In a more aggregated study, Carvalho (2014) showed that regions that are more politically aligned with the government received more loans from the bank. Here, the process probably worked in two ways. First, a business owner might support a politician and then use that channel to increase the chances for a public concession or selection as a national champion to receive support. Sec-

ond, when it sees that a certain business owner has received substantial funding, a particular political group in the government might contact that individual to solicit campaign funds.

Whichever way the effect worked, this channel laid the foundation for capitalism of ties as depicted in Figure 2. In other words, those who were better connected to the political group in power received more financing because that group had control over the entire State apparatus. To give an idea of the amount of influence that certain groups came to have over the political system, after the 2014 elections the JBS Group, the biggest corporate donor, had supported about 164 of the congressmen elected to the Chamber of Representatives, followed by Odebrecht with 141 and Vale with 98.¹ These data, of course, do not necessarily prove whether there was any particular benefit, or that each congressman brought in financing to the company. But, with so many politicians supported, it is not hard to imagine how these companies might leverage their contacts to support projects of interest.

FIGURE 2. Capitalism of ties in Brazil



Source: Lazzarini (2011).

1 Data from the Superior Electoral Tribunal (TSE) published in an article in *Valor Econômico*, 7 Nov. 2014.

The majority Leviathan, once again (2012–2016)

We have argued that, by the end of the second Lula administration, the minority Leviathan model was reinforced, as State actors proliferated in several sectors and enterprises, and a number of them established intimate political connections. With the election of Dilma Rousseff, a former cabinet minister in the Lula administration, the process of State intervention gained strong new momentum, but this time with a new feature. Rousseff believed not only in State intervention through minority actors, but also in direct, incisive action by the large State-owned entities controlled by the government. To the keenest observer, that approach had already been voiced loud and clear in the speech she gave when she was announced as the official candidate of the Workers' Party in 2010. Referring to the process of privatization and economic liberalization under Cardoso, Rousseff said, "A few ideologues even said that almost everything would be resolved by the market. The result was disastrous. Here, the disaster just wasn't worse, like in other countries, because the Brazilians resisted that dismantling and successfully prevented the privatization of Petrobras, Banco do Brasil, the Federal Savings Bank and Furnas."²

All of those large State-owned enterprises were used in Rousseff's government to promote market interventions. In other words, the focus of the government's activities again turned to the majority Leviathan model. One of the most striking cases was the use of Petrobras to control gasoline prices. In 2012, Petrobras had begun to accumulate losses due to a lack of price adjustments. Upon taking over as head of Petrobras in 2012, Maria das Graças Foster, a technical professional at the company, was asked if she intended to raise prices. To that, she responded: "It's certainly logical to adjust prices, to stay at the levels of the past six months. [...] It makes no sense to think that sellers of anything—a cup,

2 "Íntegra do discurso ..." (2010).

a notebook, gasoline, diesel—would not pass their advantages and their disadvantages on to the market.”³

Soon thereafter, however, Graças Foster was overruled. The government was concerned with containing inflation; higher gasoline prices could contaminate other prices and might be poorly received by potential voters. As a result, Petrobras began to accumulate losses, both operationally and in its share value, due to the growing perception of interference in its management. Thus, from the standpoint of SOE governance, there was not only the problem of managerial positions being filled by political cronies, but also the very use of these entities to exercise influence in the markets. It is curious to note that, for the political group in power, any potential separation between government and SOE management was viewed as neither possible nor desirable. For example, when José Sérgio Gabrielli, former CEO of Petrobras, was asked about populating Petrobras with politicians, he responded, “The parties are participants in State management. That is a part of democratic practice. That is part of democracy. The parties are legitimate.” (Souza, 2015).

Then came the interventions in the banking sector. There had already been attempts during the Lula administration to use public banks to influence market interest rates (Martins et al., 2014). Under Rousseff there was a new attempt in early 2012, focused in particular on the Federal Savings Bank. The Bank cut interest rates to end consumers, and the initiative was viewed as highly successful: the Bank expanded its participation in the market without any significant impact on profitability. That case sent a clear signal to the government that it could intervene in the markets and still unlock economic value. The evident success of the intervention in the banking sector encouraged even more actions using SOEs controlled by the government.

Accordingly, in September 2012, the government issued Interim Measure No. 579, which sought a forced reduction in electricity prices in

3 *O Estado de S. Paulo*, 27 fev. 2012.

exchange for renewing concessions that were about to expire in the near future. Rousseff went on national TV to announce the measure, and received quick support from several business owners—such as the president of the Federation of Industries of the State of São Paulo (FIESP), Paulo Skaf—who would later change direction and support her impeachment. With the prospect of substantially reduced profits, many concession holders rejected the proposal, and many concession renewals were left up to the SOEs themselves (Eletrobras in particular). The value of these companies on the stock market suffered a brutal hit: in two years' time, the federally-owned electric utilities had a stock price of slightly more than a quarter of their worth at the beginning of 2012. Complicating the picture, scant rainfall and an energy deficit necessitated the activation of expensive-to-operate thermal power plants. Prices on the open market soared, reversing the initially intended effect of reducing the cost of electricity in Brazil. By the same token, the intervention in the banks had little effect. To contain inflation, interest rates had to rise again, and the State-owned banks began to fear an increase in defaults, given the fact that their portfolio included individuals with higher credit risk.

There were also several interventions in the infrastructure sector. For railroads, the government sought to change the traditional model involving joint ownership rights to one in which an operator builds and operates the line. These two phases would be separated, and Valec, a State-owned company, would be tasked with terms of payment for operation of the line and compensation of the actor responsible for the infrastructure. That process, in and of itself, raised doubts about how prices would be set and what guarantees would be given by the government. As a result, the private sector showed little interest in new investments in infrastructure.

A similar effect occurred with highway and airport concessions. We turn back to our earlier discussion on governments' tendency to transfer public capital to concession holders and buyers of privatized companies as a public signal that the process was successful. In this case, pressure was put on forcing down the fees to be paid by users—known as seeking

“fee moderation.” The expected return on investments was defined to be below what one might expect under market conditions. And, to compensate the investors and operators for the lower-than-expected return, the government agreed to finance a large portion of the projects with funds from the BNDES and other funds connected to the public sector, such as the investment fund of the FGTS and its own pension funds. In an analysis of concessions in the highway and airport sectors, Lazzarini et al. (2017) confirmed that the participation of public sources in the total capital of these projects was, on average, 67% for highways and 73% for airports. Even though the projects were under private control, in practice the volume of public monies constituted a significant majority participation.

In the specific case of airports, the initial idea of the Rousseff administration was supposed to be to preserve majority control by Infraero, the SOE responsible for managing Brazil’s airports. But since the private sector had no interest in this model, it was decided that Infraero would hold 49% of the shares in the company created specifically to manage the airports. Let us examine the specific case of the concession for Rio de Janeiro’s Galeão Airport in 2013. The final stockholder composition for the concession was as follows: 49% held by Infraero, 9.2% by the FGTS and 3.2% by BNDESPAR. The remainder was held by the private participants in the managing consortium, including Odebrecht and Changi, the company that manages the Singapore airport. Considering, however, that infrastructure projects are highly leveraged with sizeable debt participation, the percentage of capital coming from the government ended up being even higher, given the fact that a large portion of the contracted loans would come from the BNDES.

In order to sustain such broadly expanded participation by SOEs, the Leviathan had to engage and capitalize one of its principal controlled entities, BNDES. From 1996 to 2007, annual BNDES disbursements equaled approximately 1.9% of GDP. After 2007 and up to late 2014, that figure jumped to 3.3% (Lazzarini et al., 2017). As described earlier, although the BNDES was constitutionally financed through capital from the Workers’

Assistance Fund (FAT), at the end of the Lula administration and during Dilma Rousseff's first term, the government resorted to issuing public debt and transferring securities to the bank. Contrary to expectations, however, the effect on investments proved to be very limited. During that same period, despite the substantial increase in loans from BNDES, gross fixed capital formation in Brazil scarcely evolved. The expansion of the Leviathan simply proved to have little effect and a high cost, not only through the country's higher gross debt, but also in terms of annually paid subsidies (estimated at about R\$35 billion in 2015).

Why was there so little reaction from investments, despite the large subsidy? One explanation is that the government intervention itself raised perceptions of volatile returns, which created a non-diversifiable risk that could not be offset by subsidies embedded in public capital. Moreover, after a certain time, as the country's macroeconomic indicators worsened, State expansion itself came to be perceived as part of the problem rather than the solution. Business owners who once had strategically aligned themselves with the government, in the cycle illustrated in Figure 2, began to criticize the excessive State activism and control of the economy.

One important fact that enabled the Rousseff administration to undertake so many direct interventions in the markets was the weakening of the regulatory agencies established during the privatization process—a process that had already begun during the Lula administration. Soon after he took office in February 2003, Lula said he had found out—through the newspapers, he said—that the energy and telephone regulatory agencies had authorized rate increases. He promptly complained that the agencies were “running the country” and decried the “outsourcing of the State.” Dilma Rousseff, then the Minister of Mines and Energy, asked the National Electrical Power Agency (ANEEL) to take steps to establish “reasonable rates” (Nunes et al., 2003).

What followed then was a gradual weakening of the agencies and the practice of filling positions with political appointees. In a survey of

directors appointed to regulatory agencies between 1997 and 2014, De Bonis (2016) shows that the percentage of appointees with experience in their respective sector was 48% during the Cardoso administration, 16% during Lula's tenure and 17% during the Rousseff administration. With agencies more weakened, the Executive gained greater power to make discretionary interventions in the markets. Moita and Paiva (2013), for example, showed that the establishment of ANEEL reduced the tendency of governments to lower prices around election time. When that agency's regulatory power was subsequently reduced, however, new interventions were possible.

A fiscal adjustment (and a Car Wash) along the way

The impeachment of Dilma Rousseff in 2016 was largely attributable to the excessive and indiscriminate use of the State apparatus and insufficient transparency of the mechanisms for SOE capitalization and funds transfers. Through an array of subterfuges, it was possible to mask SOE and federal government losses with all the transfers that were being made to the private sector. Early in Rousseff's second term, however, the benefit-dispensing cycle grew more and more fragile, as it became increasingly clear that the country's revenues would not be able to sustain the agreed-to disbursements and expenditures. Orthodox economist Joaquim Levy, who had been on Lula's first-term economic team, took over as Minister of Finance with the mission of adjusting the government's accounts. Levy went a little further than that. In his speech upon taking office, he appeared to have Faoro (1957) in mind as he voiced concern over the insufficiently transparent relations between the public and private sectors in Brazil, saying, "The antithesis of the patrimonialist system is the impersonal nature of the business of the State, in economic relations and in the provision of public assets, including social assets [...]. That impersonality sets parameters for the economy, and thereby protects the common good and the national Treasury." (Gerbelli, 2015).

A few concrete measures were taken to exert a little more control over the Leviathan, such as setting greater restrictions on BNDES participation in concessions with subsidized interest rates. Levy, however, did not last long in the position, largely because Rousseff's own group did not believe in the importance of fiscal balance, but also due to an internal dispute with Nelson Barbosa, then Minister of Planning, who had in mind a more moderate, gradual adjustment.

Around the same time, investigations of the so-called Operation Car Wash, led by the Federal Police and the Federal Prosecution Service, essentially exposed repeated instances of funds from State-owned enterprises being used to support politicians and business owners, much like the scenario illustrated in Figure 2. Compared to earlier investigations, Car Wash made progress on at least three important points. First, it firmly established a mechanism for extensive cooperation between government prosecutors, judges and the federal police, which sped up the evidence-gathering and adjudication process. Second, the investigation benefited from the introduction of the legal mechanism of plea bargaining, which produced a "prisoner's dilemma" effect by creating incentives for confession and handing-over of evidence in exchange for a reduced sentence. Third, it garnered widespread approval from the public, which by then had been sensitized by innumerable stories of corruption and had begun to press for more investigation and punishment. The jailing of Marcelo Odebrecht, president of the eponymous construction firm, was a landmark event because it substantially increased the probability of punishment in cases involving suspicious relations between the public and private sectors.

Can we change the Brazilian Leviathan?

After examining the harmful and lasting effects of public-private relations and their great resilience over many generations, Faoro (1957) closes his seminal work by lamenting "the rigid mantle of the inexhaustible, weighty, suffocating past." Indeed, more than a half-century after the

publication of his work, countless studies and the revelations of Car Wash have demonstrated that his concerns remain relevant today. Since the State is central to the distribution of income and benefits to the private sector and the political system, a fundamental question arises as to how to change Brazilian incentives and institutional regulation so that the Leviathan can do more to promote development and productivity gains in the economy.

It is instructive to revisit the cycle illustrated in Figure 2. In 2015, after the Federal Supreme Court ruled that private campaign contributions are unconstitutional, the traditional mechanism underpinning patronage relationships between the private sector and the political system was weakened. There was undoubtedly still some possibility that the system might operate by means of equally commonplace off-the-books contributions. However, in the face of the ongoing Car Wash investigation and the refinement of control mechanisms in Brazil, business owners began to view these informal connections to the political system as more risky. Consequently, the foundations of the cycle depicted in Figure 2 that governs relations between companies and the political system became destabilized, or at least more costly.

There must also be a discussion of what changes occur in the centrality of the government entities providing funds to the private sector and being influenced by the political system through the government in power. Owing to the fiscal crisis in 2015 and the initiatives to strengthen public accounts, there was simply not as much room to distribute credit and subsidies at the levels seen after 2007. One possible risk in that regard is that the efforts to introduce greater fiscal discipline will fail to produce immediate effects, quickly paving the way for opposition, both from groups preaching a more heterodox economic approach, and from business owners themselves as they clamor for more public capital and protection. In any event, there is unlikely to be much room for a return to the same level of disbursements and public intervention that created so many opportunities for a few select entrepreneurs and sectors.

Still, everything will depend on how the governments in power maintain their control rights over the State's benefit-distribution apparatus. Will it be possible to place limits on how the political system can guide the Leviathan to act for its own benefit and that of its allies? Indeed, after Dilma Rousseff left office, a number of measures were adopted to address institutional change along those lines. The State-Owned Enterprise Governance Act (Law No. 13.303), approved in 2016, was criticized for its repetition of several provisions that existed in other legal instruments, but it had the benefit of placing limits on the appointment of politicians and public officeholders to the management and boards of State-owned companies. The interventions during the Rousseff administration occurred primarily because ministers and political allies had colluded with the President to hold a large number of positions in the management and deliberative bodies of SOEs. As a result, Law No. 13.303 will place limits on direct control over the majority Leviathan, although it may still be necessary to more clearly define how to ensure that managers and board members are truly independent from the usual channels of political influence.

But what about the minority Leviathan which, as we have seen, had spread throughout the economy with as much breadth and diversity as the large SOEs, or even more so? As of this writing, there is a bill in the works to limit political appointments at pension funds, similar to the SOE Governance Act. Another bill under discussion stipulates that BNDES must precisely calculate the subsidies built into its loans, based on a comparison between the rate paid by the borrower and the rate the borrower would likely get under market conditions. The bill further proposes that BNDES conduct impact analyses on large loans. For example, when lending to a meat-processing or airport management company, what provision is made for socio-environmental externalities? Do they offset the costs of the subsidies involved? More clear-sighted analyses along those lines can help control capital lending outlays by making the costs and benefits of loan policies and company participation in business more transparent.

Another very important measure is to restore the regulatory and competitive backbone of the SOEs. With more competition, SOEs tend to become more productive, so they diminish the funds that can be raised by managers and politicians, and they put these companies to the test under equitable market conditions (Bartel and Harrison, 2005). For example, by turning Petrobras into a monopoly in the pre-salt fields, the government only raised the benefits of its capture by politicians and entrepreneurs connected to its chain of business. By the same token, it is essential to strengthen the independence and power of the regulatory agencies, which, as we saw earlier, ended up losing prominence after 2003. The agencies help create brakes and counterweights to government attempts to intervene in the SOEs for political purposes. For example, Norwegian oil company Statoil is answerable to the Norwegian Petroleum Directorate, a regulatory agency consisting of well-known, reputable technical specialists (Pargendler et al., 2013; Thurber and Istad, 2010). A number of proposals under discussion raise the requirements for appointing agency directors and set more transparent criteria for evaluating their performance.

One even more fundamental question is whether Brazil will be able to develop competitive industries with less State involvement. With more than R\$400 billion transferred to the Treasury, the BNDES grew larger than was prudent, given the increase in public debt and the cost of subsidies. Since about 60% of the bank loans were to large companies, which can raise capital via other market mechanisms, it is not surprising that several studies have shown a limited, if not null effect, of BNDES loans on the firms' rate of investment (Bonomo et al., 2015; Lazzarini et al., 2015). At the same time, there are contractors with good projects that have real capital restrictions; under suitable conditions of governance and transparency, involvement by the Leviathan may possibly help in urgently-needed productive projects that would not otherwise see the light of day (Inoue et al., 2013).

The key, therefore, is in creating a more efficient Leviathan, oriented towards real market failures and working in complementary and synergis-

tic fashion with the private sector. As an example, let us consider Chile's Production Development Corporation (CORFO). Although its purview is much smaller than that of BNDES, CORFO has operated more along the lines of promoting entrepreneurship and technological innovation. In fact, it does not even have direct lines of credit for companies. One mechanism used by the institution is credit guarantees; instead of making direct loans to an entrepreneur, the latter can go to a private bank with the promise that CORFO will guarantee a certain portion of the loan. The institution also channels funds from copper exploration to finance a program called Start-Up Chile, which supports local and foreign entrepreneurs in numerous sectors.

One familiar criticism of proposals of this type is that Brazil does not have an environment conducive to promoting long-term credit for capacity-building projects. But that view does not align with the facts. Musacchio (2009) shows that there was a dynamic long-term credit market in Brazil long before the BNDES was established. Between 1890 and 1915, the stock of debentures as a percentage of GDP was nearly 10% in Brazil, registering as high as 18% in some years. One of the main factors that drove this development was the introduction of legal guarantees for creditors, as well as other institutional mechanisms that invited involvement by private capital. That institutional environment favorable to investment was subsequently rolled back during the Getúlio Vargas administration, beginning with a set of measures removing creditor protections and reducing standards of corporate governance.

Rather than discussing the size of the Leviathan, therefore, it is more important to consider a series of institutional changes needed in order to create more efficient alternatives to financing and business development, while also establishing limits on political control of the State machinery. Such institutions would cause the Leviathan to work more synergistically with private entrepreneurs to boost investment and productivity, rather than simply distribute capital and opportunities to the political system and rent seekers.

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4

MÃO
À
CORRUPÇÃO!

ORDEM E PROGRESSO

Corruption and anti-corruption reforms in Brazil:

The Long Slog

MATTHEW M. TAYLOR*

Introduction

The silver lining to the political corruption scandals of recent years in Brazil is the increasing evidence that accountability institutions are working. There is a growing consensus among social scientists and journalists that Brazil has made important gains against corruption, that it is harder than ever for wrongdoing to be swept under the carpet and, most importantly, that corrupt acts are increasingly likely to be punished.¹ This paper does not contest these hopeful interpretations, but tries to put the slow improvements in the fight against political corruption into context, to evaluate the constraints to reform, and to suggest some of the limitations to the ongoing accountability reforms in Brasília.

The paper proceeds in four sections. The first two sections summarize the literature on political corruption and accountability in Brazil, describing first the costs of corruption, before briefly summarizing the academic consensus on sources of corruption. The third section looks at recent reforms and their effects on diminishing corrupt behaviors. The final section looks more closely at the stresses imposed on the political

1 "Brazil's Crisis May Have a Silver Lining: Rule of Law", *New York Times*, 25 November (2015), and Melo (2016).

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system by the corruption scandals of recent years, by the struggle for reform, and by the application of new laws and procedures by an increasingly autonomous set of competing agencies. Overall, the paper aims to demonstrate the close connections between high-level political corruption (“high” or “political” corruption) and the functioning of Brazil’s coalitional presidential system, and as a consequence, the real and important limits to reform.

Scale and costs of corruption

An outsider with only a passing knowledge of headlines from Brazil might find it difficult to believe that there have been any significant improvements in the fight against political corruption over the past thirty years. A search of *New York Times* articles headlining Brazil finds that fully 13% of the 1,749 articles published in the five years from 2011 to 2015 reference corruption. Brazilians themselves have become inured to scandal, in part because of the large number of reported cases of wrongdoing, but also, because of the scant evidence of punishment. The continued public prominence of political leaders who have been implicated in corruption, and their continued presence on the political stage, conveys the impression that this is simply the way politics has always been done, and always will be.

Over the past decade, Brazilians have seen credible allegations of political corruption at all levels of government, implicating politicians of all political stripes. In 2015, the two leaders of Congress, Eduardo Cunha (PMDB), the leader of the lower house, and Renan Calheiros (PMDB), the president of the Senate, each faced multiple charges in the country’s high court, the Supremo Tribunal Federal (STF). At the state level, Brasília’s governor José Roberto Arruda (*Democratas* party), was arrested in 2010 for receiving kickbacks from contractors; in São Paulo, former mayor and governor Paulo Maluf (PP) was until recently unable to travel abroad because of arrest warrants issued by Interpol; and in Minas Gerais, after a lengthy trial, former governor Eduardo Azeredo (PSDB)

was convicted by a trial court in 2015 of running a pay-for-votes racket. The picture is no better at the municipal level, where random audits by the Comptroller General turn up serious irregularities in more than half of the municipalities audited (Martini 2014). The governing PT has been roiled by the 2005 *mensalão* scandal, followed more recently by the colossal Petrobras investigation, which is estimated to have cost the country billions of dollars in kickbacks.

The economic costs of corruption in Brazil dwarf that of its well-known social programs, and represent a significant proportion of the government's limited discretionary spending capacity. In one of the few efforts to quantify the costs of corruption, the São Paulo federation of industry, FIESP, estimated that corruption cost US\$379 billion nationwide in the decade to 2011.² Not all of this money goes abroad, of course, but Global Financial Integrity has estimated that US\$217 billion flew out of the country in the decade through 2014 via illicit financial outflows.³ Both of these figures overshadow the cost of Bolsa Família (US\$10.2 billion in 2014), social spending (US\$26.3 billion), or even Brazil's biggest federal expense, the pension system (US\$180.1 billion).⁴

The non-monetary costs of corruption are also significant. The 2013 Global Corruption Barometer, a survey of 114,000 citizens of 107 countries (including 2,002 Brazilians), shows that 70% of Brazilians believe that corruption is a serious problem in the public sector, that 29% believe the problem is getting worse, and that 56 percent find the government ineffective or highly ineffective in fighting corruption.⁵ Partly as a con-

2 FIESP (2010).

3 Illegal remittances may include criminal activities not qualified as corruption, such as under-invoicing of commercial operations or drug trafficking.

4 Budget data from Portal da Transparência, accessed January 20, 2016, converted at December 31, 2014 exchange rate from Central Bank.

5 See Transparency International. Overview. Available at: <<http://www.transparency.org/research/gcb/overview>>. Access on: 24 ago. 2017

sequence, faith in institutions is quite low: the same survey shows that 50% of respondents thought the judiciary was corrupt, 72% thought Congress was corrupt, and 81% felt that political parties were corrupt.

These perceptions are further strengthened by the fact that although corruption has been reported under every presidential administration since the return to democracy in 1985 (Power and Taylor 2009), impunity has been rife. As a Transparency International brief noted, “Overall, high-level government politicians accused of crimes are rarely prosecuted, and when prosecuted, never convicted, contributing to the general opinion that high-level corruption cases benefit from special treatment from the courts” (Martini, 2014). The conviction and imprisonment of leading members of the PT government in 2013, for their involvement in the *mensalão*, was at the time an aberration, representing one of the few full-scale examples of investigation and punishment of high-level corruption. It was only possible because of a unique combination of compelling video evidence of wrongdoing, an antagonistic press, the attention given to the case by autonomous anti-corruption agencies, and the machinations of a particularly proactive Supreme Court justice. Similarly, the Petrobras scandal has netted a large number of important players, *but only one politician has been jailed to date, and some of the more important corporate players have been freed pending trial*. The pattern of impunity may be changing, but not quickly enough to change long-rooted perceptions or to satisfy simmering public resentment.

Sources of recurrent political corruption

The posited sources of high-level political corruption in Brazil range from the macrohistorical to the microinstitutional. At the broadest structural level, political corruption has been related to the historical legacies of slavery, inequality, and patrimonial patterns of rule that are long-established in the Brazilian political system (for a review, see Pereira 2015; for a critique of this literature, see Souza 2016). Yet whatever stock one places in historical legacies or cultural explanations, the return to

democracy in 1985 simultaneously created new opportunities for corruption and generated new pressures for reform. With that in mind, this section focuses primarily on the democratic institutions of the post-1985 regime that may generate corruption and impunity, including the toolbox of coalitional presidentialism, political appointments, campaign finance, and an inefficient and lenient judicial system.⁶

Coalitional presidentialism

Brazilian politics has been described as coalitional presidentialist (Abranches 1988), a system in which strong powers accrue to the president, even as legislative power has been fragmented by a multiparty system. Although early observers offered grim predictions about the unsuitability of presidentialism to Latin America, about the inherent instability of presidential regimes, and about the inefficacy of the fragmented Brazilian political system (e.g., Linz, Valenzuela,

Mainwaring), by the late 1990s a consensus began to emerge about the apparent governability of the Brazilian model. Much of the academic literature on coalitional presidentialism has been cautiously optimistic about the system's functionality and potential (e.g., Figueiredo and Limongi 1998; Melo and Pereira 2013, Montero 2014).

But this consensus about the governability provided by coalitional presidentialism is partly due to a cultivated agnosticism about the ethical costs of coalition formation, and partly a consequence of the relatively few crises that the Brazilian democratic system has had to weather. Although the past three decades have been anything but calm for Brazil—including the repercussions of the 1982 debt crisis, the hyperinflation of the early 1990s, the balance of payments crises of the late 1990s, and the economic collapse of the second Rouseff administration—few of these crises actually threatened

6 Other factors that play a role, but perhaps a less direct role, such as media concentration or federalism, are not dealt with directly here, but readers are directed to Taylor (2017) for further discussion.

the core of the political system. Most of these challenges could be addressed in the economic realm, and the president's ability to regularly obtain the support of three-quarters to four-fifths of Congress in favor of needed reforms was largely unquestioned. This has changed since the 2014 elections, as Melo (2016) convincingly demonstrates: although the Rousseff coalition ostensibly holds more than 68% of the Chamber and 71% of the Senate, the largest party (the PMDB) is fractured, the number of parties in Congress has risen steadily to 35 in 2015, fragmentation in the states has reached world record levels (in five states, no party controls more than one seat), and party identity among voters is at all time lows.

At equilibrium, moreover, the coalitional presidentialist system operates on a system of horsetrading that is widely thought to increase high corruption. The President must build a coalition from among the 30-odd parties represented in Congress at any given moment, and the president's party seldom holds more than 15%-20% of the seats, making him or her dependent on pulling together support by whatever means. The "toolbox" of presidential control (Raile, Pereira and Power 2011; Figueiredo and Limongi 1998) used to resolve this governance conundrum includes both formal instruments for controlling the coalition, such as decree provisions and procedural control over legislative votes, as well as informal mechanisms that sometimes fade over into the corrupt. Among these, several are regularly related to high corruption, including political appointments and campaign finance. Indeed, it may well be that a reinforcing dynamic is at work: governments in the past have encouraged the creation of new parties that might buttress their coalition, while politicians happily move from one party label to another in pursuit of pork or better campaign funding, with both patterns contributing to fractionalization, which further enhances the importance of patronage and campaign resources to pull together a coalition.

Political appointments

The distribution of political appointments is deeply intertwined with the coalitional system. The conventional wisdom has long been that the large number of appointees in Brazil contributes to the ineffectiveness of the public service, as well as corruption (Martini 2014, Instituto Millenium 2013). Using newly available data on public sector hiring practices, a wave of recent research shows that appointments to the federal bureaucracy are not as politicized as was once thought (e.g., De Bonis, 2015; Lopez et al., 2014), notes that Brazil has a strong tradition of merit-based civil service hiring,⁷ and finds little evidence that ministries are given over lock, stock and barrel to coalition allies (Bersch et al., 2017). Yet there is little question that political appointments in the federal government (roughly 22,000) are significant in comparison with most OECD countries, and that the problem may be even more significant at the state and municipal level. Furthermore, there is sturdy evidence that increased political appointments are associated with increased corruption, which also has negative repercussions for bureaucratic capacity (Bersch et al. 2016). And there is also good survey research demonstrating that civil servants themselves are deeply aware of corruption, with more than a third reporting frequent bribery in their agencies (Filgueiras, 2011).

The *mensalão* scandal of 2005 clearly reflected the bargaining logic of coalition-formation: when the PT government decided to populate the most important ministries with its own cadres, it was forced to find other means of compensating allies. The result was two-fold: first, the unwieldy expansion of the number of cabinet posts during the 2000s, to a peak of 39 in 2014; and regular payments to allied legislators, which presumably were calculated to replace the potential gains from lost appointments.

7 This tradition has been greatly enhanced since 1985. The 1988 Constitution establishes strong merit protections, and even in political appointments, establishes a preference for hiring civil servants (Article 37). This preference for filling appointment slots with civil servants was strengthened via constitutional amendment 19 in 1998, and then again by Decree 5497 in 2005, which requires a fixed proportion of appointment slots to be filled by career civil servants. (Santos 2009)

Campaign finance

Political finance plays an important role, with the high cost of campaigns motivating some of the worst transgressions. In the Petrobras scandal that began to unravel in 2014, it is alleged that 3% of the many contracts at the state-owned oil company was being funneled to the PT and its allies in the PMDB and PP. Indeed, although individual wrongdoing and illicit enrichment are commonplace, oftentimes, the most organized forms of rent extraction in Brazilian politics are related to campaign finance. These types of corruption may flow in two directions. The first is extracting funds from the public sector and directly funnelling them to political campaigns (as with the skimming of Petrobras contracts). The second is via the manipulation of procurement to favor campaign contributors. Until 2016, firms could donate up to 10 percent of their gross income to campaigns (the STF ruled this practice unconstitutional in 2015). It is perhaps not all that surprising that the top donors to political campaigns have traditionally been firms with an enormous volume of business before the state. Paulo Roberto Costa, a former Petrobras director at the heart of the scandal, was quoted as saying “that business of official donations is the biggest baloney there is in Brazil. No company is going to donate millions because they like so-and-so. The donations aren’t donations, they’re loans. The company is loaning money [to the candidate] and later will come to demand payment” (Franco, 2015).

The incentives to engage in wrongdoing to finance campaigns may be significant. The fragmentation and instability of the electoral system means that parties have a hard time consolidating a national brand that can be used in successive elections, which generates incentives for increased campaign spending. Further, especially in the open-list proportional representation electoral contests for the Chamber of Deputies, intra-party competition is often as significant as between-party competition. Speck and Campos (2014, 21) document the expensive cost of the system: using data from the 2010 and 2012 elections, they find that in addition to an estimated R\$25.9 billion in airtime provided by the “*horário*

eleitoral,” R\$1.2 billion of the “*Fundo Partidário*,” and between R\$4.7 and R\$5.9 billion in official campaign donations, R\$32.4 billion was spent on elections in this electoral cycle. Converting with the end-2012 exchange rate, this means that Brazil spent US\$15.8 billion in the 2010-12 electoral cycle. By contrast, the 2012 elections in the United States, a country whose population is roughly half again as big as Brazil’s, cost \$6.3 billion (Choma, 2013).

Brazil guarantees free TV time to candidates for campaign spots. Paradoxically, this may increase the cost of campaigns, and also contribute to party fragmentation. Increasing access to TV (97% of the population had TVs in 2010, as compared with only 50% in 1980; Speck and Campos 2014, 14) generates enormous pressure to run sophisticated campaign ads. But free TV time also creates incentives for the premature nationalization of relatively new parties—who strive to obtain access to free TV time at a national level by demonstrating that they have directorates throughout the country, a process which tends to cut short efforts to slowly and organically build local support and a genuine party identity. The result is that parties often appear to be artificial shells, with a thin core of principled stances enveloped by more opportunistic electoral bargains, feeding back into the issues of fragmentation described above.⁸ Meanwhile, the high demand for campaign finance was met primarily by corporate contributions, which more than tripled between 2002 and 2010, to R\$371 million, and overwhelmingly favor incumbents (Mancuso and Speck 2014, 2015; Mancuso 2015).

Judicial impunity

The problems produced in the political arena are compounded by a generalized sense of impunity. The number of cases of corruption,

⁸ The recent creation of the *Partido da Mulher Brasileira* (Party of the Brazilian Woman) is a case in point: it has a female president, but most of the congressmen who joined are men.

malfeasance, and administrative improbity being heard in the courts has risen steadily, to nearly 26,000 in 2013,⁹ but they remain a relatively small percentage of total court cases, which totalled 95.2 million that year. Further, although the number of convictions is also on the rise, the numbers of corrupt actors who are actually in the prison system is remarkably low: during 2014, there were 551 prisoners whose primary crimes were corruption¹⁰ in a national prison population of 607,000.¹¹

These low proportions may be explained in part by the fact that corruption can be addressed both via civil and criminal means, and some of those punished in recent years have been targetted via civil suits.¹² But it doesn't obviate the point that punishment is rare. As one exasperated prosecutor wrote, "there is a whole institutionalized apparatus that makes impunity possible, that complicates or makes almost impossible the pretension of effectively holding these criminals legally accountable" (Castor de Mattos, 2015; translation mine).¹³ In the words of the lead prosecutor on the Lava Jato task force, the failure to punish makes it seem as "...if corruption never had existed, even though it has been amply proved, and the defendants have been convicted" (Dallagnol, 2015; translation mine).¹⁴

9 Machado (2015), citing a report by the Agência CNJ (2013).

10 Corrupção passiva, corrupção ativa and peculato. Figures from Depen (2015).

11 As Machado (2015) points out, this may be a low estimate, since the reported crimes are typically the most egregious. A murderous civil servant who is also corrupt will likely be reported as being jailed for murder, rather than corruption.

12 Law 8.429 of 1992 permits corruption to be dealt with via the civil code, as in cases of administrative improbity, which punish corruption with a fine, suspension of political rights and repayment of the damages.

13 *"Existe todo um aparato institucionalizado para possibilitar a impunidade, o que dificulta ou torna quase impossível a pretensão de responsabilizar penalmente de forma efetiva esses criminosos"* (Castor de Mattos 2015).

14 *"É como se a corrupção jamais tivesse existido, embora tenha sido amplamente provada e os réus tenham sido condenados"* (Dallagnol, 2015).

Judicial impunity is not the consequence of a weak judiciary. On the contrary, Brazilian legal institutions such as the prosecutorial branch (*Ministério Público*) and the courts are strong, highly independent, and extremely well-funded. Rather, a combination of strong rights protections, political timidity, a delay-ridden process, and forgiving laws all conspire to complicate corruption prosecutions, even in the most egregiously clear-cut cases (for an explanation, see Taylor 2017).

Da Ros and Taylor (2015) point to some of the issues that make justice a slow and uncertain affair: high congestion rates (topping 67% in federal courts and 75% in state courts); large backlogs of unresolved cases (reaching 66.9 million in 2013, in addition to 28.3 million new cases brought that year); dense legal procedures; the decisional autonomy of judges from each other; weak binding precedent; an enormous proportion of cases that are appealed to the high courts (the high court hears 80,000 cases a year); the formalism of the civil code system; and the possibility of a plethora of appeals, not only to higher courts, but also to the same judgeship. The process is slow: most cases average 10 years from start to finish, and in corruption cases, the final disposition of a case may take closer to 15 years.

As though these procedural barriers were not challenging enough, the courts and the law are quite timid. Although judges and high court justices, in particular, have not been shy about wading into policy debates, they have been extraordinarily cautious in political corruption cases. This is partly because any sitting federal politician's case is given privileged standing, and must be heard by the STF. Nearly three-fifths of Congress are facing criminal indictments or have been charged in cases pending before the court, a politically sticky wicket for a court that is still growing into its institutional role. Not surprisingly, this combination of procedural sloth and political timidity meant that the first sitting federal politician of the democratic period to have been convicted of corruption was not sentenced until 2010. While many lauded that milestone, it is less well known that this congressman was in fact released almost instantaneously, because by the time the STF reached a finding, the statute of

limitations had expired. The ease with which politicians have been able to escape the statute of limitations increased in 1999, when the STF “altered a long-standing position it had held since 1964 and ruled that former public officials were no longer entitled to *foro privilegiado* and, thus, that their cases should be tried by district judges and no longer by appellate ones” (Da Ros 2014, 177). While this limited the number of politicians who could claim special standing, it had the perverse effect of allowing those politicians to demand STF trial, but resign as soon as a decision was imminent, leading their cases to be remitted to the trial courts, where they began anew.

The timidity of the law is thus a significant issue: while on the one hand, the protection of democratic rights is a virtue of the judicial system, the downside is that laws governing corruption itself are quite tolerant. The maximum sentence for corruption is 12 years, but prison terms are typically set closer to the lower bound, of 2 to 4 years. The law is quite permissive regarding the statute of limitations, progressive imprisonment, and parole (see Taylor 2017, footnote 7), which means that even when prosecutors obtain a conviction, the punishment may be relatively light. Furthermore, even though a very small proportion of appeals (perhaps less than 5%¹⁵) are in fact successful, Brazilian law only permits incarceration upon a final and unappealable conviction. The possibility of stringing out a variety of appeals, in combination with a tight deadline for prescription, can be a recipe for impunity.

Even once a sentence has been brought down, prison terms are indulgent for convicts with able lawyers. This is well illustrated by the case of José Dirceu, Lula’s former chief of staff. Dirceu was indicted in 2005 for his role as the mastermind of the mensalão scandal, whereby the Lula government allegedly paid congressmen for their legislative support, using illicit funds. When the STF finally heard the case in November 2013, eight years after charges were initially brought, Dirceu was convicted to

2 years and 11 months for racketeering, a fine, and an additional 7 years and 11 months for corrupting congressmen. He served his jail sentence for 11 months, during which time he was permitted to work at a law firm during the day. Under the law, which permits well-behaved prisoners to move to less confining conditions after one-sixth of their term has been served (with further discounts for good behavior), Dirceu was eligible for progression to a halfway house in October 2014. But because Brasília has no halfway houses, Dirceu was permitted to move directly to house arrest (*regime aberto*), which imposes some restrictions on contact with other convicts, and requires prisoners to spend nights at home. So less than a year after going to jail with a ten year sentence, Dirceu was sleeping in his own bed, where he remained until August 2015, when he was arrested anew for his involvement in the *Lava Jato* case, for corruption allegedly committed during the eight years between his resignation as chief of staff and his conviction in the *mensalão* case.

Reform and counter-reform

The previous section paints a very negative picture of the prospects for controlling corruption and imposing true accountability. It is important, therefore, to note that the past thirty years of democracy have greatly improved the anti-corruption panorama. I will not reprise these arguments here (see Praça and Taylor, 2012 for the specifics of what has changed; and Power and Taylor, 2009 for specifics on the various actors in the institutional web of accountability), but briefly summarizing, the past generation since the return to democracy has seen: the creation of stronger anti-corruption bodies, such as the *Ministério Público*; increased funding and human resources provided to anti-corruption agencies; the increased insertion of Brazilian bureaucracies into international frameworks and agreements; the creation of better legal frameworks and the strengthening of extant anti-corruption laws; greater transparency of government accounts; increased media coverage of malfeasance; and active civil society pressure for the prioritization of the fight against corruption. The result has been gradual improvement in oversight capacity

and enforcement mechanisms, assisted by higher capacity government agencies with considerable autonomy, a strong bureaucratic esprit de corps, and considerable public support.

The process of reform has not been linear, and it has proceeded haltingly, through a process of incremental “problem-solving” rather than swift, wholesale “powering” (Bersch 2016). The remainder of this essay seeks to evaluate the causes for this incrementalism, as well as what it tells us about the prospects for future reform. I turn to the experience of the Dilma Rousseff government, which offers a particularly good example of the countervailing winds of reform and counter-reform that have been present for most of the recent democratic experience.

Rousseff, it is frequently noted, has not been personally implicated in the corruption scandals of her time in office. But her two terms in office have been dominated by the discussion of corruption. During her first year in office, in 2011, Rousseff made a name for herself by replacing seven ministers accused of corrupt acts whom she had inherited from her predecessor’s government. The conclusion of the mensalão trials during her second and third years in office was an important signal to the public about the credibility of corruption accusations against the PT, and coincided with the beginning of an economic downturn. By Dilma’s third year, growing public unease with a host of issues, including lackluster public services, deteriorating economic conditions, overspending on the 2014 World Cup, and corruption, drove a frightened Rousseff government toward reform.

Three times, Rousseff pushed forward anti-corruption reforms, aimed at addressing the four sources of political corruption described in the previous section. In 2013, as public anger erupted into street protests in the run up to the Confederations Cup championship, Rousseff proposed a package of reforms, including anti-corruption. A year later, while running for reelection, Rousseff held a press conference detailing the proposals. And once re-elected, Rousseff sent a package of reforms to Congress

on March 18, 2015, three days after a series of renewed nationwide protests. I briefly describe each below.

The massive 2013 street protests sparked the first major reform announcement by the Rousseff government, which on June 24 of that year floated a proposal for five political “pacts,” one of which would be a plebiscite on holding a constitutional assembly for political reform. The proposal left most of the details to Congress, but the government suggested that the plebiscite include discussion of public or mixed private-public campaign finance; changes to the electoral system, including introduction of a district vote; changes in the senate “*suplência*” system; changes in party coalition rules, and an end to secret legislative votes.¹⁶ Although it was not one of the pacts, Rousseff also argued for hardening anti-corruption legislation, including by making intentional corruption a felony rather than a misdemeanor, and changing the penalties to those reserved for the most heinous crimes (including slower sentencing progression). In subsequent press briefings, the government claimed it wanted the plebiscite to take place in time for the reforms to go into effect during the 2014 elections. There was no concrete legislative proposal on the anti-corruption initiatives. But Congress watered the proposal down, dropping all but discussion of campaign finance, and inserting changes in the electoral timetable (Langevin and Langevin 2015). Even in this weaker form, the proposal (PDC 1258/13) did not go forward, however, and has been stuck in the lower house’s Finance Committee since April 2015.

The protests, however, contributed to approval of Law 12.846 in August 2013. This law, known simply as the Anti-Corruption Law, is the first to criminalize corporate bribery, and imposes civil liabilities on companies engaged in corruption, or found to have distorted public bidding procedures. The potential sanctions are very significant: in principle the law allows for corporations to be made liable through fines, restrictions on government lending (which is very important in Brazilian business), and banishment from government contracts. In extreme cases, there is even the possibility of the firm being shut down. The new law makes it a lot easier to prove

corruption, because the evidentiary standard is low: prosecutors do not need to prove that the company was aware that a crime (i.e., bribery) was taking place, or that it allowed an officer of the company to negotiate on its behalf. They simply need to show that the corporation benefited from the alleged behavior. This new ability to punish corporations is a major change in Brazilian law, but the law has never before been used, and there is considerable uncertainty about how effective it will be.¹⁷

Second, during the 2014 presidential campaign, Rousseff's speeches made frequent reference to the need for reforms, and her campaign platform continued to call for a constituent assembly to undertake political reform.¹⁸ The ambiguity of her position, however, was frequently demonstrated by her allies on stage, including on at least one occasion in Alagoas, impeached former president Collor and scandal-ridden Senate president Renan Calheiros. By the end of the presidential campaign, however, the emerging accusations of corruption at Petrobras led Rousseff to explicitly defend her administration's anti-corruption efforts and

17 Although the law strengthens the ability of the state to target corrupting firms, there are a number of weaknesses in the law. The first is simply that the punishments are largely "administrative," rather than judicial: the government (the Ministerio Publico or the AGU) decides whether the state has been harmed, and imposes the relevant fines and administrative penalties. The problem is that those administrative punishments could presumably be appealed in a court of law, so it is hard to know how they will be interpreted by the courts. In addition, of course, to the well-known Brazilian problem of actually obtaining a final judicial decision that "sticks" when these administrative decisions are challenged (as they inevitably will be) in the courts.

A second problem is that the law allows for leniency agreements, provided the corporation makes amends and promises to remedy previous lapses. This could open a gaping hole that good corporate lawyers can pull companies through to avoid any real accountability. Paradoxically, however, there is a separate problem with these leniency agreements, since they can be interpreted as confessions of guilt and potentially used to prosecute parallel civil or criminal cases, limiting their appeal to defendants. So it's hard to know how they will in fact be used.

18 "Uma Constituinte Exclusiva para a reforma política eliminará o financiamento empresarial privado nos processos eleitorais, que constitui uma das fontes da corrupção sistêmica que afeta o funcionamento de nosso sistema republicano." (6)

<https://www.pt.org.br/wp-content/uploads/2014/05/DIRETRIZES-PROGRAMA-DE-GOVERNO-DILMA-PRESIDENTE-20141.pdf>

promise reform.¹⁹ She promised to regulate Anti-Corruption Law, push for greater punishments of illegal enrichment by civil servants and Caixa 2, pass laws confiscating ill-got gains, and pass measures that would speed up court cases in both trial courts and political cases in the high courts. At her inauguration in January 2015, she promised a broad pact against corruption by all branches of government, as well as proposing five laws fitting the goals of her campaign, and calling again for political reform.

The package of reforms wasn't sent to Congress until March 2015, as a new wave of protests emerged. A series of proposed laws and constitutional amendments would criminalize illegal campaign contributions (*Caixa 2*), rather than treating them as a lighter “*contravenção penal*” [via *projeto de lei*]; criminalize illicit enrichment of civil servants [reviving a moribund 2005 *projeto de lei*]; pass an amendment permitting confiscation of civil servants' assets that are incompatible with their earnings [via a constitutional amendment proposal]; create a *Ficha Limpa*-like law for all political appointee positions [*projeto de lei*]; give urgency to an existing proposal for a law on seizure of corruptly gained assets [*projeto de lei* from 2011]; and create a working group on judicial efficiency. In March 2015, twenty months after the Anti-Corruption Law was passed, and amidst street protests, Rousseff signed Decree 8.420 regulating that law and making it effective.

Langevin and Langevin (2015) note that forward progress on reforms faced significant congressional resistance during 2015. The Congress wanted a popular referendum on political reform first approved by Congress, rather than the plebiscite Dilma proposed. Meanwhile, the government spent no political capital to push any of the proposals forward, distracted as it was by the Petrobras scandal, the deteriorating fiscal situation, and its battles with Chamber president Eduardo Cunha.

19 Dilma's 10th campaign spot during the 1st round of voting, and her 19th, during the 2nd round, at <https://www.youtube.com/watch?v=vt60zoO7Z1c> and https://www.youtube.com/watch?v=Xkx9MTfFwRg&index=27&list=PLDEUiz7w9QhtGU8htZUPGAHt-WGvC7_68k, accessed January 27, 2016.

Only after the STF decided in September 2015 that corporate campaign contributions were unconstitutional and should be banned did Rousseff sign “the lower house’s package of political reform measures, but with the notable veto of the allowance for corporate contributions, thereby avoiding a constitutional showdown with the [STF] and setting in motion the complete ban of such campaign contributions for future elections” (Langevin and Langevin, 2015).

As the STF’s decision illustrates, one advantage of the ample institutional diversity of Brazil’s multi-branch government, is that even in the absence of executive branch effort, other branches may push forward reform. While noisy, confusing, and at times, contradictory, this ensures creativity and continuous motion. Most recently, the Ministério Público Federal has seized on the success of the Lava Jato investigations to push forward a popular initiative for an anti-corruption package. As of this writing, the MPF has obtained 1.27 million signatures of the 1.5 million needed to approve the popular initiative, which would force it onto the congressional agenda. Although inclusion on the congressional agenda does nothing to guarantee congressional approval, historically such initiatives have faced better odds in Congress, in part because of the clear sign that they count with considerable public support. The MPF package of ten measures was drafted in March 2015, and includes increased penalties for corruption, tougher sentencing laws, provisions for speedier trial, the criminalization of electoral crimes, holding political parties responsible for wrongdoing, and provisions for the seizure of ill-got gains.²⁰

The underwhelming commitment of the Rousseff government to invest political capital in reform, the gradual erosion of her capital during her first term, and the confused legislative politics of recent years have all slowed legislative changes to either the political system or anti-corruption law. In addition to these legislative challenges, though, anti-corruption innovations have also faced challenges on two other fronts in recent years: by defense lawyers, with often legitimate concerns about the

20 According to the MP website: <http://www.combateacorrupcao.mpf.mp.br/10-medidas>, accessed January 27, 2016.

implementation of new laws and procedures, and by the government's own hand on the scales.

Because of the repeated stalemating of reforms that might hurt sitting politicians, perhaps the most important reforms have taken place below the radar, in unplanned and often incremental ways (Praça and Taylor 2012). Brazil signed on to all of the major international anti-corruption and anti-corruption conventions in the late 1990s and early 2000s (Ferreira e Morosini, 2013).²¹ But the provisions for anti-racketeering and anti-money laundering commitments had no basis in Brazilian law, leading to a patchwork of solutions, including major constitutional decisions by the STF, as well as hastily drafted legislation to regulate these international commitments and make them effective. The difficulties that Brazilian accountability institutions faced in cross-national investigation of corruption, in a variety of other high-profile cases in Switzerland, Jersey, and New York, however, led to efforts to streamline cross-border investigative efforts and cooperation, while strengthening domestic law.

Perhaps the most iconic example of the effects of this patchwork incrementalism is that Alberto Yousseff, the money launderer at the heart of Lava Jato, was also investigated and arrested in the 2003 Banestado case. He signed the first major plea bargain the MPF had ever written. (MPF, 201?) The prosecutors in that case proceeded with another twenty-odd plea bargains, even though there was not a law in place at the time regulating the use of plea bargains, obtaining nearly 100 convictions for illegal use of the CC-5 foreign exchange mechanism. As a consequence of the hurdles in that investigation, prosecutors pushed congress to pass a more failsafe plea bargain law. Simultaneously, judicial decisions—including at the ST—were pointing to the absence of any clear definition of “organized crime” or “racketeering” in Brazilian law, despite international treaty commitments. Partly in response, Congress drafted Laws 12.694/12 and 12.850/13 and an odd assortment of PT,

21 In fact, Brazil's accession to international treaties in this realm dates to the Vienna Convention of 1988 on drug trafficking, the 1989 Financial Action Task Force, and the implementation of laws implementing FATF in 1998.

PDT and PSDB congressmen pushed them forward to approval. A new generation of young prosecutors and judges was also proposing and pushing forward reforms, serving both as architects of the new laws, as well as their primary users. The significant setbacks and challenges of past investigations—including Collor’s impeachment, the Satiagraha case, the Banestado case, and the *mensalão* case—provided lessons about the limits and risks of various legal instruments and tactics.²² It is no coincidence that five of the nine original prosecutors on the Lava Jato case earned their chops on the Banestado task force, while a new generation of judges was represented by Sérgio Moro, who is one of Brazil’s a leading experts in anti-money laundering, and also served as an advisor (*juíz de instrução*) to the STF during the massive *mensalão* corruption trial.²³

It is not surprising that Brazil’s historical experience with arbitrary and authoritarian rule has led to a constitutional adherence to strong protections of civil rights, honored in the breach, but professed loudly. Politicians of all stripes have proclaimed their support for the right to defense (*direito ao contraditório*), for the extensive protection of habeas corpus protections, for the right to liberty until a final conviction, and for the democratic rule of law. The huge expansion of the numbers of jailed Brazilians—more than 600,000 in 2015, making Brazil the fourth largest nation by incarceration—has generated justifiable calls for balance. Most recently, the president of the Institute for the Defense of the Right to Defense, founded by the late Justice Minister Márcio Thomaz Bastos (a criminal defense lawyer) argued against “witchhunts,” and noted that it was important to fight abuses such as the defendants’ lack of access

22 It is worth noting that many of the police and prosecutorial abuses that accompanied past investigations, such as televising the handcuffing and arrest of defendants, or widespread wiretapping, appear to have been curtailed, in part because of rather strict decisions by the STF (for example, banning the use of handcuffs except in extreme cases, and overturning lower court decisions in cases of police abuse).

23 Sérgio Moro, Fausto De Sanctis, Jorge Costa, Abel Gomes, Gerson Godinho Costa, Cassio Granzinolim and Danilo Fontenelle are all members of this new generation of active judges.

to prosecution documents, and the poor justifications given for pre-trial detention. (Reverbel, 2015)

Defense lawyers in the Lava Jato case have been particularly active in lobbying journalists and thought leaders. A petition signed by 104 leading criminal defense lawyers was published as a paid advertisement in leading Brazilian newspapers in January 2015, generating an intense debate about the extent of “prosecutorial overreach.”²⁴ Signatories to the letter complained that “the ends seem to justify the means,” contributing to “a simulacrum of a trial.” This “inquisition” already knows what conclusion it intends to reach, the lawyers claimed, threatening rights and the rule of law. Lawyers claim there have been selective leaks in the case, that the media has been used to pressure higher court judges, that temporary imprisonment has been used to force plea bargains, and that trial documents have not been provided to defense lawyers with sufficient lead time. Separately, one of construction magnate Marcelo Odebrecht’s lawyers accused Judge Sérgio Moro of being partial, and of having usurped the jurisdiction of other courts (Carvalho and Zanini, 2016). They have been supported in these claims by legal briefs from foreign firms. Like other defense lawyers, he has expressed discomfort with the new use of plea bargaining, which allows defendants to get out of jail if they can incriminate someone higher up the food chain.

Defense lawyers of course have a strong incentive to lobby heavily on behalf of their clients and exploit legitimate doubts about the use of the law. In the Brazilian context of rapid legal change, furthermore, there are reasonable doubts that can be raised. Lawyers have been particularly adamant in critiquing three new innovations in the prosecution of corruption: preventative detention, plea bargaining, and the theory of “domínio do fato.” The first has a long history in Brazilian law, but has traditionally been applied only to prisoners at the lower end of the socio-economic

24 The title of this letter left few doubts about the authors’ stance: “Carta aberta em repúdio ao regime de supressão episódica de direitos e garantias verificado na Operação Lava Jato.”

scale: indeed, about 40% of the actual prison population (240,000 prisoners) is serving provisional jail time pending definitive judgment. But elites with access to good defense lawyers have traditionally been able to avoid jail terms through the use of habeas corpus and dilatory appeals. The arrival of a new generation of judges has changed this calculus: as journalist Frederico Vasconcelos noted, Judge Moro wrote more than a decade ago that preventative detention is a way of demonstrating the seriousness of allegations, while also demonstrating that the courts work, especially in slow judicial systems (Vasconcelos, 2015). These uses of detention do not please defense lawyers, of course.

More recent, and thus open to debate, is the use of plea bargaining and the theory of “domínio do fato.” Critics of plea bargaining emphasize the coercive elements of the process, and complain of its foreign origins, which they say do not fit Brazilian law. But now that the plea bargaining law is in statute, it seems it has come to stay. The ANPR, a national association of federal prosecutors, noted that very few of the plea bargains signed in Lava Jato were in fact signed while the defendants were jailed, meaning there was no coercion. They also note that of the 413 appeals filed by defense teams, only 16 have been successful in higher courts. (Kattah et al, 2016) An association of federal judges, Ajufe also responded, noting that Lava Jato is the result of a “slow and gradual process of the maturation of Brazilian republican institutions, which are not subordinate to economic interests.” In case there was any doubt, for good measure, the Ajufe noted that “those who can’t prove their perspective by legal means only have one option: to cast aspersions on the honesty of the process” ... [when legal means don’t work] “a letter in the papers is a way of satisfying one’s clients.” (Jota, 2016)

The use of “teoria do domínio do fato”²⁵ is one of the issues causing the most significant legal debate. It was first used in a major case during

25 This is the notion of “*Tatherrschaft*,” or roughly, “control over the act,” which was used against Nazi officials in war crimes trials. It is the notion that some officials may have had “control,” over the crimes committed, even if they had no actual hand in the perpetration of those crimes.

the *mensalão* scandal, against Lula's former chief of staff José Dirceu, to demonstrate that although Dirceu did not directly commit the crime, by virtue of his position of power, he was the intellectual author of the corruption. At the time, it was rejected by STF ministers Lewandowski and Toffoli, who drew on the work of German jurist Claus Roxin (one of the leading scholars and originators of this doctrine) to argue that there needed to be concrete proof that the defendant made a decision to act criminally. It was insufficient, in their view, to simply argue that the defendant "should have known" what was being done by his subordinates. At the time, STF minister Joaquim Barbosa was a very effective proponent of enforcing both racketeering provisions and "domínio do fato." But he has since left the court, and it is unclear how the court will rule on any appeals that come its way in the future.

Government hand on the scales

Prosecutors complain about recurring efforts to make prosecution more difficult. (Onofre and Herdy, 2016) Among these, a few recent efforts have been significant: PEC 37, MP 703, Lei 13.254.

PEC 37: For most of the post-authoritarian period, police and prosecutors have fought a running battle over the right of prosecutors to conduct investigations: the police argue that the constitution gives them the right to investigate criminal behavior; prosecutors note that although the Constitution does not give them an explicit right to investigate, it doesn't prohibit such investigation, either. The debate reached the STF, which has not yet come to a definitive conclusion. This indecision in turn led to the drafting of constitutional amendment proposal 37 (PEC 37), which would give the police a monopoly over criminal investigation, and rein in the investigative powers of a variety of government agencies, including the Ministério Público, the Revenue Service, accounting tribunals (TCUs), and the Central Bank. The amendment proposal moved forward in June 2013, with important legislative support from congressmen who have increasingly been targeted by the MPF, as well as important lawyers and leaders of the OAB, who argued in favor of a narrow reading of the

constitution.(Revista Consultor Jurídico, 2013) But the vocal opposition of prosecutors, and the 2013 street protests – which in part targeted corruption – led to the overwhelming defeat of the proposal by 430 to 9 in a June 2013 vote in the Chamber.

MP 703: Anti-Corruption Law 12.846 went into effect in February 2014, but required some changes to become effective. The Rousseff government waited until late 2015 for Congress to deliberate on the implementing statutes, but when these were not approved, it issued a provisional measure (MP703) that provides guidance to government agencies about the implementation of leniency agreements. These agreements are, roughly speaking, the corporate equivalent to plea bargains for individuals; in exchange for acknowledging wrongdoing and cooperating with the government, the firms are given more lenient treatment. The new provisional measure, however, became a lightning rod for criticism for a variety of reasons: first, it overrides the ongoing legislative debate, which had already moved from the Senate to the Chamber; second, it gives the CGU—a ministry subordinate to the president—the exclusive right to negotiate leniency agreements, instead of favoring independent agencies such as the TCU or MPF; and third, it permits firms that reach leniency agreements and admit wrongdoing to continue to participate in public bidding, despite previous bad behavior. The government claims to be concerned with avoiding overly punitive measures that might hurt the economy, and to create greater legal certainty for firms working with the public sector, but the optics are terrible. Already, an anti-corruption institute, *Instituto Não Aceito Corrupção*, has proposed that the MPF file an ADIN constitutionality suit against the MP; it is very likely that MP 703 will not be approved by Congress, setting the whole statutory regulation effort back by a few years.

Lei 13.254: The so-called law on repatriation was signed by Rousseff in January 2016, giving amnesty to Brazilians who bring unreported foreign assets home, in exchange for a 30% fine. The government claims to have acted out of necessity: the returning funds—estimated at as much as US\$400 billion—may improve the economic situation and contribute

to improving the fiscal accounts. Government defenders argue that without such a bill, the money would never return, and the government claims it will use the money to facilitate a long-overdue reform of the ICMS tax system. Furthermore, defenders of the bill note that some crimes will not be amnestied, such as illegal campaign contributions (Caixa 2), or racketeering. But critics point out that the amnesty frees tax evading money launderers from any future prosecution for tax evasion or money laundering, thus favoring impunity.

Brazil's experience in recent years has been traumatic, in part because the growing capacity of federal agencies tasked with fighting corruption—including such diverse bodies as the Federal Police, the CGU, the Ministério Público prosecutorial service, and the courts—has overcome old habits and has begun tackling the long-standing tradition of political impunity.

This article has sought to demonstrate that, even though the past few years have been turbulent, the glass is half full. The country has come a long way in the fight against corruption. It often seems like a case of two steps forward, one step back, particularly as the political system pushes back against reforms that endanger entrenched interests. But Brazil's slow and incremental progress appears to have the salutary effect of providing breathing space and room for accommodation, especially when legitimate concerns have arisen about the growing power of prosecutors and judges, or the need to align anticorruption reforms more closely to the existing legal framework. Democratic institutions have continued to function, and in many cases to improve, even though they have never been fully populated by angels.

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JUSTIÇA ELEITORAL

5



Size of election district and corruption:

Factors include not only lobbying, but also campaign costs.†

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It's cheaper to pay a mercenary army than to share power. It's easier to rent a congressman than debate a government proposal. That's the story. People who are paid don't think.

Roberto Jefferson, 2005

In Brazil, construction magnates determine the State's priorities.

Adib Jatene, then minister of health in the Collor administration

One of the concerns of this book is to determine whether there is a measurable relationship between lobbying and corruption. This is an arduous task because of the hidden nature of corruption and the lack of comparable data on lobbying worldwide. In recent years, it is true, the word “lobbying” has become virtually synonymous with corruption. Frequently the connection reported by newspapers or pundits is made through election campaign contributions, whether or not recorded (known as “caixa 2”). It is no coincidence that some of the individuals who turned state’s evidence under Operation Car Wash have suggested

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that even contributions reported as such were in fact bribes paid in exchange for favors from the government. Furthermore, plenty of the depositions that have been made public claim that contributions and bribes were used to purchase certain kinds of legislation, such as the *medidas provisórias*, which are provisional presidential decrees. That qualitative evidence indicates a connection between a certain type of lobbying (or rather, certain criminal practices), corruption, and campaign contributions. But many of those connections are endogenous. In other words, it is hard to say which came first. The easy answer is that lobbying is the cause of corruption. Maybe it is, maybe it isn't.

In this chapter, we will attempt to investigate a different mechanism. We could say that what we are looking for is an institutional explanation. If corruption is affected by the need for campaign contributions and the effort to raise cash to finance campaigns leads to an increase in corruption, the question that must be asked is: Which rules of the game (which institutions) lead to the increase in campaign costs and corruption? Are the lobbyists the ones who approach politicians and buy their support through contributions? Or is it politicians who, in the search for campaign financing, extract money from those who want to build relationships with them? And if both apply, what is it that can be measured?

If by definition corruption is difficult to detect, one of the objectives of anyone who wants to understand it is to locate the mechanisms by which it manifests itself. Corruption is widely—and correctly—perceived as a plague. Among its many consequences, corruption impoverishes. There are many mechanisms that make it detrimental to economic development. Later, we will present a list, albeit not an exhaustive one.

One of the perennial objectives of corruptors is to impose rules that insulate them from competition. It is cheaper to bribe government officials into setting up barriers to entry than to compete on an equal footing. That reduced competition is manifested in lower productivity and growth rates.

Corruption increases risks for serious investors by creating a caste of “institutional relations” managers. Production factors (capital, in this case) are generated by businessmen skilled in “administering contracts” but they are not necessarily the ones qualified to take on the business operations.¹ “Administering contracts” is a euphemism for corrupting a government entity during execution of a contract—usually a public works contract—so as to extract more gains via amendments and revisions.²

Corruption diverts resources from areas essential to growth, such as education, to activities that yield little or no social returns. For example, Ferraz et al. (2012) shows how corruption diminishes the academic performance of Brazilian schoolchildren.

Corruption diverts efforts by companies and individuals toward activities that are designed to extract gains without adding social value—a shell game, in the best of cases. Sadly, the *petrolão* “big oil” scandal will provide plenty of distressingly concrete examples for this chapter. The investigations of the so-called Operation Car Wash, led by the Federal Police and the Public Prosecutor’s Office, shows that Brazil’s biggest company, one known worldwide for its engineering capabilities, had an entire division dedicated to “structured operations,” a boldly adopted euphemism for the keeping of accounting records of contributions made to politicians and political campaigns.

Corruption diminishes the legitimacy of government authority, fostering cynicism as regards the courts and reducing acceptance of the rule of law, thus promoting a vicious circle of crime and corruption. In short, corruption not only erodes the foundations of the social contract, but frustrates economic development.³

1 There is no convincing scientific evidence on the subject, but it would not be too risky to postulate that the kind of skills needed to generate business are diametrically opposite to the skills needed to administer contracts.

2 The next section provides a formal definition of the term “*renda*.”

3 A good summary of the relationship between corruption and economic growth

Corruption touches entire segments of society but is particularly present in relations between the government and the private sector because the former has the power to create gains for the latter. The recent “big oil” scheme eloquently illustrates how corruption functions in such relationships. This chapter focuses on a mechanism by which corruption develops in the public-private relationship: campaign financing.

Corruption in relations between the government and the private sector caused by gains generated by the government is measured by the electoral system. Once again it is hard not to recall the “big oil” scandal. Achieving power via elections is expensive. Competition among political candidates, which is usually positive, can make campaigning very expensive. One way to recover those costs is to generate gains, which makes candidates, representatives, and policymakers vulnerable. Hence the umbilical relationship between election financing and corruption. The cost of election campaigns, in turn, is governed by election rules, i.e., by the political system.

In this chapter, we perform an empirical test to determine whether the size of the election district used for legislative elections is associated with corruption. The underlying hypothesis is that the larger the election district is, the more expensive will be the campaign and the more vulnerable candidates and their representatives will be to the corrupting influence of campaign financing. We tested that hypothesis using a cross section of countries to explore differences in district size and corruption among countries.

What is an election district? They are the arenas within which candidates compete for votes in a certain geographical area. In the case of Brazil, the states are the districts. It is within a state that candidates for representative, senator, governor, and president compete. In the case of representatives and senators they compete statewide for votes, as do governors and presidents. In municipal elections the city is the district. But that format is not found universally in other parts of the world. In

can be found in Mauro (1996).

other countries a state may include several election districts. In many cases, representatives compete for only one seat within a state. Every formula that defines the rules for campaigning has advantages and disadvantages. In the United States, for example, politicians who are currently in office make a huge effort to “redraw” the boundaries of districts in ways that will ensure them a greater number of favorable voters. Here we briefly digress.

This practice of redrawing districts became known as “gerrymandering.” The word was coined as a “tribute” to Elbridge Gerry, a 19th century governor of Massachusetts. He redrew the boundaries of the state’s election districts so as to favor candidates from his party. It happened that the design ended up looking like a salamander, which gave rise to the term *gerrymander*.

Many academics, however, argue that reducing the size of the election districts and having only one seat allocated from each district, thus limiting competition within those districts enables the voters to have greater control over the activities of their representatives (Nicolau, 1999). The election of a single individual per geographical area (election district) makes it easier for voters to identify and follow the pursuits of their representatives.

The choice of an electoral system depends greatly on the objectives that the system is expected to accomplish. It can be said that each system has its pros and cons. Horowitz (2003) explains that each electoral system contains a different group of biases and that politicians who decide from among those different systems are actually choosing from among different biases. The single-candidate district system increases voter control over their representatives. Other systems increase the representation of minorities in Congress. No one system can bring all the benefits without any problems. An electoral system is the means of aggregating the preferences of a population as expressed through voting and transforming them into election results. In this chapter, we are interested in

analyzing a variable that permeates different electoral systems: the size of the election district. We intend to use that variable in an effort to shed light on the relationship between campaign contributions and corruption.

The chapter is organized into six sections, including this introduction. The second section defines corruption and describes how the relationship between the government and the private sector generates gains that can be appropriated by means of corrupt schemes. The third section provides a brief description of the mechanisms by which an electoral system subdues or amplifies corruption in relations between government and the private sector. The fourth section describes the data used, the choices made in measuring the size of an election district and degree of corruption, and the empirical strategy employed. The fifth section presents the results and the sixth concludes with a discussion.

Defining corruption and delineating the mechanisms

Before proceeding, let's define corruption. According to Wallis (2006, p. 25), there are two directions and one distinction:

“What I define as systematic corruption is both a concrete form of political behavior and an idea. In political societies plagued with systematic corruption, a group of politicians deliberately create rents by limiting entry into valuable economic activities, through grants of monopoly, restrictive corporate charters, tariffs, quotas, regulations, and the like. These rents bind the interests of the recipients to the politicians who create them. The purpose is to build a coalition that can dominate the government. Manipulating the economy for political ends is systematic corruption. Systematic corruption occurs when politics corrupts economics.

In contrast, venal corruption denotes the pursuit of private economic interests through the political process. Venal corruption occurs when

economics corrupts politics. Classical thinkers worried about venal corruption, too. They talked at great length about the moral and ethical corruption of entire peoples and societies, as well as governments. They realized, however, that venal corruption is an inevitable result of human nature. So they focused their intellectual enterprise on designing and then protecting a form of government that could resist systematic corruption. By eliminating systematic corruption, they hoped to mitigate the problems of venal corruption as well.”

The passage mentions the term “rents.” Rent is a payment made for a production factor in an amount higher than would be necessary to mobilize it. More simply: it means to reap extraordinary gains, to receive more than one would reasonably expect. Example: Imagine that a construction project would cost X because that is what would be necessary to pay the workers, compensate the creditors who lent funds, and reward the shareholders who brought in the capital. Any sum higher than X is “rent.”

For the purposes of this chapter, corruption will be defined as the illegal activity of acquiring rents in the interaction between the government and the private sector. Here we will not distinguish systematic from venal corruption, not because the distinction is analytically irrelevant, but because it would be difficult to differentiate them empirically.

The government has the ability to create rents for the private sector. Mechanisms abound.

Bidding proceedings may be conducted improperly or, worse, conducted strategically in order to foster cartelization among the bidders. The “big oil” scandal is simply the most dramatically emblematic example of this.

At a higher strategic level, legislation and public policies may be designed to facilitate the creation of rents. For example, local content requirements or preferential pricing policies limit the number of companies that can provide the service or offer goods. Sometimes they create monopolies. The government, or a state-owned enterprise it controls,

is in a vulnerable situation when it assumes the position of purchaser. Once again, the “big oil” scandal speaks for itself. It is no coincidence that one of the examples now being investigated is the purchase of *medidas provisórias* that would benefit companies involved in the “big oil” scheme through contributions and kickbacks that were not recorded as campaign contributions.

In the context of foreign trade, interventions such as customs tariffs, tariff protection, and anti-dumping rules all reduce foreign competition and create or increase rent on the domestic market.

The power to tax or to apply existing tax legislation selectively by enforcing the rules in a biased manner creates rents. Tax exemptions can have a brutal impact on the profits of an industry, unless it is the chosen one.

In short, the government has the power to create rent for the private sector. That rent is the source of the kind of corruption referred to in this chapter. The question we are asking is: how can the political system, more specifically the election rules, expand, or mitigate the corruption that is directed toward the acquisition of rents generated by the government?

Election rules and incentives for corruption

Various authors have tried to find mechanisms that would explain the presence or absence of corruption. There are some who adopt cultural explanations. Nef (2001), for example, finds the explanation for high levels of corruption in the very culture of Latin America—its peculiarities, formalisms, and expectations that favors will be dispensed—in the midst of a structure of corporative, authoritarian and centralist institutions. Other authors associate corruption with collective identities, a sense of hierarchy, and views about authority, as well as the desire to climb the social ladder in societies that offer few opportunities (González-Fabre, 1996; Hooper, 1995; Morris and Blake, 2010).

A different approach to the study of corruption is found in the institutional view, which focuses on the structures of government, bureaucracy,

and society. Certain institutions and laws may steer behaviors in more appropriate directions. Robert Klitgaard (1988) is known for his definition: “Corruption equals monopoly plus discretion minus accountability.”

A common explanation offered for Brazil is that its open list and proportional representation system tends to create incentives for representatives to recruit personal support through arranging for the introduction of legislative amendments and, sometimes, outright corruption. But the closed list and proportional representation creates a different kind of corruption in Argentina and Bolivia, where party leaders use public funds to help their parties (Morris and Blake, 2010).

How can we reconcile those differences? The government generates rents by means of the mechanisms described in Section 2. Corruption is one of the mechanisms used by agents to compete for those rents. It is in the electoral arena that we see competition waged for the right to decide how the rent is distributed. Hence it is plausible that the electoral arena is a central factor in the dispute over rents.

The mechanism of corruption passes through campaign contributions, be they legal or illegal. It is plausible that some of the donated funds are diverted to personal use, even when the donation is legal.⁴ However, campaign spending is a well-documented mechanism of political competition.⁵

In Latin America, Geddes (1994, Geddes and Neto (1992, 1999) and Gingerich (2006) argue that the cause of corruption lies in the institutions that were forged in the region’s new democracies, including the degree of power placed in the hands of presidents, decentralization of the power of the State, institutional constraints against presidents forming coalitions, and the rise of neopopulist leaders (Morris and Blake, 2010).

4 There are several ways to channel campaign funds for personal use, such as contracting with companies that are actually owned by the candidate to provide services at an excessive cost.

5 See Silveira and Mello (2011).

In their analysis of the Fernando Collor de Mello administration (1990-92), Geddes and Neto (1999) list characteristics of the Brazilian political system that led to the increase in benefits available through corrupt practices and the reduced likelihood and cost of punishment for those caught practicing corruption during the first 10 years after democratization. The authors focus on the use of open lists in Brazil. Since candidates compete against other candidates from their own party in addition to those from other parties, there are greater incentives for the exercise of clientelism and other forms of exchange with voters. To Geddes and Neto, State intervention in the economy and the open list system contributed to the traditional levels of corruption in Brazil, but not to its likely increase during the Collor years. They identified three determining factors: growing fragmentation of parties, less rigorous party discipline, and an increase in congressional representation on the part of regions of the country where politicians depend more heavily on the policy of swapping favors for votes (via corruption or amendments).

In a sad prophecy, Geddes and Neto (1999, p. 651) write: "If, however, reforms to reduce the number of parties in Congress, increase party discipline and establish more egalitarian representation of different Brazilian parties are not carried out, another window of opportunity will close. Brazil will probably find itself once again imprisoned between the Scylla of corruption and the Charybdis of inaction."

Redemocratization also boosted campaign costs, expanding the opportunities for corruption (Skidmore, 1998). As campaigns became more expensive, campaign contributions became more important. Moreover, the greater the rent to be appropriated in the relationship with the public sector, the more valuable it is for agents to make contributions where the counterpart is, explicitly or implicitly, rents to be granted by the candidate if elected. Those who hold power can also blackmail public sector suppliers to get them to make contributions. That blackmail can

be successful only if there is rent to be lost. Once again, the “big oil” scheme is illustrative. In short, the hypothesis is that corruption will be greater when campaign costs are rising.

Yet, campaign costs depend on the political system and election laws. Because campaign costs are much higher in large districts, the hypothesis is that the larger the election district in which legislative contests are conducted, the more corruption there will be.

The logistics of campaigning are also more expensive in large election districts. Air travel is more expensive for campaigning in the state of Minas Gerais (15 million voters and 585 km²) than on the Isle of Wight (108,000 voters and 381 km²) for example, England’s largest election district.

And while campaigning itself can be more interpersonal in small districts, it is impossible to campaign door-to-door in election districts like the state of São Paulo, which has an electoral college of 20 million voters.

Television advertising, another big campaign expense, is particularly valuable in large election districts. The value of quality in communications—the famous political marketeers—is also enhanced. In short, economies of scale in large districts increase the value of campaign financing.

The relationship between campaign costs and district size depends on the electoral system. Where the district sizes are the same—in terms of population, perhaps—campaigning will be cheaper the more representatives that district has. Under an open list proportional system like that in Brazil, a localized campaign strategy is conceivable. A candidate for representative of the state of Rio de Janeiro in the Chamber of Representatives can focus his efforts in Nova Iguaçu, thus limiting the scope of his campaign and attempting to replicate a small winner-take-all district. It is still plausible, however, that at the margin, money is more important in larger districts because it makes geographically broader campaigns feasible. In small districts, whether the system is proportional

or winner-take-all, money is less valuable because other methods of campaigning are viable substitutes for the purchase of TV time.⁶

The relationship between election district size and corruption has already been explored in both political science and economics literature. After all, different electoral systems can have different systemic effects on corruption. Chang and Golden (2007) investigated whether or not the open list systems in proportional representation tend to generate more corruption than closed list systems. They concluded that political corruption does indeed increase or decrease depending on the size of the district, but the extent is conditioned upon whether proportional representation systems use open or closed lists. Corruption is more widespread in open list systems than in closed ones when the size of the district exceeds the level of 15, under the district measurement method the authors proposed.

Other authors connect corruption to the concept of personalization where voting is for individuals rather than parties. In other words, incentives to raise money for campaigning (possibly illegally) increase with the size of the district in open list systems. That is the case discussed by John Carey and Shugart (1995). They argue that in systems that feature intraparty competition (open lists), when the size of the district increases, the value ascribed to a candidate's personal reputation also increases, which affects the incentives for financing and corruption. When there is no intraparty competition, the value of personal reputation declines with the increase in district size. That is why the authors argue that it is vital to differentiate between systems that feature open lists and those that employ closed lists.

6 The allocation of television time is centralized in some electoral systems, where television time cannot be bought on the market. The Brazilian system is one of these (see Silveira and Mello, 2011). The Brazilian case illustrates well the paradox of the attempt to regulate campaign spending. In theory, TV and radio advertising is "free" for the candidates. In practice, the coalitions that determine the amount of free TV time are formed with payments made using money raised in corrupt schemes. The *mensalão* [monthly payoff] scheme is illustrative.

Carey and Shugart's argument differs from the one offered by Persson et al. (2003), according to whom the closed list system is more susceptible to corruption because individual politicians are less accountable. After all, since votes are cast for the list, the voter knows less about individual candidates. The authors argue that larger districts (and, consequently, lower barriers to entry into the contest) are associated with reduced degrees of corruption.

Data, measurement, and empirical strategy

Our empirical strategy compares election district size with corruption. To do that, we use a linear regression model. It produces a "controlled" correlation for factors that may be related to corruption and to election district size.

The model is:

$$\text{Corruption}_i = \alpha + \beta \text{ District Size}_i + \text{Controls}_i + \varepsilon_i$$

The subscript i denotes a country. Corruption_i and District Size_i are, respectively, measures of the perception of corruption in country i . Controls_i is a set of factors that may be associated with both corruption and district size. In other words, this empirical strategy uses a cross section of countries to assess whether there is an empirical relationship between district size and corruption. In both cases, we adopt as average the average obtained from 1995-2014, using the available years, which helps reduce data noise.

Some comments on measurement and identification are needed here

Measurement of corruption and election district size is no trivial matter. Corruption is measured by the Corruption Perception Index (CPI), published by Transparency International. Carrasco and Mello (2015) describe

the problems associated with the CPI this way: “The CPI is an index of corruption perception constructed using evaluations by experts in governance. Like any index, it has problems. Giving gifts to public servants may be seen as corruption in some countries but not in others. Even so, the CPI produces a sensible ranking. In 2014, the most corrupt country in the world was Somalia, land of pirates; Venezuela ranked 11th; Spain was 125th. Denmark was the least corrupt country.” Despite all its problems, the CPI is commonly used in the literature. Persson et al. (2003), Chang and Golden (2007) are just two examples.

District size is measured by the following formula:

$$\text{District Size}_i = \frac{\text{Number of voters}_i}{\text{Number of Election Districts}_i}$$

In other words, the measurement is an average among the districts in country i . For example, in the case of Brazil,

$$\text{District Size Brazil} = \frac{144 \text{ million}}{27} = 5.4 \text{ million}$$

27

A key question for analyzing the issue, therefore, becomes how to measure the districts. Chang and Golden use the average number of legislators elected to the lower houses in each election district as their yardstick for district size. To that end, they consulted the political institutions database documented in Beck et al. (2001).

Persson et al. (2003) use a different standard. Average size is the result of the number of districts divided by the number of seats in the lower houses. Thus it varies from 0 to 1. When an election is conducted by districts with only one member, as in the United Kingdom, the value will

be equal to 1, since it will be the result of X number of districts divided by X number of seats. When there is only a national district, as in Israel, the number will approximate 0, since it will be the result of 1 divided by hundreds of seats.

We believe the measure proposed in this chapter is the most suitable, since it refers to the number of voters who are the target of politicians' attention. The bigger this number, the more geographically dispersed is the campaign effort and, in theory, the more expensive it will be. This measuring stick allows a comparison of the sizes of the electorates that the politicians must reach.

What is parameter β ? Ideally, we would interpret it as the causal effect of district size on corruption. In practice, we must be careful of causal interpretation and so will call β a "controlled correlation." After all, it is hard to be sure that there are no other variables we failed to include in our model that could explain the relationship.

Before we present the results, we should reaffirm one point. The electoral system is not designed randomly. We can easily think of examples. Legislators in countries where the State's ability to enforce the law is weak may choose an electoral system that facilitates corruption. Retention of an electoral system with large districts is of interest to those who prosper under that system; part of the reason they prosper is that corruption may be endemic. In that case, it is corruption that creates large districts, not the other way around.

Strictly establishing causality is beyond the scope of this chapter. That would require exploring changes in the legislation that were not motivated by the desire to curb (or increase) corruption, something we are not measuring on the following pages. Our strategy is to calculate a controlled correlation for the largest possible number of factors so that β approximates the maximum of something whose interpretation is causal. Besides, that is the strategy typically adopted in the literature (see Persson et al. 2003, and Chang and Golden, 2007).

Among the Controls we include: 1) characteristics of the country, such as size, income per capita, institutional quality (World Development Indicator and World Governance Indicators, both from the World Bank); 2) district size (data collected by the authors); 3) information about the political and electoral system (Institute for Democracy and Electoral Assistance and the Central Intelligence Agency); 4) an indicator of the degree of democratization (Economist Intelligence Unit); and 5) the corruption index (Transparency International). We have a database of 151 countries for which we have gathered information for all these variables.^{7 8}

Results

Table 1 contains descriptive statistics and deserves a few comments. For most variables, there is considerable dispersion in the sample. It is especially important that there is a lot of dispersion in electorate size (standard deviation three times the average) and election district size

7 The variables are: corruption index (CPI), income per capita, number of voters, population, the rule of law index, existence of prohibition of private contributions to parties or candidates, participation in parliamentary elections, and the democracy index.

8 The countries in the sample are: Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrein, Bangladesh, Belarus, Belgium, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Dominican Republic, Denmark, Djibouti, East Timor, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Kyrgyzstan, Laos, Lesotho, Latvia, Liberia, Lithuania, Lebanon, Libya, Luxemburg, Macedonia, Madagascar, Malaysia, Malawi, Mali, Malta, Morocco, Mauritius, Mauritania, Mozambique, Moldova, Mongolia, Montenegro, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, Ruanda, Russia, São Tomé and Príncipe, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Surinam, Sweden, Switzerland, Syria, Thailand, Tajikistan, Tanzania, Togo, Trinidad and Tobago, Tunisia, Turkmenistan, Turkey, Ukraine, Uganda, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia, and Zimbabwe.

(also standard deviation three times the average). The sample includes countries that are wealthier than the world average (an average of USD 10,000 income per capita during the period 1995-2014). That reflects the existence of elections and availability of data, so the selection favors countries that are relatively wealthier. There is a significant fraction of countries that prohibit private contributions to parties or candidates (about one-fourth). Participation in parliamentary elections is almost 70%.

Table 1: Descriptive Statistics

Variable	Average	Standard Deviation
Corruption Index	4.32	2.49
District size (in thousands)	761	2220
Rule of law	-0.59	1.02
Income per capita (average 1995–2014 in USD thousands)	10.62	15.64
Number of voters (in millions)	2.44	7.45
Prohibits contributions to candidates? (in %)	25.37	
Prohibits contributions to parties? (in %)	29.10	
Participation in parliamentary elections	67.97	28.91
Democracy index	5.93	2.10

Table 2 shows the correlation pairs between variables. In general, the signs of the correlations are as expected (in those cases when a sign is expected). Respect for the law correlates strongly with income per capita. Countries that ban private contributions to parties usually also

ban them to candidates. In countries where democracy is better established, there is more respect for the law (and they are wealthier countries). Participation in parliamentary elections is greater in the more democratic countries but the relationship is not strong, which reflects the fact that voting is optional in many mature democracies. In other words, the data makes sense.

Table 2: Correlations Between Variables

	Corruption Index	District Size (in thousands)	Rule of Law	Income per capita (average 1995–2014 in USD thousands)
Corruption Index	1			
District Size (in thousands)	-0.1131	1		
Rule of Law	0.8259	-0.1171	1	
Income per capita (average 1995–2014 in USD thousands)	0.7088	-0.0536	0.8225	1
Number of voters (in millions)	-0.043	0.0807	0.0298	0.0021
Prohibits contributions to parties? (in %)	0.1272	-0.0444	0.1724	0.0744
Prohibits contributions to candidates? (in %)	0.0661	-0.0374	0.1389	0.1201
Participation in parliamentary elections	0.0402	-0.0243	0.0461	0.0973
Democracy index	0.6479	-0.0964	0.8224	0.6619

Number of voters (in millions)	Prohibits contributions to parties? (in %)	Prohibits contributions to candidates? (in %)	Participation in parliamentary elections	Democracy index
1				
0.0099	1			
0.0439	0.5703	1		
-0.0453	-0.124	-0.0354	1	
0.1011	0.1725	0.143	0.0025	1

Table 3 presents estimates of the parameters of model (1) for the entire sample and for certain subsamples that exclude small countries. The variables are in natural logarithms (except the dichotomous variables of contribution prohibition). The estimates are, therefore, elasticities.

Table 3: Corruption and District Size

	Complete Sample	Excluding smallest 25%	50% largest	25% largest
District Size	-0.013 (0.014)	-0.027 (0.015)*	-0.041 (0.017)**	-0.059 (0.030)*
Rule of Law	0.417 (0.084)***	0.410 (0.089)***	0.302 (0.079)***	0.326 (0.074)***
Income per capita	0.091 (0.026)***	0.126 (0.019)***	0.130 (0.019)***	0.174 (0.029)***
Number of voters	-0.024 (0.019)	-0.027 (0.020)	-0.029 (0.027)	0.016 (0.048)
Prohibits contributions to parties?	0.042 (0.069)	0.043 (0.080)	0.080 (0.071)	-0.069 (0.098)
Prohibits contributions to candidates?	-0.037 (0.059)	-0.077 (0.070)	-0.059 (0.064)	0.104 (0.107)
Participation in parliamentary elections	0.082 (0.071)	0.039 (0.053)	0.126 (0.079)	0.254 (0.175)
Democracy index	0.028 (0.098)	-0.034 (0.100)	0.052 (0.066)	-0.244 (0.196)
R2	0.77	0.84	0.86	0.89
N	134	101	67	34

* p<0.1; ** p<0.05; *** p<0.01.

In the first column, we consider the entire sample. There is a negative relationship between district size and corruption: in countries where the election district is larger, there is more corruption.⁹ But that relationship is not statistically significant and the magnitude is small. The other variables either are not statistically significant or have the expected sign: corruption is less prevalent in countries that are wealthier and have greater respect for the rule of law. Taken together, the variables explain 77% of the variation among countries as regards the corruption index.

Table 3 presents the results obtained after excluding the smaller countries (the smallest 25% in the sample, with a population of no more than 4 million). Although the coefficient increases in magnitude and becomes marginally significant (p -value = 7%), it is still small. Its quantitative interpretation is as follows: 25% of the countries have an election district smaller than 71,000 voters (the 25th percentile of district size distribution), and 75% are smaller than 453,000 voters (the 75th percentile of district size distribution). The estimated coefficient means that the corruption index is 5% higher in a country where the election district has 453,000 voters than in a country where the election district has 71,000 voters.

Separating the small countries from the sample makes sense because there are economies of scale in parliamentary representation. Districts tend to be small because there is a minimum number of representatives. So observations from those countries are not very informative. In fact, once the population totals 10 million, the relationship between population and district size ceases to exist.

Column 3 presents the results obtained using only 50% of the largest countries (those with a population of more than 10 million). The coefficient increases even more in magnitude and becomes statistically significant although the sample is small (p -value = 2%). Now the corruption

9 The Corruption Index is constructed in such a way that an increase in the index means a reduction in corruption.

index is 8% higher in a country where the election district has 453,000 voters than in a country where the election district has 71,000 voters.

Column 4 presents the results obtained using only 25% of the largest countries (population of more than 10 million). Once again the coefficient increases in magnitude and is still marginally statistically significant although the sample includes only 33 countries (p -value = 6%). Now the corruption index is 13% higher in a country whose election district has 453,000 voters than in a country where the election district has 71,000 voters.

Discussion

The literature on the relationship between size of election district and corruption produces a variety of results. To some authors (Chang and Golden, for example) the motive is not differentiation between the open list and closed list systems. The objective of this chapter is to test a more general proposition: that as the size of the district increases, so does the probability of corruption because of campaign costs.

The difference lies in the way that district size is measured. We argue that focusing on the average number of voters better captures the degree of competition necessary for a candidate to get elected. The declared cost of the 2014 Brazilian campaign, for example, was R\$5 billion, according to the accounts submitted by the candidates. Of that total, R\$1.2 billion was reported by candidates for state representative and R\$1 billion by candidates for federal representative.

The literature points to different mechanisms that could increase or decrease the presence of corruption. But the debate is far from reaching a consensus. Persson et al. (2003) and Kunicova and Rose-Ackerman (2005) argue that the closed list system (where parties control the list and the sequence in which candidates appear) generates more corruption. To Persson and his co-authors, larger districts would lead to less corruption because the barrier to candidate entry would be lower and

the competition among candidates less fierce. Chang and Golden (2007), however, argue just the opposite: corruption will increase with district size in open list systems, exactly the case of Brazil.

Using various statistical methods, Treisman (2007) disagrees with studies that attempt to connect electoral systems and corruption. According to him, international databases do not provide sufficient information to permit a reliable comparison. Treisman says that his own regressions and comparisons did not produce significant results. To him the main problem is that the arguments in the cited studies are concerned with politician accountability while the corruption perception indices focus much more on the venality of public servants and bureaucrats, a condition over which, Treisman argues, legislators have little control.

Treisman's results point out that the perception of corruption, measured by indices commonly used in the literature, is less in economically developed countries—liberal democracies established many years ago, with a free press that is patronized by a large portion of the population, a higher percentage of women in government, and a history of an economy that is open to trade. Taken together, those factors explain 90% of the variation among countries. However, indices of exposure to corruption, based on surveys of businesspeople and citizens who were asked whether they had ever been a target of requests for bribes, correlate only with lower degrees of economic development and, possibly, countries that depend on exports of fuels and feature more intrusive economic regulations.

The results presented in this chapter, added to those offered by various studies, show that there are several possible causes of corruption. For that very reason, the idea that regulating lobbying or simply prohibiting companies from trying to influence public officials will lessen corruption needs to be debated at greater length, as other contributors to this book are doing. Any discussion of campaign contributions, whether or not obtained by lobbying, must necessarily undergo analyses of election rules such as those proposed in this book.

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6



Government relations:

Significance, functioning, and problems of democracy in Brazil

CARLOS MELO*

Introduction

As has been true almost everywhere else in the world, so too in Brazil does politics have a poor reputation. The activity is so disparaged by most of the public, regarded as “the stuff of scoundrels,” that a career in politics is considered second-rate. Most Brazilians do not perceive the extent to which politics influences society, failing to recognize its daily presence or realizing that their destiny is tied to it. The difference with respect to other countries is perhaps the fact that this is an ancient, underlying sentiment passed down and not tied to this particular low moment in world history.

However—and this seems even contradictory—a high percentage of those people who disparage political activity overvalue the role of the State (which they call “the government”) in all that affects their daily lives. For better or for worse, the State in Brazil plays an important and vital role. It controls at least 40% of the nation’s wealth and intervenes in both promoting and frustrating development. It siphons resources from society and inhibits creativity and investment. But it also protects enormous contingents of people who lack the most basic conditions of

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health, safety, or education. It provides those services but in most cases without the necessary quality, transparency, and efficiency.

Brazilian companies are not immune to this reality. On a daily basis, they are aware of the presence of the State—taxing, incentivizing, convincing, or frustrating. They see it as a bureaucratic obstacle, an impediment to development and a barrier to the realization of gains and profit. But they also see it as a source of funds and business opportunities; some even as a sort of “pot of gold at the end of the rainbow.”

Although the State holds this importance and ambiguity, people and companies have demonstrated that it is the dynamics of the process, i.e., politics, that matters to them. They are interested in how politics works, in its characteristics and problems, believing that if they could understand it, they could remove any obstacles and correct the most obvious dysfunctions.

In this chapter, we seek enlightenment; our intent is to gain an understanding of how Brazilian politics works so that we can then explain it, in an effort to reduce the vast expanse of ignorance and estrangement that lies in the space between two worlds: that of the State and that of companies. The latter are unsure how the State works and the logic behind it. They lack an understanding of the political system that drives it and do not even realize the quality (or precariousness) of Brazil’s democracy.

In short, our objective is to inform the reader about the dynamics and functioning of politics in Brazil by illustrating its general characteristics, structural issues and historical parameters, so as to dispel preconceived notions. Not because we naively accepted the sway and turbulence of those waters but because we want to know how to navigate those seas. And it is imperative that the boat be in good working order.

A relationship of confusion and estrangement

First, we must clear the area to make room for certain questions that

function less in the realm of knowledge—or ignorance—than in the field of confusion and prejudice. The first task for anyone who wants to discuss politics in Brazil is to clarify the purpose of its functioning. It is essential to examine aspects of a centuries-old relationship of estrangement between the public and private sectors in Brazil that was inherited from time immemorial. Its by-products are patrimonialism, clientelism, and corporatism, practices not native to either field but found in the same measure in both of them.

There are factors that hinder action by both companies and the State, and lead to a misunderstanding of the idea of democracy among Brazilians. There are questions that reside in the realm of ignorance in the minds of many government relations professionals. These are questions that come from sociological aspects and conditions that are more properly deemed political rather than simply formal.

Because of the above, it will be more worthwhile in this chapter to understand the functioning and problems of the political system than to parrot various “basic handbooks” whose function is to describe in detail facts such as: “the Brazilian State is organized into three branches...” or “the current number of parties,” or even “the required quorum and procedure for voting in the National Congress.”

The better-informed reader will dispense with that sort of thing—would actually abhor it—while readers in the elementary stages of learning can perfectly well search for information on hundreds of Internet sites, the internal regulations of the Chamber and the Senate, or basic political education handouts available to beginners. Nor will this chapter appear to be “teaching” anyone to “construct analyses of current trends.” That kind of thing is not taught, it is learned over time—during the passage of years—from observation, patience, discipline, and experience.

The questions raised here will be of a different sort: the knowledge and clarification of the functioning of fundamental aspects of Brazilian politics.

Politics, lobbying, patrimonialism and corporatism

First of all, it seems reasonable to observe that in Brazil there is often confusion among the terms “society,” “politics,” “State,” and “government.” Although running the risk of providing overly basic and elementary definitions—schematics—we believe the differences need to be defined. “Society” consists of an aggregate of individuals who occupy a given geographical space and interact with each other while sharing values, beliefs, and norms. The term may or may not be confused with “nation.” The “State,” in turn, is the pact that underlies that society: the manner in which it is organized, its laws, its resources assembled for the collective good, the dynamism and search for an order that gives meaning to its functioning.

In comparison, the term “government” can generally be defined as administration of the State; a group of people who will be responsible for conducting the State with a view to achieving societal well-being. Politics is the dynamic from which emerge the conflicts, differences of opinion as regards the State’s path forward, and the best way to provide well-being for all. But it is also through politics that those conflicts are negotiated, and consensuses are built or established by means of a set of forces called public policies.

This separation, as simple as it may seem, is not clear to Brazil’s citizens or to a considerable number of its companies. The inability to distinguish between government and the State is very common, giving the impression that the two are interchangeable. This circumstance, inadvertently or not, gives governments excessive power. The fact that reports of confusion between “public” and “private” commonly arise is not, therefore, only the result of ethical slipups or the rather un-republican view espoused by governing officials and parties. That confusion also arises in society itself.

The history of politics in Brazil is characterized by that confusion: a

perception and expectation that there are no clear boundaries between “governments” and the “State.” It is found in the federal government and at all levels of the Federation (27 states and 5,561 municipalities). In Brazil, the practice of patrimonialism and even its logic is inherited from the Portuguese who colonized the country and set the stage for a way of thinking; it was in the royal Court but also in the hearts of the people.

Now as one might imagine, that sentiment would also embrace what over time became known as lobbying in Brazil. Common sense thus recognizes lobbying as the underlying support for relationships that are murky, capable of mixing public with private interests—in truth, replacing the public with the private; subjecting the State to private interests.

And so, no matter how proper and transparent they are in their relations with the government, professionals in the field and those who practice lobbying in Brazil pay a high price in terms of their reputations. To a large extent, this is because of the countless cases that reveal the promiscuity of those transactions through Brazil’s history, but it is also a product of prejudice and an outlook conditioned to some degree by the shadows of that same history and culture.

Democracy misunderstood

As we will see later, democracy is a relative novelty in the political life of Brazil. This means it is natural for it to be misinterpreted, to draw inaccurate conclusions about its nature that are divorced from reality and the true meaning of its concept, inaccuracies that find no place in genuinely democratic societies. There is a feeling that everywhere in Brazil people see “rights” while at the same time refuse to see “duties” and the natural obligations associated with life in a society.

Almost exclusively restricted to elites and other groups that hold power—people skilled in mobilizing resources and opinions—those “rights” become “privileges” in a country that is poorly developed and suffers from scarcity, neediness, and inequality. A privileged society is surely the

opposite of a democratic society, where equality is promoted as part of the State's adoption of the principle of "universality of procedures"—the equality of all individuals in the eyes of the law. However, defense of particularisms as if their presence were completely normal in a democracy has caused tremendous confusion to develop in Brazil: what we call its "misunderstanding of democracy."

Sérgio Buarque de Holanda, one of the leading figures in Brazilian intellectual circles, wrote as far back as 1936 in his classic book *Roots of Brazil* that "democracy in Brazil has always been a lamentable misunderstanding" (Holanda, 1993). This phrase was related to the ancestral patrimonialism in Brazilian political culture, in replacing an impersonal, insular, and professional bureaucracy with the "patrimonial official" who is capable of confusing public goods with private assets and able to dispose of those goods to the benefit of his personal relationships or in favor of private groups. In the words of Holanda, these are "certain groupings of particularistic interests" that subjugate the State.

One of the biggest problems with Brazilian democracy lies in its inability to establish a regime that is based on "universality of procedures," one in which all citizens are subject, on an equal footing without distinction, to the rule of law, and under which rights and duties are, remarkably, the same regardless of an individual's origins or traits. That same Sergio Buarque de Holanda pointed to a characteristic element in the psychology of the Iberian colonizers that led to a deleterious cult of personality – the "personalism" that causes an individual to believe he is superior to others.

According to this logic, rules, norms and laws would be intended, first of all, "for others," and never for the personalistic individual himself. It then becomes a general psychological determinant and even a cultural trait. "It is that mentality that is largely responsible for the unique weakness of all forms of organization and of all associations, which imply solidarity and order among people [the Iberians]. In a land where all are barons, lasting group agreement is not possible unless imposed by a respectable

and feared outside force” (Holanda, 1993). Better stated, this implies equality of everyone before the law.

The feeling of superiority, which has always been present in Brazilian colonial patriarchal culture, spread rapidly and assumed that collective dynamic. Now it is no longer the individual, acting alone, who adopts this posture. His social group, his primary identity, locale, or occupational category have also come to believe devoutly that rules are for “others,” not for them; that the law must always be adapted to their interests. These groups are convinced at their very core that they are superior to the rest of mankind. They are unable to submit to the laws and, furthermore, believe they cannot only subvert those laws, but custom-make them in the image and likeness of their interests.

This attitude will of course be transferred to a large proportion of Brazilian companies,¹ the ones that do not agree to submit to the laws. It will also be adopted by business and industrial groups whose approach to public officials will be motivated primarily by a feeling of superiority and the distinct impression that when it comes to equality of rights and duties they are different, as they devoutly believe themselves to be. More than that, they believe that they deserve all this distinction and that the defense of their “right”—interesting to note how the word “interest” is replaced by the word “right”—is a question of “democracy.” There will be a regime that, having accepted that concept, does not define equality but above all guarantees the permanence of the particularisms of groups, which rapidly become privileges, and propagate and contaminate some of the relationships between public and private. And thus, the groups seize the sinecures available from the State, subjugating it.

By virtue of the above, the interpretation of the task of professionals who are engaged in the well-known business of lobbying in Brazil has assumed a meaning quite different than that suggested by the reality and nature of

1 A high percentage of foreign companies, in principle, find that mentality odd, but tend to adapt quickly by adopting the same metrics of “rights” in relations with the public sector.

their daily activities. Unfortunately, the terms “lobbyist” and “patrimonialist” according to that interpretation soon came to signify the same thing. That is why a prejudice, which to some extent is justified, is developing with respect to what Brazil understands to be lobbying: the defense of interests that are private, yes, but also legitimate—as ought to be the case—has acquired a pejorative connotation in Brazil.

It now needs to be said that defending one’s interests is legitimate and that doing so does not reflect badly on any person or individual business organization or representatives thereof. The Brazilian Constitution specifically includes the “right to petition,” i.e., the right to call the attention of public authorities to a certain situation. Provided the interest is legal and does not violate public interest or moral standards, there is no reason to ignore it or deny its existence.

In recent years, with the outbreak of major scandals involving a significant number of extremely large companies—whose relations with the State are not only traditional but to a certain extent obscure—the confusion has grown even further, so that companies and government relations experts as a group are bearing the cost of deviations in behavior by some parties. That mistrust and prejudice are spreading more widely is clear from the reports in the press. At this point in Brazilian history one need only open a newspaper to read reports about proceedings, plea bargains, and imprisonment of corrupt individuals and to learn that this or that “lobbyist” has been involved in a fraud, in a crime. “John Doe, lobbyist, was arrested,” is typical of what newspapers report on a daily basis.

This situation needs to be changed and the confusion promptly undone. However, it is not unique. There is also confusion and prejudice in the minds of companies, most of which are reputable and have nothing to hide.

Unfortunately, but with some rationale, what is being heard continually in Brazil is that its public sector is inefficient, laden with privileges, and characterized by bad faith and incompetence. Despite a certain profusion of cases confirming that impression, there is, as a whole, plenty

of unfairness in that view. Action by the State in Brazil in many areas plays a vital role—given the needs of the country—but also reveals the existence of reputable agencies and dedicated professionals who are honest, honorable, devoted—and, yes, efficient. Various areas have corps of bureaucrats who are well-qualified, modern and transparent, and could not in any way be confused with specific situations of corruption and inefficiency, or even with the Brazilian tradition of patrimonialism and clientelism.

However, these are not the only problems associated with the relationship of mutual estrangement between the State and companies seen in Brazil. There are more general conditions that also deserve attention, and other kinds of misperceptions associated not only with the interpretation of the meaning of democracy but also with its very functioning within Brazil's political system.

If, as we have seen in the preceding pages, there is some lack of comprehension of what democracy is—a regime of quality, not just a majority regime; a regime of duties, not only of rights and much less of privileges—there is also a failure to acknowledge democracy's recent vintage and the fragile way it functions in Brazil. Understanding our current phase of democracy as well as how it works seems to be just as important for government relations experts as is correcting the mistakes made in its interpretation. That will be the purpose of the following sections of this chapter.

Brazil's young democracy

Democratic regimes are relatively new on the world scene. With the exception of the Athenian period and the Roman Republic, and a few minor occurrences among the Nordic nations, they had practically disappeared over the centuries until their vigorous resurgence in 1776, with the Independence of the United States, followed by the French after their 1789 revolution.

The democratic experience in Brazil is much more recent. It cannot yet be said that it has become established practice. The history of this country demonstrates that the regime is still in the testing phase and suffers frequent oscillations and periods of turbulence. It is young and relatively fragile.

In order to understand the fragility of this youthful phase, we must briefly review the historical process of the formation of Brazil. The territory that would become Brazil was discovered by the Portuguese on April 22, 1500. Its existence in the eyes of the western and known world therefore totals 517 years, a little more than five centuries. Compared with Europe, those years mean practically nothing. Yet this lengthy history does not make Brazil any different from most of the Americas, from north to south.

Of these 517 years of history, 308 were racked up while Brazil was a slaveholder colony—the first slave ship arrived there around 1530. In thinking about democracy in terms of the level of participation and autonomy enjoyed by its inhabitants, a colony can in no way be classified as such. Much less, when we consider the issue of equality, could a slaveholding regime be understood through democratic lenses.

Colonial status did not unravel until 1808, when the Portuguese court, fleeing the continental blockade imposed by Napoleon Bonaparte, sailed into Rio de Janeiro, and Brazil was decreed part of the United Kingdom of Portugal, Brazil, and the Algarves. Relative political autonomy prevailed, albeit with the constant threat that it could be revoked.

After Bonaparte was vanquished by the British and the blockade had ended, King John VI, concerned about conflicts in Portugal, returned to Europe, leaving behind his son as regent. Because of disagreements with Portugal, it was not long afterward that Prince Pedro de Alcântara declared Brazil's independence and was crowned Emperor Dom Pedro I of Brazil.

This means that Brazil has been an independent nation for only 195 of

the 517 years of its history. It was not until 1824 that the country had its first Constitution, although granted by Emperor Dom Pedro I. Simply for purposes of comparison, we should remember that the Americans won their independence in 1776 and that their republican regime was put in place immediately.

In 1831, in light of a potential opportunity to recover the Portuguese throne, Dom Pedro I abdicated in favor of his son, who was only five years old at the time. There followed a period of regencies arranged by the legislature—composed primarily of large agrarian landowners—until emancipation of the new emperor could be decreed in 1840. Dom Pedro II, age 14, then assumed the throne. Throughout that period, the territorial unity of Brazil was maintained by the efforts of the National Guard, an armed force that put down several revolts and attempts at separation.

Brazil and the empire were consolidated during the 19th century. The government was centralized and the provinces—now known as states—had almost no autonomy. The slavocracy continued. It was not abolished until 1888, a year prior to the 1889 fall of the Empire. Emperor Dom Pedro II was deposed by elements of the military, who then proclaimed the Republic. A new Constitution would be written (Brazil's second).

Continuing with our comparison, this means that it had taken 113 years after American independence for slavery to end in Brazil and the Republic formally established. Brazil was the last country in the Americas to abolish slavery. Going back to our basic math: for 388 of its 517-year history, Brazil was either a colony or an empire characterized by slaveholding. This means it was not until 129 years ago that equality—albeit a merely formal equality—was achieved among human beings in Brazil. The figures are cruel: three-quarters of our history was a chronicle of slavery and monarchical power. How, then could people talk about democracy?

With the institution of the so-called First Republic, however, conditions for democracy improved somewhat. Blacks were not incorporated into the labor market and many became a sort of pariah, wandering around

the cities that were forming. There was neither inclusiveness nor objective recognition of their rights. The rural legacy—a society that was patriarchal, unequal, and based on slavery—made itself felt, as it does to a large extent even today.

The first civilian president of Brazil was José Prudente de Moraes Barros (1894-1898). Starting with his successor, Manuel Ferraz de Campos Sales, the politics that became known as “coffee with milk” established itself in Brazil. In it, basically agrarian oligarchs from the two largest states, São Paulo (coffee producer) and Minas Gerais (milk producer) took turns controlling the State. Although those officials were actually elected, the vast majority of the population were mere spectators in the process; only about 5% of the population voted and when they did so tended to be controlled at the ballot box by regional “colonels” (civilian bosses) as part of the so-called “herd voting.”

The oligarchy, restricted as it was to regional powers, aroused a great deal of discontent in the other states of the federation, but was not actually brought down until 1930, during a revolutionary process commanded by Getúlio Vargas. His intention was to transform the foundations of Brazilian society and politics through vigorous actions by a strong government, with a plan to thoroughly modernize Brazil.

Once again going back to our basic political math regarding Brazilian history, we can say that Brazil experienced 417 of its 517 years either under colonial and slavery-based monarchical regimes, or in an oligarchical republic that was unable to promote democracy. Slavery, although abolished 42 years before the proclamation of the New Republic (1930), had still not been completely eliminated.

However, apart from the hope that survived when the Vargas revolution began, democracy was still not established. There were innumerable conflicts. The first was a revolt by the people of São Paulo, who had lost power through the fall of the oligarchical republic and demanded a new Constitution and an end to the provisional Vargas government. The country took up arms.

After São Paulo was defeated, a new Constitution (the third in Brazil's history) was adopted in 1934, accompanied by the decision that a new (direct and democratic) election would be held four years later, in 1938. But that did not happen. In 1937, in a gesture of force, Vargas led a political coup that decreed administrative centralization, an even further weakening of the states, and a political shutdown. With the proclamation of the so-called *Estado Novo* (New State), a new Constitution (the fourth) was approved and a true dictatorship took hold.

Some parenthetical remarks about the Vargas regime are in order. It is true that, despite his indisputable status as dictator, Vargas tried to establish—using the enforcement ability that an authoritarian regime provides—some degree of management efficiency and administrative rationality that had until then been lacking in Brazil. For example, he established the Public Service Administrative Department (DASP).

Reporting directly to the president, the DASP sought to separate the civil service from political dynamics and irrationality, and make a priority of achieving equality of all citizens before the law, according to the “universality of procedures.” A precondition for this was the formation of an impersonal technical corps, an “insulated bureaucracy,” both “universality” and “insulation” being the opposite of Brazil's traditional “corporatism” and “clientelism” (Nunes, 1997). Of course, at the end of the process, the flaws in this enterprise proved greater than its virtues and neither the democratic regime of equality before the law nor impersonality were established.

Close parentheses.

During the 1940s, the world experienced yet another world war (World War II, 1939-1945) and although the Vargas regime was openly sympathetic to the Axis powers (Germany, Italy, and Japan), a series of circumstances enabled Brazil to join the Allies, declare war on the totalitarian regimes of Europe and send troops to the continent.

Obviously, a country that is sending soldiers to war in the name of democracy ought not be living at home in the environment of a dictatorship. In 1945, members of the military defeated Getúlio Vargas, called for presidential elections, and convened a new Constituent Assembly. In 1946, Brazil would have a new government and another Constitution (its fifth).

Various authorities on the politics of Brazil include the period that begins at this point as the beginning of democracy in Brazil—years that they argue should be added to the current phase, begun in 1985. As we will see, this opinion is controversial at the very least. The picture of the nation's history that will extend until 1964 is quite polemical, full of turbulence and attempted coups—until the military coup of 1964 was fully accomplished.

Let's look at the process: the ballot boxes of 1945 gave the victory to a military man, Field Marshal Eurico Gaspar Dutra, who had been dictator Vargas's minister of war. Not only was he not a civilian, but Dutra was one of the leaders of the military who had deposed Vargas. Even so, the field marshal/president governed (outlawing the communist parties) and served out his term.

In 1950, Brazil once again experienced a full-fledged and open electoral process—only the second, as we are not counting the one that occurred during the oligarchical Republic which, as we have seen, lacked citizen participation and representativeness. Ironically, this time it would be the so-called "dictator" from the previous period who would be elected after having fallen into disgrace and been ostracized less than five years earlier: Getúlio Vargas returned to power, now democratically elected and supported by a representative coalition of parties.

Under a more open democratic regime with broad participation by voters, this would be the first time in the history of Brazil that an elected president would accept the ceremonial sash from another president who was also elected. Vargas, however, did not finish his term; boxed in by a serious political crisis, the president committed suicide on the morning

of August 24, 1954. His death paralyzed the opposition and prevented a civilian-military coup.

In 1955, with the country still involved in the drama of Vargas's death, Brazilians elected Minas Gerais Governor Juscelino Kubitschek de Oliveira, a physician, as their president in a lawful, comprehensive, and democratic election. However, JK as he was known, did not take office and begin to govern until the end of his term because of legalistic intervention by his influential minister of war, then-General Henrique Teixeira Lott, a future field marshal.

Even so, JK served out his term and for the second time in Brazil's history a sitting president conveyed the position to a successor. Former São Paulo Governor Jânio da Silva Quadros had also been elected in a full-fledged and democratic process in 1961. However, having expressed a desire to shut down Congress and force the country to passively accept his political leadership, Quadros resigned as president of Brazil in August of that same year.

Quadros's resignation created tremendous confusion—there were enormous civilian and military objections to his vice president, João Goulart (Jango). Goulart would eventually take office under an agreement that deprived him of certain powers and was to establish the parliamentary system in Brazil. The system was short-lived; a 1963 plebiscite revoked the expedient agreement and restored Jango to power.

The political system in Brazil worsened, giving way to much turmoil and many strikes. Inflation rates soared and there were charges of corruption. The Right feared a coup from the Left. The Left, for its part, expected a coup by the Right. The military entered the field and the trial edition of the democratic process that had begun in 1946 came to a sad and melancholy end. A new authoritarian regime, this time a military one, was established in April 1964 and would continue for 21 long years.

The first phase of the regime introduced a series of changes, among them a new Constitution (the sixth) that, over time, would be supple-

mented by a series of so-called Institutional Acts that served to even further harden the regime. From then on, until late in the first half of the 1970s, the military experiment was economically successful; Brazil grew at rates unprecedented in its history. But regardless of the good news, income concentration increased.

Meanwhile, the dictatorship was arresting, assassinating and exiling its opponents—its slogan was “Brazil: Love it or Leave It.” The regime lost its rationale and despite having literally destroyed the opposition, began to break apart from internal conflicts that would enhance the terror. It was not until the second half of the 1970s that a slow and gradual process of *abertura* (opening up) began, a change that the military thought was safe to allow.

After an economic decline and an intense mobilization of the population—the extraordinary 1984 *Diretas Já* (Direct Elections Now!) campaign—the military regime ended in late March 1985 having authorized the election, by indirect procedure, of Minas Gerais Governor Tancredo Neves. Brazil was preparing for democracy; Neves promised to convene a new National Constituent Assembly and establish a regime of freedom and equality in Brazil.

But let us get back to our basic political math: Brazil spent 485 of 517 years of existence under different regimes: colonial or slavery-dominated monarchies, an oligarchical republic, a fascist dictatorship, a brief interregnum of democracy that never quite became established, and an authoritative civilian-military regime that was as cruel as the earlier dictatorship.

As a result, many analysts of Brazil would say that democracy began in 1985, so that by 2017, it would be a mere 32 years old. Even so, it does not seem that simple. The period—yes, this one also—needs some additional context.

Tancredo Neves became seriously ill on the eve of his 1985 inauguration as president of Brazil and died five weeks later. A hostage of an ironic

twist of fate, it was Vice President-elect José Sarney who was installed in Neves's place. He was a politician from northeastern Brazil who had been a legislator, governor, and later president of the party that supported the military regime (ARENA/PDS).

It was clear that Sarney would be a weak president. He lacked political legitimacy, was frequently challenged, and was dependent on person-ages who were more attractive as well as representative of what had in fact been the opposition to the military regime. Even so, in order to fulfil Neves' promise, the new president convened the Constituent Assembly that in 1988 would promulgate a new Constitution—the seventh in Brazil's history.

Sarney played an important role in the transition from an authoritative regime to the democracy that was implemented in Brazil in subsequent years: The new Constitution—dubbed the “citizens' Constitution”—political tolerance, the opening towards legalization of the communist parties, and the president's unflappable temperament will eventually be recognized by historians.

In other respects, the Sarney administration was a tortuous one, mired in a terrible economic crisis—which ultimately saw inflation reach an unbelievable 84.23% (per month, that is!) in March 1990. Inflation rose to the stratospheric annual rate of 4,853% that year (March to May) (Safatle, 2017). Ultimately, the Sarney administration, involved in various charges of corruption, was not even in a position to nominate a candidate to succeed Sarney as president.

In 1989, Sarney's two principal antagonists: Fernando Collor de Mello (PRN) (National Renewal Alliance Party) and Luiz Inácio Lula da Silva (PT) (Workers' Party) reached the runoff phase of the first direct election since the military regime. The atmosphere was truly that of a festival in celebration of democracy, but it also featured a serious division of political forces and vigorous ideological appeals from both sides.

In that extremely close race, the winner was Fernando Collor. The new

president, however, would be diminished by the fact that he was from a minuscule party that had almost no influence in Congress. Thus, he was vulnerable from the outset. In addition, the impetuous style of the young president stigmatized him and attracted opposition from labor unions, businessmen, artists, and eventually—all of Brazil's media.

It was not long before a series of corruption charges connected to the financing of his election campaign as well as alleged appropriation of State resources isolated Collor from public support and sent him into political disgrace. He was forced to resign at the 11th hour of impeachment proceedings that would annul his mandate and deprive him of his political rights for eight years.

Consolidation of democratic stability took time. Collor's would be only the first impeachment in Brazil in the short period that spanned the years 1992 to 2016.

After a period of important economic adjustments made during the administration of Itamar Franco (PMDB) (Brazilian Democratic Movement Party)—Collor's vice president who had assumed the presidency—the 1994 presidential election was won by Fernando Henrique Cardoso (PSDB), who had been Franco's finance minister. He was credited with accomplishing a series of important and broad economic, technological, social and political transformations in Brazil.

But the FHC undertaking was possible only because the president and his group knew how to handle continuity of power. Power always requires more power, and given the characteristics of Brazil's political system, it was important to send a message to the majority in Congress that Cardoso and his group intended to remain firmly in power.

Because of Cardoso's success, the Brazilian legislature decided in 1996 to allow holders of key posts—president, governors, and mayors—to run for re-election. Strictly speaking, this permission should not have applied to those who had been elected earlier under other rules. It was obvious casuistry that FHC and all the governors were able to benefit from the

change. However, seen in perspective, it was an important condition for the continued advancement of the economic process that, in its own way, could have compromised the political process itself. Not coincidentally, Fernando Henrique Cardoso was re-elected in 1998.

Following the end of what the media had dubbed the “FHC Era,” Brazil finally experienced a turnover in power. After having been defeated in three consecutive elections—1989, 1994, and 1998—Luiz Inácio Lula de Silva was elected president of Brazil, succeeding FHC. Once again, and for the first time since Quadros/Kubitschek, an elected president would receive the ceremonial sash from another president who had also been elected through a full-fledged free and democratic election process.

President Lula did not interrupt the progress of transformation in Brazil, a circumstance that somewhat surprised his critics. The administration by the feared Workers’ Party (PT) took the pragmatic approach and continued the economic stabilization process initiated by Itamar Franco and carried through by FHC. What’s more, in view of economic stabilization and some favorable winds from the international economy, Lula was able to expand the actions his administration was taking toward integrating millions more people into the country’s economy.

Even so, by the middle of his first term, it was evident that Lula was having trouble in his relations with Congress. Because the PT had not won a majority in the legislature, the administration was accused of “buying off lawmakers by paying them a monthly allowance with monies diverted from public funds.” The practice became the scandal known as the *Mensalão* (big monthly payoff).

Now if *Mensalão* actually happened—and the courts, from the Brazilian Federal Supreme Court (STF) on down believed that it had, convicting the principals involved—the continuance in office of the president himself should have been questioned and impeachment proceedings should not have been ruled out. However, since formalities had been ignored in order to allow FHC to be re-elected, camaraderie dictated that the same tolerance be given to Lula. In 2006, Lula was re-elected.

It would be the first time in the history of Brazil—in a democratic process that was not oligarchic but truly broad and participative—that the nation would witness four complete presidential terms uninterrupted by suicide, resignation, coup, or impeachment. This was progress that it took Brazil until 2006 to experience, just slightly more than 10 years ago.

Despite signs of the problems that would later compromise the history of the PT administration, Lula was able to get his chosen successor, Dilma Rousseff, elected in 2010. The event represented not only the unprecedented circumstance of a fifth election and a fifth uninterrupted presidential term, but a fantastic accomplishment for the nation's history. In 2010, Lula became the first president of the Republic—except during the oligarchic period of 1889 to 1930—who had received the ceremonial sash from an elected president and passed it on to another president who had likewise been elected by a democratic process that was full-fledged, free and participative.

This happened in 2010. Rousseff was re-elected in 2014 but, unfortunately the next president of the Republic, to be elected in 2018, will not receive the ceremonial sash from a predecessor who was similarly elected and still in office. As we know, impeachment proceedings—the second in Brazil in less than 25 years—removed Dilma Rousseff from office in 2016 after she had become involved in a series of charges that are yet to be better understood.

Governability and coalitional presidentialism

Whether under a presidential or parliamentary regime—but more so in the parliamentary system—in any country of the democratic world the executive and legislative branches must get along with each other. Without a majority in Congress, the head of government (or chief of State) will have to take risks, if not be condemned to inaction, paralysis, and thus to failure. This relationship is inevitable and even beneficial when we contemplate a system of mutual controls, of checks and balances.

Forming governments with forces in the legislature is therefore part of the democratic political game. This tends to occur more in multiparty systems, since it is unlikely that the party of the president will have managed to elect a majority of representatives and/or senators. In many cases, it is common for a coalition of forces to be proposed in order to ensure required governability.

If governments needed to enact only laws that are less complex and more commonplace, they would need only simple majorities: half plus one of the number of legislators actually present in the two houses. In that case, a certain amount of absenteeism among members of Congress would actually be helpful to the administration.

But a government does not make its mark by dealing in ordinary laws. The introduction of programs and fulfillment of campaign promises complementary laws. These votes require absolute majorities—in the Chamber of Representatives that means 257 votes and in the Senate, 41. Furthermore, a government cannot remain exposed and needs to be vigilant and maintain a majority so as to forestall enactment of agendas contrary to its political and/or fiscal interests (the so-called “bomb agendas”), preventing the formation of Congressional Investigation Commissions (CPIs) and attacks on the public budget. This is defensive governability: the administration needs a majority in order to defend itself.

However, in a reality like that of Brazil, whose Constitution, replete with details, gives orders on almost every aspect of national life, governability becomes even more complicated. The majority needed to enact amendments to the Constitution is, naturally, higher and more difficult to achieve. The criterion is $2/3$ of the votes—308 in the Chamber, 49 in the Senate. Of course, if the executive branch possesses those votes it has almost all the power. A constitutional majority is the maximum expression of the power of a governing official.

For an administration to protect itself from impeachment, for example, the quorum will be quite a bit lower, but success will still not be a sure thing: an administration must have no fewer than 172 votes in the

Chamber and 28 votes in the Senate. In Brazilian democracy—which is multiparty and severely fragmented (28 parties are represented in the Chamber of Representatives)—those figures are never attained, individually, by the president’s party. Since it has become the practice to form coalitions for election purposes, a president must assemble new coalitions in order to ensure governability.

If none of the above is possible, the executive branch will have no choice but to identify some external situation that will give it enough clout to pressure Congress—support from demonstrators in the streets, for example. Clearly such a situation entails a breach of democratic normalcy, political turbulence, and unpredictability. It is not an option that is desired by most countries or the officials themselves.

The following table sums up the kinds of governability:

Type of Governability / Number of votes	Chamber of Representatives	Federal Senate
Defensive	172	28
Active	257	41
Full	308	49
Coercive	Externalities — Support from the streets, for example	

Governability, therefore, is a *sine qua non* of any government. It can be said that there is no government without governability. One without the other would truly be a contradiction in terms. Governability based on a majority in the legislature suggests that the administration may have more freedom to propose laws—eventually, even constitutional amendments—as well as protect itself from hostile agendas concocted by the opposition.

There are different ways by which to form such a majority: (1) an exclusively programmatic arrangement; (2) a programmatic arrangement with

participation in government office holding; or (3) an arrangement based mainly on the politics of self-interest, or patronage politics—in which programmatic issues, although they appear during the discussions, are set aside.

In the history of Brazil, the politics of self-interest has always been very important in relations between the executive and legislative branches. It was not “invented” in the last decade. Even so, there was a landmark moment when it became more evident. It occurred between 1986 and 1988 during the José Sarney administration when the Constituent Assembly was deciding whether the term of office of a president of the Republic would be reduced from six to four years in the new Constitution.

Unhappy with the Constituent Assembly’s willingness to reduce his term, Sarney summoned the so-called *Centrão* (Big Center)—a conservative group that had traditionally opposed initiatives taken by the Left during the drafting of the 1988 Constitution—to help ensure that in his own case the term would run, just that once, for five years. The Big Center did not fail Sarney but asked for a reward in the form of the release of government jobs and funds. The circumstance was marked by a sentence uttered by former Representative Roberto Cardoso Alves (PTB-SP) (Brazilian Labor Party-São Paulo) who, quoting St. Francis of Assisi said: “For it is in giving that we receive”—thus symbolizing the opportunistic culture of Brazilian politics.

With only a minority in Congress—his party was minuscule and his election not the result of debates in the legislature—and with his cocky demeanor, Fernando Collor de Mello (arrogant in victory and conceited in power) demonstrated a fatal lack of experience in believing he could confront politicians and govern autocratically without making the traditional concessions to the various parties, especially the PMDB. When he decided to reconsider his approach, it was too late. For a number of reasons, it did not take long for Collor to be stripped of his political rights by Congress.

Fernando Henrique Cardoso seems to have learned from Collor's inexperience and the trauma of his impeachment. As president, he made several concessions to the politics of self-interest. But then he went on to conduct a comprehensive process of economic stabilization (the Real Plan), constitutional reforms, requiring a vote by a majority of all members (three-fifths, in the two houses), and privatizations. Satisfying politicians' private interests was the price paid, and this time the goods were actually delivered.

Luiz Inácio Lula da Silva also knew he would need a majority in order to govern. However, he seems to have opted for more heterodox relationships than FHC pursued. The fact that he resorted to the Mensalão scheme indicates that his administration must have sought non-institutional relationships with adherences and loyalties that were more fully committed in personal terms—Lula had initially refused to include the PMDB in his government. At the same time, the commitments would be much less programmatic, which would give his administration enormous freedom of action.

After the *Mensalão* scheme was made public, Lula's practices became more "orthodox," we could say, with respect to satisfying individual interests. He resorted to the distribution of government posts and funds in a more explicit, systemic and institutional manner in relationships with the myriad parties that began to support his administration, applying the same Franciscan dictum of "for it is in giving that we receive," cited by Roberto Cardoso Alves.

Dilma Rousseff continued at least this final phase of the term of her predecessor and sponsor, Lula. As president of Brazil, Rousseff did little or nothing to change the foundations of Lula's relationship with Congress. There was a downside though: because the government was not the result of a turnover in power, but rather, continuity—the third PT term—Rousseff could not count on renewing old pacts and agreements.

Having reached the limit of what the State had available to give in this phase, she nevertheless went on distributing funds at a time when the Brazilian fiscal crisis—the deepest in the country’s history—was already taking shape.

Cycles in coalitional presidentialism

The question we will address here is whether coalitional presidentialism based on political conciliation and formation of majorities works. From the standpoint of results achieved, there is a vast volume of literature on Brazilian political science that shows that efficient “political co-optation” can be effective. The answer is simple: it works to a certain extent.

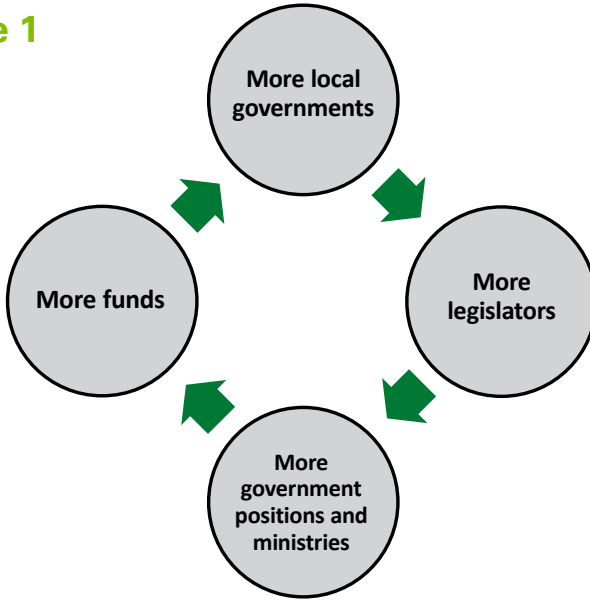
During a president’s first term, there occurs what in Brazil we call a “honeymoon” between the new governing official and the political class. On what is it based? There is, indeed, some credibility plus the legitimacy from the ballot box, i.e., the support of public opinion. But that is not all. In reality what we have is what can be considered to be a renewal of the cycle of patronage politics.

When power alternates between parties, the new government will inherit from its predecessor—to which it had served as the opposition—tens of thousands² of positions available to be filled by applying criteria that will be, above all, political. The bargaining power that the executive branch has over Congress at that time is enormous. We can call it “Coalitional Presidentialism 1.0” (Turnover in Power)—the inaugural moment. Parties and delegations will desperately attempt to handle pressures from their base seeking jobs, along with requests for funds made by ministries. That is why they are open to accepting the generosity of the government in exchange for their votes and support. Parties ask for so-called “participation in the government.” Obviously,

2 These figures are only guesstimates. Some estimates say there are about 25,000 or 30,000 positions available for filling based on political criteria. At the end of the PT administration, its opponents suggested that this figure would have reached a stratospheric 98,000.

these negotiations do not focus on programs and projects, at least not exclusively. Discussions focus mainly on the distribution of government positions and release of public funds.

Figure 1



This is a process that includes a logic tied to a cycle of power that needs to be better understood. We will henceforth call it the “vicious cycle of the large *bancada* (delegation)” as depicted in Figure 1, above:

A large delegation that represents a certain party—as in the case of the PMDB, which elected 68 federal representatives—will demand the highest possible number of ministries, positions, and funds. In arm-wrestling with the executive branch, it could, in theory, seize a half dozen ministries.³ These ministries will provide additional funds that will

3 In addition to the hundreds of jobs scattered around the structure of the State in strategic positions such as the federal Audit Court, there are the boards of control or regulatory agencies, as well as superior courts and similar arenas, thus configuring a tentacular power—the true and genuine power.

be allocated to those states and municipalities that are of interest to the delegation, thus helping the party elect as many governors, mayors, and councilmembers as possible. The more mayors and governors, the larger the party's delegation in the next election. The logic is extremely simple and visceral: survival of the delegations collectively, and of each legislator individually, depends on that cycle.

This is the game that is played in Brazil and should by now come as no surprise. It is just as natural for administrations to want to assemble majorities as it is for parties and politicians to work to ensure their own political survival and win as many re-elections as they can. In a relationship that is merely utilitarian and functions exactly as hoped, a government will have the majorities it needs and can arrange for the projects that were confirmed by the ballot boxes to be brought to term.

However, we need to consider the quality of a democracy that is based solely on instruments of this type of co-optation: how sustainable is it?

In the first place, the legislative branch is debased, becoming a mere appendage of the executive. As in a game played with marked cards, there will be no further dispute, no opposition, no debates that might improve projects or institutions. The opposition, bereft of resources, disappears; hence competition will be unfair.

It is interesting to realize that politics as a means of debate and formation of consensus is also vanishing. To the professional legislator, the only important tools now are: (1) the office; (2) the amendment; and (3) visits to the base. The tribune who defends the rights of the people has been dispatched; clashes in the legislature will no longer have the least effectiveness. How can hearts and minds be changed in an environment where everyone has closed ranks around interests situated far from the debates and the public interest?

But the question is not only one of principle. The very functioning of the system will be compromised for the medium- and long-term future. One has to consider the effect of voracity on that process. A de-politicized

relationship cultivated through the distribution of resources tends to encourage and cultivate new vices. A legislator who is co-opted in that way will become a bottomless pit, always demanding more.

Competition at the grassroots will itself energize the process, pursuing it to exhaustion. One interesting—and complicating—aspect is that the release of government positions and budget appropriations is not actually arranged by the parties. In most cases, the trading is done by party leadership bodies and the heads of the delegations, although the true beneficiaries are the individual legislators. No matter how methodical the controls that some governments propose to implement, the process will always be relatively chaotic.

This chaos will lead to significant autonomy for each senator or representative, the fragmentation of agreements and the subjection of the operations to specific regional and/or sectoral logics. Local disputes—for example: Legislator “A” vs. Legislator “B” (or some newcomer)—will interfere directly with the relationship with the executive branch. Political competition tends to create a situation where demands for new and bigger spaces and resources are always growing, probably without end.

So if there is a “honeymoon” period in a president’s first year in office, in subsequent years, the story of the romance will be a little different. The fact is that when the time comes for the chief of the executive branch to decide to run for re-election, new rounds of negotiations will have to be held and new concessions made. Then the president will need support, accomplishments to boast about and, especially, allocation of TV time for political ads. Those hours belong to the parties. The president will have to renegotiate everything.

In this phase, which I am calling “Coalitional Presidentialism 2.0” (“Re-election”) there are no more positions available in the direct governmental apparatus. The administration will have to appeal to “the crown jewels,” the directorships of state-owned companies and autonomous government agencies. These are companies that negotiate directly with other companies that operate grandiose contracts—operations in many

cases larger than those of the ministries. Examples of this type of company include Bank of Brazil, Caixa Econômica Federal (Federal Savings Bank), autonomous entities in the electric power industry and the most emblematic of all, Petrobras—Brazil’s biggest company.

Another aspect of this phase is illustrated by the attitude of a former president of the Chamber of Representatives, Severino Cavalcanti (PP-PE) (Progressives-Pernambuco). In one of his demands to the administration, he argued that: “I don’t want a position on just any board of directors, no, it has to be the one that drills the hole and finds the oil.”⁴ At that stage, financial schemes and diversions of public funds—whether for personal enrichment or campaign financing, it doesn’t matter—will expand. Even so, the most likely scenario is that the chief of the executive branch (in this case, the president of the Republic) will be re-elected.⁵

The election of Dilma Rousseff, consecrated at the ballot box by the efforts and influence of Luiz Inácio Lula da Silva, instituted a new phase in coalitional presidentialism in Brazil: succession, following an election and re-election—which can be interpreted as “Coalitional Presidentialism 3.0” (“Continuity”). Note that Rousseff was not truly a new president nor was the group taking office new. As in the first phase, there was no turnover in power. Although Brazil was now governed by a new president, the same party and same group remained in power.

Let’s review: in the previous phases—during Lula’s two terms of office, his election and re-election—because it needed to form a majority, the executive branch had already distributed ministries, positions, and resources. By then it had also permitted new distribution efforts to advance in the direction of state-owned companies to tap their resources and financial and business potential. Now, in what could be called the

4 See Felix (2015).

5 The possibility that a president could run for a second term was established in Brazil in 1996. Since then, three presidents of Brazil have run for re-election (FHC, Lula, and Rousseff); all three were re-elected.

“third term” of the PT, i.e., Rousseff’s first term, there was very little left to share—although the voracity of parties and legislators for additional resources was unabated. Exhaustion set in; Brazil stood on the cusp of a crisis of governability.

The first year of President Rousseff’s term perfectly demonstrated what we might call a collapse of the political distribution system. The allocation of positions and resources became impossible in light of the voracity effect: everything that was available had been distributed during the two previous terms. Even so, political agents remained dissatisfied—they wanted more.

With an eye towards tapping into ministries and resources that had been allocated to other groups or parties, a second group or party—from the same alliance, the government’s same majority base—began to “leak” to the press charges of misdeeds by people who were their allies within the base—but adversaries in the distribution system. A denunciation by Group A led to the dismissal of the minister from Group B, who responded by destabilizing the minister from Group C who, in retaliation, aimed fire at Group B, which would disturb the tranquility enjoyed by Group A. That’s how the cycle works.

If the head of government managed to arbitrate the conflict and was then pressured by the media and public opinion, he or she would be forced to dismiss all the individuals involved. That was what happened with Rousseff, who dismissed seven cabinet ministers during her first year in office. The press called the president’s action “ethical housecleaning”—allegedly, Rousseff was raising the moral standards of her administration by terminating agreements made by her predecessor Lula. Nonsense. It would not be long before the political agents rearranged the chairs and the president reappointed all the groups, previously dislodged, to new positions in the Cabinet.

Brazil was growing, the president’s popularity ratings were high, and Lula was at the peak of his political prestige—the PT was able to elect

candidates and mayors in several important municipalities.⁶ Furthermore, there was still money in the Treasury, or at least sufficient creativity to perform a facelift on the account books pertaining to the figures and fiscal results achieved by the administration⁷ to enable an increase in spending to satisfy demands from her base for at least a little while. At that point, Rousseff had reached the end of her first term.

She was stumbling and staggering, however. The commodities market shock, which had helped Brazil in the early 2000s, had not only reached its end but was now producing an inverse effect. The Rousseff administration—supported by the developmentalist ideology known as the “New Economic Development Matrix”—refused to make adjustments. The grassroots in which coalitional presidentialism was planted continued to demand more rewards. If not direct appointments to office or gifts of funds—Brazil now boasted a stunning 39 cabinet ministries—then people were asking for at least some freedom to run illicit financial schemes in the executive and even the legislative branches.⁸

The campaign to re-elect Rousseff was a tough one: she won it through an electoral process that featured plenty of social conflict, as well as intense political polarization that divided the electorate and, later, society itself. In this fourth PT term of office—again there was no turnover in power—it was clear that the story would not end well. Here we have

6 São Paulo, the biggest city, elected as mayor PT candidate Fernando Haddad, until then unknown to the larger constituency. It was dubbed “yet another posting by Lula,” the previous “posting” being Rousseff herself.

7 At first, that “facelift” of figures was euphemistically called “creative accounting” and later “fiscal pedaling” [postponement of disbursements in order to improve the appearance of fiscal results]. Such “pedaling” was the motive behind the 2014 impeachment of Rousseff—at least that was the legal justification.

8 To give just two examples of the “schemes” in the executive branch—in this case, run at a state-owned company—see Operation Car Wash, in which activity centered on contracts with Petrobras, or Operation Zealots for issues in the context of the Administrative Council of Tax Appeals (CARF). For schemes associated with the Legislative Branch in the sale of amendments, there are plenty of examples dating at least as far back as 2011. A quick search on the Internet will turn up innumerable cases involving the Chamber of Representatives.

“Coalitional Presidentialism 4.0” (“Crisis”). Those greedy for rewards, led chiefly by Eduardo Cunha, a PMDB representative from Rio de Janeiro who had been elected president of the Chamber, would demand even more funds—and continue to do so—at a time when all the executive branch could do was cite the economic crisis and the tight budget.

Unable to control the process—due to personal inadequacies as well as the system’s voracious appetite for benefits—Rousseff was deposed. Unable to govern, the president who had been re-elected in 2014, and the political party that had held the top position in government since 2003, were removed from power on August 31, 2016. The cycle of coalitional presidentialism could not survive four terms.

The PT experience during its long and continuous period in power taught us that such cycles exist in coalitional presidentialism that is maintained almost exclusively by the distribution of State resources. In terms of programs and projects that would achieve more for Brazil through political and economic change, those cycles, if not empty, are at least anemic. While State resources are obviously finite, the elasticity of the political patronage system seems to exceed the bounds of reason and rationality—killing the hen that lays the golden eggs.

Does the blame lie exclusively with the agenda of the party in power, the myopia of the Workers’ Party, the voracity of its individual members, or did Dilma Rousseff lack the necessary skills? It’s hard to say. Democracy in Brazil, as we have seen, is very young and the country has never lived through a democratic experience that remained in power for so long.⁹ Under the control of a different party, would the system have also reached this state of exhaustion after four election campaigns and three terms in office? Here it is equally hard to say yes or no. In politics, there is no *ceteribus paribus*, there is no “all things being equal.” The

9 Getulio Vargas’s first term (1930-1945) and the military regime (1964-1985) were administrations that were in power longer than the PT. But they were dictatorships that, each in its own way, subjugated Congress and forged majorities by other means (the April Package of 1977 is an eloquent example of this). That is why they cannot be compared with the recent period of history that, despite its flaws, must be considered democratic.

fact is that under those conditions, the system reached its limit. Brazilian political science, most often and in the work it has produced, has usually taken great care to point out that, in its own way, the system worked. Ultimately the legislative branch passed the bills submitted by the executive branch so the two branches got along with each other in a special kind of harmony. Still, only a much smaller number of political scientists bothered to discuss in their works the quality of the process, the quality of the democracy.

The tangible fact is that coalitional presidentialism built on a foundation of resources that were eminently a tribute to patronage politics and nearly devoid of political and programmatic elements demonstrated its limits, its fragility and ended in the failure of that equally tangible experiment. What we can definitively state is that built on that foundation, it collapsed, produced scandals, lost much of its credibility, and became a harbinger of economic and political crises.

As we have said, democracy has a short history in Brazil—it is a young democracy. There are no historical data series that would enable us to make definitive statements, much less develop a safe and irrefutable typology. It is good to underscore the fact that a cycle of four consecutive terms like the PT's recent experience has never worked out. But we should also be mindful of the fact that we cannot say that the same dynamic will necessarily repeat itself in the future.

Even so, by relying exclusively on recent experience, the understanding that we can draw today from the terms served by the aforementioned presidents, and for the purpose of explaining the PT adventure, we will risk talking here about “types”—without the rigidity of a Weberian taxonomy or “typification.” This is a classification of the “phases” of coalitional presidentialism, as we have been able to observe in the flesh, however episodically, in the context of recent Brazilian history:

Type or Phase	Term	Agreements
"Turnover in Power"	First	New pact and distribution
"Re-Election"	Second	Deepening of the distribution
"Continuity" (succession of the re-election)	"Third" (i. e., without turnover)	Resources begin to be scarce, conflicts increase within the base.
"Crisis" (re-election of the successor)	"Fourth"	Collapse of distribution, crisis in governability

Operation Car Wash

Among the many potential arenas for manifestation of that system that functioned so uniquely, it chose to demonstrate its worst characteristics at Brazil's biggest company, Petrobras. It was there that the allocation of positions in response to the needs to form majorities shook hands with traditional Brazilian patrimonialism, the most active element of our traditional democratic misunderstanding.

The involvement of politicians with Petrobras resulted in the biggest and most complicated public scandal in history, responsible for several billions in financial losses for the company and the public coffers in general. Moreover, the proceedings sent dozens of executives from the state-owned company to prison. These included directors of (private) service providers, financial operators, party leaders, former ministers, former representatives, and even a former state governor.¹⁰ That extraordinary and unprecedented process became known in Brazil as Operation Car Wash.

¹⁰ All of those mentioned here are not entitled to—or are no longer entitled to—jurisdictional prerogative. It is thought that there are more than 100 other operators, legislators, ministers or others who hold elective office who, under the law, will be investigated upon authorization from the Federal Supreme Court, or prosecuted exclusively by that court.

It was not only at Petrobras that a chain of interests and corruption schemes took hold in Brazil. It seems obvious and would even be legitimate to argue that other companies and government agencies were similarly subjected to corruption schemes and diversions of public funds. New examples are revealed daily by the Brazilian press but not all are being as thoroughly investigated as is Operation Car Wash, probably owing to a lack of technical resources and budgeted funds—as well as a political willingness to investigate, indict, prosecute and of course, punish.

Corruption schemes like the one that broke out in Car Wash arose, obviously, out of the propensity of individuals to seek illicit routes to personal enrichment, but that was not the only motive. The great majority of cases also involved party interests, ever more onerous election campaign financing as well as the financing of increasingly more professional political activities and the bolstering of projects of interest to the party in power, considered more broadly than the episodic electoral moment.

This kind of corruption is an important and sometimes vital element in the effort to raise funds to maintain political groups and even to strengthen party structures. Then it becomes systemic: parties appoint agents whom they trust to fill important decision-making positions in the State. These agents work with party leaders to operate the schemes that favor service providers. Those providers, benefiting in some way from the action of those operators, then finance the parties. A cycle is established. Obviously, some of those operators, by charging modest commissions, become rich.

Everything seems quite simple. What is worse is the impression one gets that schemes of that kind have even established themselves over time, becoming part of the “game” of real politics commandeered by real political actors, motivated by their own real interests. Of course, schemes like this did not start yesterday, although suspicions persist that

they expanded during the years when the Workers' Party was in power, thus becoming—as we have described—systemic.¹¹

Other initiatives in the direction of investigation, accusation, judgment and condemnation of corruption were given life in Brazil's recent history prior to Operation Car Wash. But they did not go as far nor did they have the same success. The 1992 "PC Farias CPI" (Congressional Investigation of Mr. PC Farias) that sought to inquire into corruption during the Fernando Collor administration went only halfway because it did not investigate the companies that were involved with Farias, who was treasurer of the campaign of the then-president. The following year, the "Budget Dwarfs CPI" (1993) also failed to result in punishment for groups of companies that may have been involved.

More recently, new attempts have also only gone halfway. Operations carried out by the Federal Police (PF) such as Satiagraha (2004) and Sand Castle (2009) were frustrated by legal/bureaucratic issues associated with the collection of evidence or the quality of the fact-finding that supported the proceedings. These laid the foundation with the Federal Police and the Public Prosecutor's Office (MP) for both a concern for procedural detail and a renewed determination to investigate and punish schemes of that kind.

Operation Car Wash is certainly a landmark event. It marks a breach with centuries-old impunity regarding the promiscuity of relationships between companies and the State in Brazil. It can also be explained by an

11 Saying so, however, will always be reckless, primarily because successful corruption—"well done," shall we say—does not show itself, is not discovered, nor is it punished. And so one cannot say that it was at one time more or less prevalent in comparison to a given moment. There are no data, merely an increased perception based on greater publicity being given to the events—and eventually in the higher numbers of people being punished. That means we will have to live with the following doubt: was the systemic nature perceived during the experience of the PT era occurring because that party and its allies were in fact "the most corrupt in history," or were they merely the least "competent" in carrying out that kind of operation? Any definitive response to that question—for or against the PT—will be based on assumptions and value judgments. But what is really the most serious is to have to admit that, unfortunately, Brazilian political culture sanctions this kind of question.

interesting conjugation of factors that were born of the promulgation of the Brazilian Constitution in 1988. Beginning with that new codification, the MP gained prominence and its autonomy with respect to any of the Three Powers is now truly uncontested.

Furthermore, over the course of time a series of important modifications was made in Brazilian legal practice. For example, there has been an interesting rejuvenation of the judiciary branch. New judges arrived to replace the older ones who gradually left the stage. These young people bring with them a set of new experiences. They have experienced the world's globalized society and have assimilated new criteria, they are innovative in their practice of ancient Roman Law, and they take a different view of old problems and issues.

The Federal Police has also been transforming itself into more of a career with the State than a tool of government. Its freedom to investigate is now incomparably greater than in the Brazil of the past. Similarly, oversight and control agencies have gained stature and autonomy—the Office of the Federal Controller General (now the Ministry of Transparency, Oversight, and Federal Controller General), the Audit Courts, the Brazilian Antitrust Authority (CADE), and others, have raised their level of national oversight and accountability.

Also part of this context is growing international concern about corrupt practices that may be linked to organized crime as well as terrorism. Vigilant and restrictive legislation enacted by several countries to hinder, combat and punish corrupt practices is convincing companies to be concerned about their compliance practices and they are bringing the effects of this new world to countries like Brazil.

Lastly, we have observed diversification of the media and fragmentation of the press, with myriad new media companies competing with each other for readers' attention and trust. To do so they need to get "scoops" and build up credibility. It is impossible in the modern world to consider

concocting agreements involving all the media to get them to cover or protect someone, no matter who it is. Even if (more or less important) groups wanted to do that, news of the inquiry and accusations would flood the internet via social networks.

Reality has changed. This has caused Brazil to change as well, and thus face up to its anachronistic and flawed political system. However, the facts do not seem to support the widely touted theory that because of all these changes, the institutions of this country are stronger and more solid than before. Were the nation's institutions truly efficient, the situation would not have reached the point at which they now find themselves. (Latif et al., 2016). Proper theory on the subject of institutions (North, 1990) seeks, above all, the economic efficiency of a country's complex of institutions and their ability to ensure security and predictability. Objectively, this does not seem to be happening in Brazil.

The executive and legislative branches, along with political parties, are also part of the framework of institutional organizations, and it cannot be said that those actors are functioning efficiently in Brazil. And even when the judiciary is examined as a whole—not only in the context of Operation Car Wash—it also leaves much to be desired from the standpoint of companies in general and the average citizen. To be convinced that what is happening in Brazil (all the collapses identified above) is symbolic of satisfactory institutional functioning may be the result of wishful thinking.

Another aspect of institutional development is that the empowerment of parts of the Public Prosecutor's Office and the Judiciary has brought about recognizable progress, yet the system retains some equally acknowledged built-in risks. A democracy is not made up of prosecutors and judges alone. Nor should it be their sole province to determine right and wrong in national life, must less conduct a national debate. A democracy requires a broader vision in which a wide variety of sectors participates, where there is a view towards political tolerance, and perspectives for building consensus connected to a dedication to the

common good. That a society must be based on law is obvious, but even so—and actually because of that—it must be plural.

Besides this aspect directed more toward the eminently democratic question, there is yet another one, this time associated with the “misunderstanding about democracy” we discussed earlier. The empowerment of groups, even for good reasons such as the fight against corruption, cannot justify, or much less permit, the distinction of those groups in relation to society as a whole. In the Brazil of 2018, we still find fiscal distortions that benefit judges, for example. We are not necessarily referring to those who are connected with operations that dignify public morality but to those who may possibly be favored by all the positive effects and public awareness generated by Car Wash.

Conclusion

Relationships between private enterprise and government are permeated by a series of misunderstandings, both big and small. These reside in the existence of a patrimonialism that is as atavistic as it is obstinate, but also in the opportunistic conceptual confusion, which implies that a democratic regime requires a defense of individual interests and transforms them into privileges, and that those particularisms should then be entitled to prevail over the larger interest.

Companies have rights and may legitimately defend their interests. It is absolutely admissible that they seek to earn a profit and that they be allowed to manage enormous resources—companies create jobs, produce goods and services. In reality they, not governments, are responsible for the economy that is the foundation for social development.

That companies wish to draw official attention to their projects and make demands of governments and other public bodies is absolutely normal. It would be wonderful if society in general could move past clichés and overcome prejudices related to business in general and the pursuit of

profits and wealth in particular. Unfortunately, people in Brazil still seem to have some sort of archaic and religious aversion in this respect.

However, it is equally legitimate that those interests should not be restricted to unaffected greed or allowed to take precedence over the broader interests of society. This is not what is called lobbying—given the historic origin of the word—much less does it mean promoting good and healthy “institutional relationships.” Above all, this can be called favoritism, clientelism, corporatism or, speaking plainly, corruption.

The interests of companies must be essentially understood within the context of social interaction, the overall interests of society, and interactions within society. Company executives and government relations professionals urgently need to understand that when two individuals interact they can do a lot of good for themselves. But they can also do plenty of evil for everyone, including themselves. Elster (1994) writes that “acting rationally is to do as well for oneself as one is able” but that ability is limited by fiscal, moral, social and political coercions. And that is how it should be.

Another aspect to consider is that there is a plethora of differences between the business world (private) and the world of the State (public). It is only natural that it be this way, although an approximation between those worlds is as desirable as it is necessary. On this point, to shorten those distances, one must know and understand the dynamics, reasons, and boundaries of both worlds.

To argue that the State does not understand the dynamics of companies is as true as saying that companies do not understand the dynamics of the State, the public sector, or the political world. Assimilating the differences is essential in order to navigate the space between those worlds and perceive the conflicts and contradictions as well as disputes that are in play there.

Hence it becomes necessary to be able to tune into the way that politics works: the characteristics, potentials, limits and dysfunctionality of the political system; questions related to the quality of its leadership, and the deficiencies of its institutions. A professional who is contemplating a career in government relations must quickly gain an understanding of all of this. Political analysis of the structural conditions of Brazil, as well as their contextual framework is a fundamental tool for accomplishing this.

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7

PETROBRAS

Can companies move away from crony capitalism and embrace integrity in government relations?

ALANA RIZZO* AND JOEL VELASCO**

Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.

Louis Brandeis, U.S. Supreme Court Justice, 1913

At the heart of this book is the relationship between corruption and lobbying—activities that many, especially in Brazil today, unfortunately regard as interchangeable. Lobbying is not corruption. It is indeed true that corruption can utilize mechanisms similar to those employed in government relations, i.e., lobbying activities, as described in other chapters. The authors of this chapter believe that simply restricting the relationship between the public and private sectors is not the solution. The cure for the endemic corruption in Brazil will not come by abolishing the practice of defending individual or collective interests, which is essential in any society. There is no miracle cure for ending corruption. The solution lies in the development and implementation of clear-cut rules of the game—that is, ethical, healthy interaction between governing officials and the governed as they formulate public policies.

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Let us consider an example. Many corrupt transactions are captured on recorded telephone conversations. One solution would be to simply prohibit the use of the telephone. At the extreme end, saying that corruption can be blamed on the interaction between public and private sectors, and then simply prohibiting all lobbying activity, would be tantamount to doing away with the telephone. Continuing the metaphor, the telephone could be banned only in cases when it is clearly used for criminal activity, as in the case of signal-blocking antennas in prisons that prevent crooks from using cell phones. Another, more sensible option in our view is to establish clear-cut rules for phone use to make it clear that certain uses are unacceptable and will be punished.

Lobbying can be a tool for improving the performance of private companies and increasing public-sector efficiency, as shown in Chapter 2 of this book. Yet, in Brazil, and even in the United States and other more advanced countries, there are innumerable cases in which the tool is misused. How, then, can we create incentives so that this “telephone” is better utilized and not simply blocked? Does the solution lie in regulating the activity or punishing those officials caught using the tool unlawfully?

In this chapter, we will examine how companies interact with the public sector and how they can improve that relationship in a lawful manner. The goal here is to outline a scenario that will help us to understand and identify questions that still need to be addressed by the private sector, the government, and especially by society. Is it possible to change the culture of relations between the public and private sectors? Will companies truly be able to change the course of their activities after a corruption scandal? We believe they can.

It is possible, and indeed necessary, for companies and the State to establish a *modus operandi* that not only instills more honesty among politicians and business leaders, but also leads to efficient public policies that benefit society as a whole. In a modern democracy, the market of ideas cannot be limited to a select group of “national champions” or, worse yet, to those who pay a monthly sum to a legislator, or who run

a department whose activities are built around satisfying politicians' demands. In the same way that only open and fair competition produces better products and lower prices in a capitalist economy, we believe that broad-scale competition of ideas can produce better public policies and build private-sector confidence, and thereby create a virtuous cycle.

In the first part of the chapter, following a brief definition of important terms used (e.g., *corruption*, *lobbying*, *crony capitalism*), we will trace the history of corruption-fighting initiatives in Brazil. We will then examine the possibility of changing the corporate governance model in the wake of public exposure of illegal practices in relations with public officials and in the market. Defining the limits of such relations is not easy; it requires knowledge of and adherence to the rules of law, as well as the establishment of internal and external engagement with the corporate culture.

Both the corporate and the political world are under intense scrutiny today, and ethical conduct is increasingly in demand. The private sector's dependence on the public sector remains unchanged, and is even greater in some countries in the wake of episodes such as the financial crisis of 2008. Just to give an example, a paper published in 2016 by the consulting firm PricewaterhouseCoopers along with CEOs from 79 countries revealed that overregulation is the second-biggest concern among executives (80%), only slightly trailing uncertain economic growth (82%). We cannot, therefore, expect sustainable growth in the economy and society if we do not put government/private-sector relations on track.

Definitions

Corruption. The World Bank defines corruption as “the abuse of public office for private gain.” According to the Bank, individuals and companies bribe public officials to facilitate legal transactions, such as expediting government permits, avoiding costly regulations or ensuring lucrative government contracts.

It is also regarded as corruption to illegally manipulate electoral campaign contributions, whether it be to circumvent campaign rules, or to pay bribes. And Brazil is not the only country where campaign money leads to corruption. In the United States, which is regarded as more modern and advanced, campaign contributions and private groups created in order to influence political processes have generated enormous debate.¹ According to one research study, about 85% of voters believe that the U.S. electoral system needs fundamental reform or should be completely overhauled.

Lobbying. We consider lobbying to be activity undertaken for the purpose of defending legitimate private interests and influencing public decision-making. Advocacy is essential to the democratic process, as is interaction between the public and private sectors. We recognize that specific causes defended by a group may not represent the overall good of the nation or the best public policy. Nevertheless, we believe that, in the debate process, competition between parties (i.e., ideas) generates better public policies for the most part. In this chapter, we will focus not on proving that the competition of ideas generates better public policies, but on the relations between the public and private sectors and the importance of transparency in that process, in the wake of successive scandals that have created distortions and mistrust.

As we have seen in the previous chapters, there are no clear-cut rules on the interaction between the government, private initiative and other interest groups. Looking again at the United States, four laws regulating lobbying have been implemented in the past 100 years, with refinements and adaptations wrought by experience and case law.² The American experience shows that the rules governing interaction between government, civil society and the private sector are interactive processes.

1 See LaRaja (2015).

2 See <fas.org/sgp/crs/misc/R44292.pdf>. U.S. Congressional report on lobbying laws.

They can be refined, but they are never intrinsically perfect. As in most religions, perfection is something to which we can aspire, but it is only possible in the hereafter. Or, to use the adage, in politics and government relations, the perfect is the enemy of the good.

Crony capitalism. Crony capitalism is the economic model in which business success depends on close relations between business leaders and government representatives. Public officeholders make appointments on the basis of patronage. In the view of economist and University of Chicago professor Luigi Zingales, several factors contribute to the growth of this model, including disproportionate lobbying, lack of competition, nepotism and political clout—all of which, Zingales says, create distortions in these relationships. Such a scenario can open up the doors to permits, financing, tax breaks or other forms of interventionism.³

In crony capitalism, the government decides the winners and losers based on political interest. These distortions do not necessarily involve financial transactions or wrongful acts in the eyes of the law, as in the case of campaign contributions. Zingales maintains that favoritism based on personal relationships restricts competition and facilitates the formation of cartels. “It’s not a matter of criminalizing the relationship. There is a great deal of value in social relations, and they improve the flow of information, but these two considerations need to be kept in mind.”

In the same way that competition between products creates better products at lower prices, competition in the debate between interested parties and government improves the shaping of public policies. Crony capitalism creates unfair public policies that promote inequality in society and slow economic growth.

Corruption, according to Zingales, is the continuation of cronyism. The more pervasive it is, the greater the demand for corruption. Abuses end

3 See Zingales (2012). For a more recent article on the subject, see Zingales (2016).

up creating their own equilibrium that is difficult to change. But it is not impossible. Marcelo Odebrecht, the former CEO of Odebrecht who was jailed in Operation Car Wash, said in his plea bargain that there were three aspects to his company's relations with the public sector: *contracts, people, and bribes*.

Part 1: Context of corruption-fighting initiatives in Brazil

In October 1997, on the eve of U.S. President Bill Clinton's visit to Brazil, the U.S. Department of Commerce published a report saying that "corruption is still endemic in Brazilian culture."⁴ In the wake of furious reaction by the Brazilian government, politicians and the media, the U.S. ambassador apologized and the term was struck from the report. Since that time, many Brazilians, including Prosecutor-General Rodrigo Janot and Federal Judge Sérgio Moro, have identified corruption in Brazil as an endemic, systemic activity.⁵

In Brazil, corruption is nothing different or new. What is new is the spread of corruption within a young democracy. If, as Carlos Melo shows in Chapter 6, Brazilian democracy is in its infancy, our corruption is a cancer that is spreading before the child takes its first steps. What Car Wash, the *mensalão* vote-buying scheme and other scandals brought us was a truth that, up to this point, we either did not admit or we rejected, as was the case for the American ambassador. If we fail to break the vicious cycle of systemic corruption, representative democracy and the market economy will not prosper in Brazil.

An innovative way to fight abuses between the public and private sectors was introduced via Law No. 12.846 of August 1, 2013, known as the Anti-corruption Act. To understand the environment in which this

4 See "EUA mudam..." (1997) and Tognolli (2014).

5 See Bulla (2016) and Costa (2016).

law was passed, one needs to go back a short distance in time. Over a decade ago, Brazil was asked to establish anti-corruption mechanisms that were in line with the international agreements to which it was a signatory. Demonstrators had flooded the streets in June 2013 after the mensalão trial to voice their dissatisfaction with the political class. The June protests that year demanded better public services and a stop to the misappropriation of money. The Anti-corruption Act, therefore, was the Dilma Rousseff administration's response to the people in the streets and the international organizations that had been pressuring the country.

In early 2014, a few months after the law took effect, Operation Car Wash would explode onto the scene, exposing illegal ties between large State-owned enterprises and the government and igniting an unprecedented political and institutional crisis. Still ongoing in 2018, the country's largest-ever investigation provides fertile ground for enforcement of the law. There have been more than 1,400 investigative proceedings, 16 companies involved, 413 cases heard by the Federal Supreme Court (STF) alone, 269 indictments, 158 plea-bargaining agreements, and over R\$6 billion paid in bribes. The size of the criminal organization and the tentacles of the scheme startled even the most experienced investigators. Car Wash shed light on the need for corporate accountability for companies that commit harmful acts against the government, precisely as provided in the Anti-corruption Act.

Inspired by American and British laws (the Foreign Corrupt Practices Act, or FCPA, in the U.S., and Britain's Bribery Act), the Brazilian law is part of a global endeavor to reduce corruption, as well as the focus of fervent debates on the impact of embezzlement on business and the increase in social inequality. The FCPA and the Bribery Act prohibit any offer, payment, promise or authorization of undue advantage in order to entice a public official to grant undue advantages, through acts such as trading permits, altering a regulatory requirement or expediting tax benefits, even when due. Following the global trend, the Brazilian law codified the legal doctrine of *respondeat superior*, under which a company may

be liable for acts of its officers, employees or even other agents such as consultants and lobbyists.

The international anti-corruption crusade gained momentum in 1997 through the Convention on Combating Bribery of Foreign Public Officials in Business Transactions, put forth by the Organization for Economic Cooperation and Development (OECD). In 2003, the United Nations Convention against Corruption, also called the Mérida Convention, put the subject at the center of its agenda. In 2004, the United Nations Organization added the 10th Principle of the Global Compact, which challenges businesses to fight corruption in all of its forms, including extortion and bribery. Studies by the OECD estimate that corruption adds 10% to the cost of doing business and as much as 25% to the price of public contracts in some countries.

It was in this context that several countries went on to adopt standards to ensure more transparency in relations between business leaders and the public sector. In Brazil, the changes came more slowly, by the time the Anti-corruption Act was passed. The country signed the OECD Convention in 2000, but it was not until 2010 that the President presented the preliminary draft to Congress.

In the nearly 15 years between the signing of the OECD Convention and the effective operation of the Anti-corruption Act in Brazil, the Penal Code was amended, Congress passed the new Anti-Money-Laundering Act, and the federal government adopted initiatives to ensure more transparency in public expenditures and to strengthen international cooperation between police, investigators and the judiciary of several countries. These measures were important aids in the fight against corruption in Brazil.

But what does the Anti-corruption Act say, and why is it so important to our discussion about the interaction of the public and private sectors? The Anti-corruption Act of 2013 establishes legal boundaries for public/private-sector relations, and considers the following acts to be crimes:

1. to promise, offer or give, directly or indirectly, any undue advantage to a public official or a third party related to a public official;
2. to finance, fund, sponsor or otherwise subsidize the practice of torts described in this Act;
3. to make use of third parties to conceal or disguise their real interests or the identity of the beneficiaries of the actions taken;
4. to hinder the investigation of acts;
5. to frustrate or defraud the competitive nature of contracts or bidding procedures;
6. to prevent or defraud the performance of any act within the scope of a public bid, or to remove or seek the removal of a bidder, by means of fraud or by offering advantage of any kind;
7. to use shell companies for the purpose of participating in a public bid or entering into an administrative contract;
8. to manipulate the economic and financial balance of the contracts entered into with the public administration; and
9. to obtain improper advantage or benefit concerning modifications or extensions of invitations to bid or of contracts.

Some of these practices were considered unlawful prior to the Anti-corruption Act. But now they are independent of the liability of a company officer or public official. This means that a company that commits such crimes can be held liable, even if none of its officers is directly involved. In other words, an employee's ignorance of or failure to comply with the Anti-corruption Act does not exempt the company from penalties,⁶ and likewise, financial fraud by employees can incur liability upon company

6 For a discussion of good faith compliance and the legal doctrine of *respondet superior*, see Cassin (2008).

officers, who can no longer hide behind ignorance of evidence of corruption.

According to the Brazilian Anti-corruption Act, if it is proven that a company has violated any of the rules, it can be sanctioned with a fine of up to 20% of its gross revenues for the fiscal year prior to the start of the investigation, as well as full restitution of the damage; loss of the assets, rights or valuables representing the advantage or that have been obtained from the wrongdoing; partial suspension or interdiction of its activities; mandatory dissolution of the legal entity; and prohibition from receiving incentives, subsidies, grants, donations or loans from public agencies and from public financial institutions, for one to five years.⁷

Even with the low number of administrative sanctions, there is no reason to doubt the effectiveness of the Anti-corruption Act in Brazil. Like similar international laws, the Brazilian law is likely to take some time to become firmly established. It is an adaptation period for administrators of the law and companies, which will now have to demonstrate that they have policies and are actually implementing practices designed to prevent corruption at every level.

The FCPA, for example, was enacted in 1977, but it was not until the late 1990s that it gained momentum to become the model we know today, which inspires laws throughout the world. The law is an attempt to establish a more just environment in business and restore society's trust in the market:

7 According to the Anti-corruption Act, sanctioned companies are also listed in the National Registry of Punished Companies (CNEP). The list is public and is available at <<http://www.portaldatransparencia.gov.br/cnep>> in order to increase public exposure and negative impact on the offenders. However, the list contains the names of only eight "dirty" companies—six microenterprises and two limited companies. So far, the only sanctions applied under the Anti-corruption Act have come from the government of the state of Espírito Santo and from Infraero, Brazil's state-owned enterprise that manages airports. No companies implicated in Car Wash have been penalized. The microenterprise William de Andrade Bullerjahn, the first to be listed, paid a fine of 6,000 reais for defrauding the bidding process.

Corporate bribery is bad business. In our free market system it is basic that the sale of products should take place on the basis of price, quality and service. Corporate bribery is fundamentally destructive of this basic tenet. Corporate bribery of foreign officials takes place primarily to assist corporations in gaining business. Thus foreign corporate bribery affects the very stability of overseas business. Foreign corporate bribes also affect our domestic competitive climate when domestic firms engage in such practices as a substitute for healthy competition for foreign business. (United States Senate, 1977)

Nevertheless, the FCPA has been under constant crossfire. Some argue that the law is very hard on companies and that it ends up disrupting business. According to U.S. official data, investigations under the FCPA resulted in 99 sanctions between 2010 and March 2017. The accusations range from million-dollar bribes to luxury travel provided to foreign public officials.

But the number of sanctions under the FCPA (and similarly, the lobbying law) does not do justice to the weight and practical effect of these laws. There is no company doing business in or outside the United States that has not established internal procedures to avoid being targeted by investigators. Fear of being caught in the fine mesh of the fight against corruption creates enormous apprehension, and therefore, companies make an effort to avoid any act resembling corruption.

In England, the UK Bribery Act, which took effect in 2011, was also roundly criticized in the market. The Serious Fraud Office (SFO), responsible for implementing the law, currently has 33 cases under investigation. The law applies to all organizations established in the United Kingdom and anyone who does business with them. The Bribery Act describes corruption, including by foreign public officials, and corporate failure to prevent it.

Corruption cases rarely make it to the courts in the U.S. or Europe, because of the push for companies to cooperate and for whistleblowers to become involved.⁸ This creates incentives (both financial and reputa-

tional) for companies to reach an agreement while still in the administrative context, away from public scrutiny in the courts. There is also an incentive for whistleblowers to come forth, give information and receive compensation for it. In the United States, for example, using a law that originated in the 19th century (the False Claims Act), a whistleblower can receive 10% to 30% of the money recovered by virtue of the information he provides.⁹ Under that program, 41 whistleblowers have been paid US\$149 million. According to the Securities and Exchange Commission (SEC), the investigations have saved the public coffers more than US\$935 million.

The data presented in the OECD Foreign Bribery Report reveal that in 69% of cases, the imposed sanction is the agreement. Only 31% of cases result in a conviction. The report shows a bribery map of the world and attests to the importance of business cooperation in the fight against corruption. One-third of cases were self-reported by the company to the authorities, perhaps demonstrating the effect of the law and compliance programs. And the cases brought to the company's attention came as a result of internal audits (31%), merger and acquisition due diligence procedures (28%); or whistleblowers (17%). According to the OECD report, only 1% of identified corruption cases involves a criminal investigation.

In Brazil, remunerated private whistleblowing still faces strong resistance in Congress, despite multiple bills under consideration. The National Strategy Against Corruption and Money Laundering (ENCCLA)¹⁰ supports

tleblower is a person who, having privileged access to data or information of an organization, voluntarily and under no legal obligation discloses to a competent public authority, as an act of public interest, facts that he understands to be illegal and non-trivial or other irregularities under the control of an organization, and that may constitute corrupt acts, fraud or violation of a normative or regulatory system."

9 See Doyle (2009).

10 See <<http://www.enccla.camara.leg.br>>. Accessed on 28 Aug. 2017. {Note: This link does not work.}

the creation of a program with clear-cut rules for receiving information and protecting whistleblowers.¹¹

While the debate over the role of private whistleblowers continues, the Brazilian Anti-corruption Act offers a leniency agreement, which is a plea-bargaining tool for companies under investigation. A leniency agreement allows companies to shake off sanctions in exchange for admitting irregularities and cooperating with the authorities. They can thus continue to take part in bidding, enter into public contracts and get fines reduced. This remedy is already being used with recognized success by the Administrative Council for Economic Defense (CADE) in cases involving cartel formation. But three years after the Anti-corruption Act took effect and the corruption scheme at Petrobras was revealed, the government has not yet been able to gain an understanding of the capacity to sign leniency agreements in the executive branch, and only one agreement has been formalized.

The leniency agreements in the Car Wash probe, for example, were concluded only with the Office of the Prosecutor for the Public Interest and were limited to criminal cases. Deputy Attorney General Marcelo Muscogliati, who is responsible for validating agreements at the Office of the Prosecutor, maintains that, “A leniency agreement is not a road to salvation for companies. It is an investigative tool. If the person doesn’t hand anything over, there is no leniency.”

The mathematics of the agreements are anything but simple, and the impasse within the government is far from ending. At the center of the debate is the amount that should be returned to the public coffers and

11 Superior court Judge Márcio Antônio Rocha defines *whistleblower* as a person who calls the attention of public officials to offenses against the legal order. In a study entitled “Subsídios ao debate para a implantação de programas de *whistleblower* no Brasil” [Considerations for the discussion on implementation of whistleblower programs in Brazil], Judge Rocha affirms the importance of this tool as a way to guarantee human rights, with the objective of assisting the State. He does, however, caution about the need to guarantee the physical and moral integrity a person who decides to report an offense. The success of the program still depends on the credibility and reliability of institutions.

where the monies should go. This occurs because the Anti-corruption Act did not specify any criteria for the recovery of valuables or for the imposition of a fine. In the absence of a table or any clear guidelines, each agency indicates a different number. The difference in the amount ranges from millions to billions, depending on the case.

The size of the account is essential to financial survival. After the plea-bargaining phase, the signing of the agreement is the decisive moment for “turning the page.” As a rule, leniency is coupled with integrity measures and public commitments to good business practices. Worth noting here are the words of Valdir Moysés Simão and Marcelo Pontes Vianna, authors of the book *Acordo de leniência na Lei Anticorrupção [Leniency agreement in the Anti-corruption Act]*:

A leniency agreement viewed in isolation as an investigative tool may not bring about the awaited cultural change in the corporate environment. The agreement must be part of a corruption-fighting policy. It is not just a way out for a company that shows repentance while it is on the receiving end of a lawsuit. It should also be a means of compensating the corporations that implemented the control and integrity measures expected of it and, when it finds an irregularity, a means of reporting it to the State voluntarily and on a timely basis. That is the spirit of a leniency agreement in its purest form. However, agreements made without predictable, transparent rules and with little legal certainty discourage true spontaneous cooperation on the part of legal entities. (Simão and Vianna, 2017)

Ten companies involved in Car Wash have now signed leniency agreements with the Office of the Prosecutor for the Public Interest. At least R\$9 billion have been reimbursed, and the companies have promised ongoing cooperation to facilitate expanded, more detailed investigations around the country. By signing the agreement, companies promise to cease their participation in unlawful schemes, implement rules of compliance and conduct their operations “honestly, loyally and in good faith.” Odebrecht’s agreement also calls for an outside monitor to oversee the company’s compliance with the agreement.

Part 2: Why will a company or an individual report corruption?

After analyzing the ranking of 480 corporations by the non-governmental organization Transparency International, Harvard professors Paul Healy and George Serafeim published the study “An Analysis of Firms’ Self-Reported Anticorruption Efforts” (2016). They conclude that companies with a higher number of reported corruption cases are in countries with a lower corruption ranking, and operate in industries regarded as high-risk (fishing, heavy industry, pharmaceuticals and health services, energy and power transmission, mining, oil). These companies are based in countries with powerful anti-corruption safeguards, are listed in the United States or Europe, have had some recent experience with corruption, are audited by one of the world’s four largest auditing firms and have a higher percentage of independent directors.

According to the authors, corruption is related to a number of complex factors such as size of the public sector, presence of autocratic regimes, weak regulations, limited economic competition, and cultural variables. Healy mentions the so-called “transaction cost” that executives calculate for their business. The cost-benefit calculation considers such variables as power of enforcement and the possibility of being paid. Countries like Brazil, where regulation is a problem, and bureaucrats can exchange vetoes for money, and that raises the cost.

In “An Empirical Study of Corruption in Ports” (2010), Simeon Djankov and Sandra Sequeira discuss the difficulty and the cost for companies to avoid ports that collect more bribes. The study reveals that the way in which government bureaucrats are organized leaves loopholes for different forms of corruption that, in some cases, reduce the costs companies pay to use the ports, but raise them in others. The choice of port then depends not only on the amount of expenditure, but also on how long the goods are held at each port. Another significant revelation of the study is that, the more corruption, the less investment the companies make to improve

infrastructure and local services. The study reveals the level of effort it takes to avoid corruption and its influence on business.

In the second part of this chapter, we will discuss how excessive rule-making due to bureaucratic machinery encourages crony capitalism, and we will suggest ways in which companies can avoid this kind of relationship.

In crony capitalism, an overdose of regulatory requirements spurs the use of personal relations to unravel the bureaucratic red tape imposed—often deliberately—by government. The result, then, is a clash between public and private interests that undermines the collective interest and improperly influences government operations. It should be no surprise to Brazilian readers that the federal government has over two million civil servants in the executive, legislative and judicial branches, and that a minority of that contingent feels “highly empowered,” thereby making it difficult to find solutions in the midst of corruption. As described earlier in this chapter and by other economists, in countries where the government is too big, corruption emerges as an alternative in order to circumvent regulation, favoritism and taxes.

Regulation and the difficulty of doing business under crony capitalism are factors that drive corruption. Excessive rules are not only expensive, but they consume a great deal of a company’s time. The stories related by Odebrecht executives revealed that the company paid bribes to members of the legislative and executive branches in exchange for at least 10 interim measures. These presidential measures, which required Congressional approval, provided tax benefits and payroll exemptions, and forgave or reduced debts. The intention of these interim measures may even have been laudable, yet there is no way to ignore the fact that we are talking about exempting a select group from obligations that apply to the many. As any economist or accountant can affirm, up to a certain taxation level, there is incentive to pay. Once that limit is passed, the incentive is to avoid paying the tax, one way or another.

In one of his statements, Marcelo Odebrecht gives an account of how that relationship worked. "If you go to Congress and ask for something, it creates an expectation of support," explains the group's former CEO. He says that his good personal relationship with ministers guarantees project funding and unraveling of red tape. "It's a great partnership," he maintains, but it is based on money. "Companies without the same access weren't able to advance their initiatives."

In the study "The Concept of Systematic Corruption in American Political and Economic History" (2006), John Joseph Wallis noted that systemic corruption incorporated the idea that political players manipulate the economic system to create rules that will ensure them control of the government. Joesley Batista, CEO of JBS, who provided information on five different corruption schemes, said that he made campaign donations to guarantee privileged access to and empathy from politicians in order to take care of the group's demands. The gifts included off-the-record meetings with the President, weekly appointments with ministers and approval of business-friendly regulations.

Conflict of interest is one of the most perverse effects of corrupt relations between the public and private sectors, because it poses a threat to impartiality in government decisions and fairness in business dealings. Public officeholders with access to privileged information and the network of contacts responsible for decision-making are of interest to companies. Some areas are regarded as more sensitive, and the so-called gray areas are generally in financial institutions, regulatory agencies and ministries that command a large budget.

Brazil's Conflict of Interest Act, passed in July 2013 in the same environment as the Anti-corruption Act, attempts to remove questions about the activities of civil servants. In 2015, the Ministry of Transparency, Oversight and Control received more than 2,000 inquiries about activities that could produce conflicts. The most common questions were related to the possibility of consulting arrangements while working as a civil servant, in addition to travel and gifts.

In 2016, Brazil's General Accounting Office and the Public Ethics Commission drafted a guidance note on public officials' involvement in events (Joint Regulatory Guidance Note No. 1 of May 6, 2016). However, lack of oversight and loopholes in the text leave room for different interpretations. The guidelines say that travel should be paid preferably by the government but, as an exception, it can be funded by the institution promoting the event if this is seen to be in the public interest. The note also says that officials must disclose the defrayal of travel expenses for transportation, food, lodging and event registration, and provide details about the sponsor and the list of any gifts or tokens received. One need only take a quick glance through the pages of the federal government to see that this rule is ignored. Nor does the President provide this information in compliance with the Access to Information Act.

If conflict of interest is one of the negative effects of corruption in public/private-sector relations, transparency is the key to building an honest relationship with the government. There is no formula or ready model for this kind of relationship, only principles and good practices, and the concept of right and wrong is in constant transition. As noted by Eugene Soltes (2016) in the book *Why They Do It: Inside the Mind of the White-Collar Criminal*, until just recently, some acts that would now likely trigger a long prison sentence, from *inside trading* to manipulating financial statements, were once acceptable. In the book, Soltes focuses on the importance of company management and of clear-cut rules, despite the knowledge that the person is often aware of the rules and still ignores them. He talks about the case of Scott London, a former executive at KPMG who was convicted of selling information. "Once I saw that nothing was happening, my standards became lower," London explained about his crime.

The implementation of compliance programs has been instrumental in establishing rules for corporate relations with government. The literature on this topic and interviews with experts on the subject underscore the need to focus on changing the corporate culture, and on the top-down cascade effect of corporate leaders' engagement on the issue. Multi-

nationals are accustomed to compliance, particularly through the legal framework discussed earlier in this chapter. Brazilian companies are now in the process of adapting to the new order and to the cultural changes that the society has been experiencing in recent years. In his book *The Theory of Moral Sentiments*, philosopher and economist Adam Smith looked at the way laws generally follow morality.

Before the Anti-corruption Act went into effect, and before Operation Car Wash exploded onto the scene, even large companies in Brazil had not yet embraced compliance tools. Some firms even had a department dedicated to governance and ethics, but the subject was not taken seriously, nor did it receive much funding. The reality today is quite different. And although some companies engage in illegal practices, what we are seeing is a race to change the course of their activities and to strengthen tools of control and command. The anti-corruption market has grown significantly in Brazil as advocacy offices and consulting firms have begun offering an array of services. Corporations have also begun advertising their mission, infused with the values they uphold in their work.

One peculiarity of the Brazilian market is that 90% of the companies are family-owned, according to the Brazilian Institute of Geography and Statistics (IBGE). Under this model, the management is usually grounded in relationships and trust. This can be a positive for building strong values, but it can complicate the process of turning the page, as in the case of Odebrecht. Reclaiming a reputation often calls for changing the person at the top as well as the entire board of directors. A change in company management helps reshape perceptions in the marketplace and aids the corporate reorganization process. Such was the case with the selection of Pedro Parente, a former civil servant known for his ability to manage sensitive, complex subjects, to head Petrobras. Readers will recall that at the time of the first major power-sector crisis in 2001, President Fernando Henrique Cardoso chose Parente to implement energy-rationing measures to avoid power blackouts around the country. For family-owned businesses, a change of executives could be harder, either because of the difficulty in altering the family core, or in just recognizing the need for change.

In their article entitled “Ethical Breakdowns,” Max Bazerman and Ann Tenbrunsel (2011) argue that business leaders should use an assortment of measures to fight corruption, such as developing a code of conduct, team training and eliminating loopholes in the rules that facilitate corruption. The authors, however, say that laws in emerging markets may not be sufficient if they are not properly enforced. And in order for internal initiatives not to become mere chitchat, they point out the need to invest—heavily. One recent research study of 217 large companies indicates that, for every billion in revenue, the company invests US\$1 million in compliance measures. The authors counter, however, that, “if these efforts worked, one could argue that the money—a drop in the bucket for most organizations—would be well spent. But that’s a big ‘if.’ Despite all the time and money that went into those efforts and all the laws and regulations that were enacted, unethical behavior appears to be on the rise.”

According to Bazerman and Tenbrunsel, it is quite common for employees to break ethics rules because management is “blind” or even unknowingly encourages such practices. Bazerman notes that it is rare to see instances in which corruption is encouraged from the top, as occurred at Odebrecht. Studies also show that we are more lenient in our judgment when unethical behavior was delegated to someone and committed by an intermediary. In fact, according to the OECD, 75% of bribery cases involve intermediaries. In most cases, corporate leadership is involved, or at least aware, of acts of bribery and corruption.

In 2015 the Brazilian government, perhaps as a show of bureaucratic severity, established guidelines for the implementation of compliance programs, by way of Decree No. 8.420 of March 18, 2015. Article 41 of the Decree defines an integrity program as follows: “An integrity program, in the context of a legal entity, consists of a set of mechanisms and internal procedures on integrity, auditability, and incentivized reporting of irregularities, as well as effective application of codes of ethics and conduct, policies, and directives, aimed at detecting and correcting deviations, fraudulent acts, irregularities and illicit acts against the government or a foreign government.”

Beyond regaining their reputation, companies have a legal incentive to embrace an integrity program. The law establishes softer penalties and a reduced fine if they implement these mechanisms. Good-faith compliance also protects the company because it is often a gateway to whistleblowing, and it demonstrates an effort to deter illegal activities. Effective actions, not just written policies, are needed for proper compliance, which most of the time trails behind regulations.

In the United States, the first compliance programs were aimed at reducing competitive risk (i.e., antitrust) and controlling financial institutions. But recently, the health services industry has begun to popularize standards of integrity in order to combat fraud and adhere to increasingly tough regulations.

In Brazil, all of this is quite new. The government defends the need for a policy on public/private-sector relations to minimize risks, especially in relation to contracts, regulation and *revolving-door practices*. The Brazilian General Accounting Office (CGU) supports the establishment of internal rules designed to enforce measures such as rotation of company staff who have contact with public officials, to stipulate the need for more than one company executive at meetings with government officials, and to ordain that high-risk activities require approval by the board of directors. Some of these practices have already been put in place, such as the requirement for more than one executive at meetings and the recording of minutes at meetings with representatives of the public sector. Some government agencies, recently hit by scandals, have also begun to record meetings, as is true for the Brazilian Health Surveillance Agency.

The transparency factor, then, appears to be not only a companion piece to enforcement of the law, but also a prime factor in building an honest relationship. There must be interaction; it is essential to the democratic process. Corporations today have unprecedented power. In 2016, a research study by the non-governmental organization Global Justice noted that, of the world's 100 biggest entities, 69 were privately held. They

have emerged as the dominant governance institutions on the planet, exceeding most governments in size and power (Korten, 1995).

Conclusion

We began this chapter with a few phrases spoken by U.S. Supreme Court Justice Louis Brandeis in 1913. The key phrase, that sunlight is the best disinfectant for society's problems, is regarded as the seed of the movement toward transparency policies aimed at reducing corruption in government.¹² Ironically, Brandeis was writing not about political corruption, but about collusive practices among investment banks at that time. In the article, Brandeis attacks a form of savage capitalism that led bankers to use money from small depositors to invest in and control a large segment of the U.S. economy, creating a vicious cycle in which ordinary citizens had no control over their accounts or their future. But, in Brandeis' view, the best way to fight corruption is through free access to information, which he termed "publicity" at the time, and which we would now call transparency.

In Brazil, Operation Car Wash clearly demonstrated that corruption exceeded the threshold of tolerance, even for Brazilians. The biggest investigation in Brazil's history did not happen by chance; it resulted from a series of mandatory rules and singular moments. Who ever imagined that a simple gas station in the country's capital would bring down so many politicians?

How Car Wash will end (or is ending) is for historians to relate, but what is clear is that only this generation of citizens and public officeholders can resolve to put an end to crony capitalism and turn over a new page for a Brazil in which the best ideas gather momentum in the framing of public policies.

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See "Brandeis..." (2009).

Companies need to embrace anti-corruption standards, and to uphold them from within and without. Having a compliance program is not enough. They must invoke the rules for everyone and create engagement in order to forge a new kind of relationship with government. Compliance programs, as Christine Parker argues in *The Open Corporation (2002)*, need to be guided by goals that include the creation of a healthier, more competitive business environment, well-informed consumers, and a more just and equitable workplace.

It is through transparency, though not transparency alone, that we can continue the long process of building a more honest democracy and a more just economy.

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PART 2

MANUAL OF BEST PRACTICES IN INSTITUTIONAL RELATIONS

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1



Why is it important to engage with the State?

What is lobbying? Why lobby? Is lobbying good or bad for democracy? Is it possible to try to influence the government or public policy in Brazil without fear of arrest? The goal of this second part of the book is to take an instructive approach by presenting a manual on how to legally, ethically and effectively engage with public officials in Brazil. It is not the *only* way, but it is what the authors believe is the most appropriate based on years of experience in public administration and private enterprise, in addition to the experience of teaching, conducting research and publishing a series of studies on the topic at Insper Institute of Education and Research (Insper).

In general, companies and NGOs do not know a great deal about the public sector. Similarly, public officials of the State and even members of legislative bodies know little about the corporate world or the NGO realm. Before delving into the State in order to understand whether or not it is even possible for non-governmental organizations to carry out their activities without engaging with it, we will briefly discuss what the State actually is.

There is a General Theory of the State, which in the words of Paulo Jorge de Lima (1971) is a general theoretical system for studying the State as a social and historical phenomenon, not just with regard to its economic and social content, but also with an eye towards its legal forms and ideological manifestations. For this theory to make sense, we have to adopt

a definition of society and will therefore use the definition formulated by philosopher Régis Jolivet, who says society is “the stable moral union of several physical or moral persons under a single authority, who aspire to a common purpose” (Acquaviva, 2010, p. 8).

That definition approaches the one by Italian jurist and philosopher Giorgio Del Vecchio (in Acquaviva, 2010, p. 9), who held that it is “a complex of relationships by which several individuals live and work together, giving rise to a new and superior unit.” Community life presupposes interaction or reciprocal action because, in order for a group of individuals to qualify as a society, there needs to be a sense of permanence, or more accurately, stability. To categorize societies for the purpose of achieving that which we are particularly interested in, the State, we have to experience the difficulties encountered by the leading theorists.

Categorizing societies is as difficult as defining them, but sociologists Ferdinand Tönnies and Max Weber got close to doing so. Tönnies separated societies into two major groups: communities and associations. A community is a subjective, spontaneous product of social life that essentially corresponds to real life, while an association is the result of a rational impulse, a willingness colored by reason in the face of material interests. Marcello Caetano (in Dezen Jr., 2015, p. 10) concludes from an analysis of studies on Tönnies that “in communities, members stay together in spite of everything that separates them; in associations, members stay separate in spite of everything they do to come together.”

According to Italian jurist Norberto Bobbio, the word in its contemporary meaning was first used in the book *The Art of War*, by strategist General Sun Tzu, and later in *The Prince*, by Niccolò Machiavelli. To Bobbio et al. (2004, p.50), the State “is a political, social and legal organization that occupies a defined space where supreme law is normally a written constitution. It is directed by a government that has recognized sovereignty both domestically and abroad.” A sovereign State may be summarized by the principle “one government, one people, one land.” Recognition of the independence of one State in relation to the others, allowing the first to

sign international agreements, is an essential condition for establishing sovereignty. The State is responsible for the organization and control of society because, according to Max Weber, it holds a monopoly on the legitimate use of violence. According to the most common sociological breakdown, the State is considered the primary sector, with markets and entities of civil society seen as secondary and tertiary sectors, respectively.

Several concepts are entangled in this type of analysis. Here we consider the State to be the *locus* of power—the apparatus of power. It is no coincidence that scholars of the State also engage in the study of bureaucracy as did Weber. The State differs from a regime, depending on the rules that define how power is exercised (democracies, dictatorships, etc.). In other words, regimes institutionalize rules and regulations for access to, and the exercise of, power. In the end, governments are the people who control the State.

When organizations of these three sectors seek alliances and partnerships to conduct their activities with a view towards the public interest, the result is generally positive for everyone. A process of mutual benefits arises for any organization that simply adapts its plans along the path of least resistance. The ethical question in these relationships is important and will be duly addressed within the context of the alliances, demonstrating the necessary requirements for ensuring appropriate commitment to the rules that emanate from moral limits. Corporate social responsibility (CSR) is an important part of this approach because it engenders a more complete narrative about the social importance of private companies in each society. It is also possible for an organization to build a reputation on the basis of the society's new traits and by presenting itself as the embodiment of a set of economic, social and environmental influences.

Private organizations, however, also engage with civil society. In discussing the consolidation of democracies, Stanford Professor Larry Diamond (1994) argues that the simplistic contradiction between civil society and

the State, as if it were a zero-sum game, no longer makes sense. To Diamond, civil society is concerned about public, not private ends. By that definition, not every association or group belongs to civil society. Instead of a generalist view of civil society, Diamond (1994, p. 5) defines it in the following way: “Civil society is conceived here as the realm of organized social life that is voluntary, self-generating, (largely) self-supporting, autonomous from the State, and bound by a legal order or set of shared rules. It is distinct from “society” in general in that it involves citizens acting collectively in a public sphere to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. Civil society is an intermediary entity, standing between the private sphere and the State.”

Cláudio Acquaviva (2010, p. 146) holds that “the ideas that have inspired the constitutional State, disregarding natural law and focusing on the narrow perspectives of legal positivism, reduce right to law, do not distinguish between what is legal and what is legitimate, and do not go beyond a State of legality, which is not always a State of justice.” In other words, in order for the State to be based on the Rule of Law, it has to ensure that the justice owed to others is exercised, since the law does not create the right, but recognizes and establishes the conditions for exercising subjective rights.

Therefore, the following principles of the Rule of Law must be absolutely ensured (Acquaviva, 2010):

- principle of supremacy of the law (*rule of law*), with limitation of power through substantive law;
- principle of legality, through which no one will be obligated to do or not do anything without law;
- principle of non-retroactivity of the law, to safeguard acquired rights;
- principle of equality before the law or isonomy, through which the law

applies to everyone and thus, to everyone it should be applied;

- principle of the functional independence of judges, bound by the guarantees inherent to the judicial branch.

Different views of the State

There are several notions as to what constitutes the State. While liberal economic tradition has always advocated absence of the State in economic relations, revolutionaries like Lenin (1979, p. 112) said that the “State is an organ of domination, submission, and oppression by one class over another,” and therefore it is always “the State of the most powerful” (economically and politically dominant) class, which “establishes an ‘order’ that legalizes and strengthens that submission, seeking to soften the collision between the classes” (Lenin, 1979, p. 14) by means of oppression and exploitation of the dominated class.

For the purpose of discussions about contemporary institutional relations, a state apparatus is rather intricate and complex. Professors Aldo Musacchio and *Sérgio Lazzarini* (2015) present an interesting approach to how the modern State is organized and operates in Brazil. They showed that “the wave of liberalization that swept global markets in the 1980s and 1990s allowed the emergence of new types of state capitalism in which governments interact with private investors as majority or minority shareholders in publicly held companies or as purely private business investors (the so-called ‘national champions’)” (Musacchio and Lazzarini, 2015, p. 62).

That new form of State presence in the economy is directly related to the topic under analysis. The authors identified two key features. The first is that capitalism is present so there are elements of investor freedom of action. The second is the very active presence of public officials. Ultimately, there is an important and crucial connection between public and private officials. In the words of the authors, in the beginning, “investors were faced with something that was clearly state capitalism, but clearly

was not the state capitalism they were used to” (Musacchio and Lazzarini, 2015, p. 4).

The studies by Musacchio and Lazzarini uncovered the dynamic and methods of how public and private investments intermingle to influence company governance and lead to paths and areas for national development. The classic and traditional model of State participation in the economy is that in which the State operates as a majority shareholder, enabling private investors to serve as minority shareholders. But as the authors note, more recently, the State has relinquished control of its enterprises to private investors, but retains a presence through minority equity investments in pension funds, sovereign wealth funds and its own funds. This last model also includes the provision of loans to private firms by development banks and other state-owned financial institutions.

The new state capitalism exhibits a “widespread influence of the government in the economy, either by owning majority or minority equity positions in companies or through the provision of subsidized credit and/or other privileges to private companies. The new varieties of state capitalism differ from a more traditional model in which governments own and manage state-owned enterprises” (Musacchio e Lazzarini, 2015, p. 4).

There is therefore no question as to the impossibility and lack of plausibility involved in cogitating the absence of a relationship between the public and private sectors. Engagement is necessary. Lazzarini (2011) outlines information that is important to all government relations professionals and members of the government:

- Shareholder redundancy in Brazil is important; in other words, there are cross-linked owners and groups investing in many companies. In alliance with owners linked to the government, Brazil has various national private groups that also have a cross-sectional presence in the economy.

- The phenomenon of shareholder concentration is not exclusive to Brazil, but Brazil presents a rate of corporate intersections that is higher than that found in other economies, both industrialized and emerging.
- That agglomeration of owners indicates, on the one hand, that several owners are pooling their capital and reducing their risk in shared undertakings. But on the other hand, it could mean it is a much less competitive environment.
- With regard to the State, the question remains as to the need to have equity stakes in several sectors of the economy while the country lacks solutions to basic issues such as sanitation and security.

Yet one question remains: is it possible to develop business activity, and operate independently, in a society that has created a system so complex and that interferes to such a degree in the relationships of nearly all members of that society, without interacting with that system? In other words, is it possible to develop a productive activity—for or not for profit—without engaging with the State?

Clearly the answer is no. It is not possible.

What then do we do?

What we learned in this chapter

- In general, companies and NGOs do not know a great deal about the public sector.
- Public authorities of the State and even legislative officials likewise understand little about the corporate world.
- A process of mutual benefits appears for any organization as a result of the mere process of adjusting its plans along the path of least resistance.

- The ethical question in these relationships is key.
- It is not possible to talk about a non-engagement between the public and private sectors.
- In Brazil, the new state capitalism exhibits a “widespread influence of the government in the economy.”



2

History of Lobbying and Definitions

An anecdote often helps explain the importance of analyzing institutional, governmental or lobbying relations activity through a practical and academic perspective. When Insper began offering its course in government relations, Operation Car Wash was just beginning. In no time, classes were packed and enrollments filled up. Why did this happen? People really wanted to learn how to act in an ethical, professional and effective manner without running the risk of arrest. One thing was clear. If they were only interested in legal outlets for protecting themselves from crimes committed as lobbyists (the way most people think about these professionals), they would certainly have looked for attorneys. That was not the case. Everyone was looking for a respected business school, focused on professional growth for a legitimate and important activity in the world of government/corporate relations.

It can even be said that lobbying has become a part of politics during the modern era. More precisely, discussions about lobbying began to take shape in the time before the first modern democracies appeared. Could this have been a coincidence? Historically, the right to petition authorized representatives of the State appears in English documents such as the Magna Carta, and more precisely, in the 1689 Bill of Rights that defines the topics that can be petitioned before the King. In the process of American independence, the topic arises in the very first declarations made by the 13 original colonies. Those 13 colonies that led the process of independence argued that “the right to petition the King, or Parliament, for the redress of grievances [...] is a right inherent to each individual.” The desire to petition the monarch is also cited in the 1776 U.S. Declaration of Independence. The then-colonists criticized the lack

of response from the Empire in relation to what Americans identified as injustices.

Some years later and after a war of independence, the United States ratified the right of private interests to petition the government for measures and public policies in 1791. That legal regulation was embodied in the very first Amendment to the Constitution of 1789.¹ The measure prohibits Congress from curtailing “the right of the people [...] to petition the government for the redress of grievances.”² As a result, thus was established the right of private interests to engage with Parliament and other instances of government to influence public policy.

The liberal American society, which was just starting to be established, laid the foundation in its early years for private goals to be represented by third parties, individuals or entities who were speaking on behalf of the parties interested in influencing particular actions by the State. Until the 1920s, more than 100 years after the First Amendment, this law was restricted to federal government policies, leaving states the freedom to address the subject independently.

As of 1920, the U.S. Supreme Court began to establish a new doctrine when it interpreted the laws previously specified just for the federal government as valid for all spheres of government. This process was known as the Incorporation of the Bill of Rights. With the new doctrine, in 1925, the Supreme Court interpreted the 14th Amendment in a new way. According to the justices, most of the rights set forth in the Bill of Rights would have to be incorporated into all levels, not just the federal government.

1 The United States Bill of Rights was drafted in 1789 and *ratified* in 1791.

2 Original wording: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

One key point of this new interpretation would refer to the 14th Amendment to the Constitution, ratified after the end of the Civil War. It was the amendment that assured citizens that the State could not take away life, liberty or property unless supported by due legal process. The key objective of the 14th Amendment was to guarantee equal rights to blacks and protection to recently freed slaves.

What happened was that the decisions made by the Supreme Court in the 1920s opened the door to corporations obtaining the same rights in the eyes of the court as those afforded physical persons. They argued that they were another type of person: legal persons. Thus, interested parties, in all spheres, were assured the right to petition the government for redress of grievances or changes in decisions handed down that did not favor them.

That decision made room for the establishment of activities designed to represent those interests before government agencies and Congress. Those activities were given the generic name "lobbying." Lobbying can be defined simply as pressure exerted by one organized social group for the purpose of directly interfering in decisions made by the government and, consequently, establishing a new regulatory framework to benefit their specific causes or interests. The word already suggests a certain inclination towards the interests and causes embraced by wealthy groups whose interests were contrary to those of the majority. The term itself refers to antechambers, corridors and lack of formality.

The origin of the name is argued in two different yet similar versions. One of them, presented in the *Oxford Dictionary of English* maintains that the term lobbying originated to describe meetings between parliamentarians and British nobility in the corridors (lobbies) "of British Parliament before and after parliamentary debate."

Another version, which is more popular in the Americas, ensures that the expression lobbying or lobby refers to the entry rooms of the large hotels that often hosted parliamentarians and government officials. Specifically,

some place the name's origin at the time of the Ulysses S. Grant administration, from March 1869 to March 1877. Grant was the great military victor of the Civil War, in the famous Battle of Appomattox in April 1865. Only six days after the Confederates surrendered, President Abraham Lincoln was assassinated by actor and Confederate sympathizer John Wilkes Booth. Vice President Andrew Johnson assumed the presidency.

Grant won the presidential elections of 1868 and succeeded Johnson to become the 18th U.S. president. Born in Point Pleasant, Ohio, the new president moved to Washington, DC, and took up residence at the Willard Hotel, near the White House, the seat of the Union administration. Top officials of the new government, following the president's example, selected the same hotel as their residence in the nation's capital. With so many officials living under the same roof, the Willard Hotel became the preferred spot for breakfast meetings and happy hours for people interested in interacting with the new administration. The habit of frequenting the lobby of the Willard Hotel became fashionable in Washington, and the expression became a verb, the famous synonym for exerting pressure in seeking to influence government officials.

Minister Said Farhat, who served in the Brazilian Ministry of Communications in the administration of General Figueiredo, proposed a broad definition of lobbying, which includes the set of activities representing interests before public officials. According to Farhat (2007, p. 50), lobbying is "any organized activity, conducted within the limits of the law and according to professional ethics, by clearly defined legitimate interest groups, for the purpose of being heard by government officials to inform them and from them obtain specific measures, decisions and stances."

According to this definition, aligned with others presented by many authors, the professional who engages in this activity—the lobbyist—would simply be an intermediary or broker of interests with government agencies. Lobbyists would offer the parties who hired them their knowledge of the intricacies of state-run agencies and the paths that should be

followed to serve demands. They would also identify key individuals who should be pursued to influence specific public policy.

In preparing material about their clients, lobbyists generally include information on the interests they represent, along with specialized technical opinions. In other words, they show decision-makers with public policy influence the viewpoint of the specific segment that will be affected by the policy.

Regardless of those definitions and the historic impact that social groups have had on government policies, few activities carry as strong a negative stigma as does the action of lobbying. That is why those who engage in the activity (lobbyists) are viewed as agents of practices on the very edges of what is legal, participants in impure actions in the face of rigid formal legal institutions. They are certainly perceived as agents of activities performed on behalf of society's organized groups that have less legitimacy than society as a whole. Is this, though, an incontrovertible truth?

To avoid any confusion, it is important to understand the significance and role of society's organized groups.

The Dictionary of Politics written by Italians Norberto Bobbio, Nicola Matteucci and Gianfranco Pasquino (2004) offers an intriguing discussion about interest groups or pressure groups. The discussion proposed by the authors retraces the role of groups that are not ordinarily included in the categories considered in the General Theory of Politics. In the reasoning set forth by Bobbio, Mateucci and Pasquino, lobbying's origins must be found outside the State. Lobbying is therefore defined as the activity of representing interest groups for the purpose of influencing public policies and changing regulatory frameworks.

The authors of the *Dictionary of Politics* ask important questions of those who wish to study the subject with an open mind. First, would democracy function better or worse without pressure groups? Second, what

guarantees are needed for pressure groups to operate as an instrument of stability and democratic development rather than an element of degeneration? The authors' response is clear (Bobbio et al., 2004, p. 517):

In most cases, to respond to the first question, modern democratic systems would function worse in the absence of pressure groups. In fact, political parties now tend to focus on large-scale political issues rather infrequently and on occasions limited to elections. By doing so, political parties are often out of sync with new issues affecting society. Pressure groups operate in a more ongoing and specific manner, using efficient channels between organized social groups and the government. In addition, they can deliver a more meaningful stake to their members than can the activities available to them within the party. It is impossible to safely assess whether the decisions made through the intervention of pressure groups are more in keeping with the general or public interest. First, because it is hard to determine what is the public interest, and second because we have no basis for comparison. One can assume that decisions made without the intervention of pressure groups would be less costly in terms of time and complexity of inquiries, but costlier for the acquisition of information and necessary knowledge, and much costlier in terms of implementation in the face of resistance from groups who were not consulted.

Authors like Arthur Bentley and David Truman also studied the influence organized groups have within society, and showed, each in his own way, that those activities were always part of the decision-making process of those who run the State. Measures taken cannot be explained solely by the action of these organized groups, since there are influences from other categories of the formal legal, political and psychological framework. With few exceptions, pressure groups are able to organize

and act with complete freedom. Simply stated, pressure groups can act in democracies.

The role of these groups in democracies becomes increasingly prominent in international academia—either through positive or negative aspects. Berkeley political scientist Sarah Anzia (2014) wrote an award-winning book about the role of interest groups, including their influence in determining the dates of local elections in the United States. The study shows how organized groups take advantage of low voter turnout in local elections that take place in years in which there is no presidential election. Because voting is not mandatory in the United States, in off-years, members of organized groups make up a much larger proportion of the total vote. Politicians who are elected end up responding much more to these groups, such as teachers' unions, one of the examples in the book. At the same time, those very groups push for elections to be held during off-years.

Several academics look to interest groups as key players in democracies. Academics who are part of what is known as the School of Political Parties at the University of California, Los Angeles (UCLA), point out that pressure groups are essential to U.S. political parties. First, ordinary voters do not pay much attention during the primaries. This is why those academics (Bawn et al., 2012) argue that interest groups, lobbyists, and activists are the lead actors in the nomination of candidates. In a recent book entitled *Democracy for Realists*, Achen and Bartels (2016, p. 301) conclude: "If the voters are to have their interests represented in the policy-making process, then interest groups and parties have to do the work. And the organizations representing different interests have to have power in the policy-making process proportional to their presence in the electorate." The main issue is avoiding disproportionate influences by various groups. The authors conclude by citing Zaller (2012 in Achen and Bartels, 2016, p. 324), according to whom, "what can be called a view of democracy as group policy is not so optimistic. Groups that are orga-

nized to demand policies routinely obtain what they want at the expense of those who are not organized. But organized groups of ordinary voters—if numerous, cohesive, and attentive enough, with a central role in specific key questions—can also attain what they want.”

Pressure groups in practice

In practical terms, pressure groups need two forms of authorization to operate. First, organizing has to be possible, not just allowed by law, but agreed upon by the social practices. Furthermore, pressure groups need legal and actual viability to petition and exert pressure against decisions made by authorities of the State.

Thus, pressure groups are organizations typically found in democratic systems, even though in some countries and in certain phases of political life, they are not completely accepted. In any event, it is nearly impossible to imagine a democratic regime today without the presence of pressure groups involved in the political process, whether they be called organized social movements, business groups or something else. The main point is that all of them are pressure groups. What’s the difference between a pressure group that acts on behalf of a union and one that acts on behalf of a company?

While recognizing these groups as part of the political sphere, we can also discuss methods to give expression to and ensure a balance among interests that are not organized, are weaker, and in terms of elections, are less interesting to politicians and public authorities.

At this point, the issue of transparency arises amidst the desire for everyone to know the issues involved when interest groups meet with public authorities to negotiate topics of mutual interest. Transparency is not an abstract concept, but rather something that should be emphasized every day in relationships with public authorities. The legitimacy of these meetings, mediated or not by lobbyists, arises only when the public interest is served, and this will only be possible if the meetings

are made public. How and why? When society is aware of the meetings, it opens the door to discussions about the interests involved. One contemporary example is the following: Brazil discussed pension reforms in 2016-2017 and several news reports described the meeting of members of the government responsible for this reform with private-sector representatives, such as those from financial markets. So the mere fact that such information was public allowed a debate about the nature of the meeting and about the reforms themselves. It is a win-win situation for all involved: society, members of the government, and members of the private sector.

The work of pressure groups is similar to that of lobbying, if not in method, then at least in the ultimate goal: influencing public policy. In most of the world, as in Brazil, lobbying is perceived negatively and situated on the line between what is legal and what is corrupt. The two probable exceptions to this are also the two spaces where democracy and development meet and influence each other: the United States and Europe.

The main difference that allows Washington and Brussels to peacefully coexist with the presence of associations and groups organized to advocate for legitimate interests is that they have regulations on lobbying activity and they recognize the profession of lobbying. As a result of the U.S. and European experience, the Organization for Economic Cooperation and Development (OECD) has suggested that the activity of lobbying be regulated for the purpose of lending it more transparency and thus increasing the possibility for societal control over public officials. The OECD suggests that certain principles be respected in order to maintain a successful lobbying regulation process, as follows:

- 1.** Everyone should have access to the same channels of information to engage in the process of public policy formulation.
- 2.** Rules on lobbying should be formulated within the socio-political context, responding to societal demands related to such practices.

3. Rules on lobbying should be consistent with legal principles of good governance.
4. Countries should clearly define the terms “lobbying” and “lobbyist” for regulatory purposes.
5. Citizens, businesses and other public officials should have sufficient information on lobbying activities.
6. The public should have the right to extensively scrutinize lobbying activities.
7. Countries should foster a culture of integrity in decision-making by public officials.
8. Lobbyists should comply with standards of professionalism and transparency.
9. Countries should involve all groups interested in lobbying to formulate strategies to achieve compliance with ethical standards and meet the goals of transparency.
10. The rules of lobbying should be reviewed on a periodic basis and adjusted to the experience and will of the nation.

Brazil and most countries in Latin America fail to meet the recommendations set forth by the OECD because they do not regulate the activity through laws that offer public officials clear standards of conduct for their interactions with lobbyists and representatives of pressure groups.

Proposals to regulate lobbying in Brazil are currently being pursued, but considering the sluggishness of the process, the greatest innovations thus far have been codes for self-regulation that corporations and business associations are starting to establish within their scope of activity. It will be by combining these initiatives that Brazil will move forward to bring more clarity to lobbying activity and reduce the stigma surrounding it.

What we learned in this chapter

- In 1791, the United States ratified the right of private interests to petition the government for measures and public policies.
- New studies indicate that interest groups are key actors in democracies.
- Brazil does not meet OECD recommendations because it has not regulated the activity through laws that offer clear standards of conduct.

3



The purpose of government relations: key issues and a few dilemmas

On Monday, April 28, 2014, the American Chamber of Commerce (AmCham) in São Paulo, Brazil, held a seminar on government relations. One of the keynote speakers was the former governor of the state of Rio Grande do Sul, former representative and former Minister Antônio Britto, president of the Brazilian Research-based Pharmaceutical Manufacturers Association (Interfarma). Britto got right down to business: the private sector needs to be more assertive in defending its own interests, as long as it adheres to the law within a multisectoral context. “We have an obligation to defend specific interests as well as help build an agenda that prioritizes the collective good,” he told the audience.

Professionals who work directly in the relationship between public and private sectors have little doubt about the importance of the topic for the development agenda. Jack Correa is one of these professionals, whom Brasília learned to respect for his many years of experience honed at companies such as Fiat and Coca-Cola. Correa also shared his remarks about the meaning of lobbying and its reputation. “The word lobbying gives me a strange feeling of impotence. I think about all I was able to experience on business travel to Washington, DC, London, Mexico City, Vienna and Rome, and the atrocity that’s been made of the concept of lobbying in Brazil. I’ve surrendered to the power of a media that in our country was able to turn a word with such valuable meaning into a

concept that labels intermediaries of legitimate interests as nefarious initiators of spurious acts and bribery payments,” he stated in an interview for this book.

Correa goes even further: “During my 40 years of working as a lobbyist, I’ve dealt with people the likes of Said Farah, Oscar Dias Corrêa, Fernando Lyra, and Marco Maciel, with whom I’ve discussed how to return the word to its original meaning: the all-important practice of advocating for interests. And I have found that all of them, despite their respect for that activity, saw no way to recover the original meaning of the word. We, the professional lobbyists, know better than anyone that the connotation adopted in Brazil completely circumvents the activity’s original historic meaning. It was always up to us to shed the old meaning and recover the correct connotation of the term lobbying, but as the decades passed, we lost the battle and now we’ve been overtaken by this uncomfortable feeling of impotence.”

When asked if private interests can legitimately influence public policy, Jack Correa is clear: “If the public and private were impenetrable entities and each one played its role, we could deny that any influence was necessary. However, the relationship between public and private is, at its essence, a relationship of necessary complementarity. To explain it better: a State that increasingly regulates economic activities needs to be ‘buoyed’ and informed so that its heavy hand does not strangle the operation of its productive agents. Lobbying professionals are actually translators serving as intermediaries in the exchange of strategic information between sides, seeking to obtain a balance between the private and the public.”

To Correa, the prime and most cogent example of this activity is the situation that occurs shortly after the implementation of economic plans. When deciding to implement new economic measures, several administrations in Brazil established regulations in secret—secrecy being an important element in the plan’s success. However, when the substance of the new plans comes to light, different economic forces are called

upon to alert the government of what Correa defines as “gross errors,” which could lead to industry bankruptcies, the elimination of products, a drastic reduction of labor and currency fraud. An expert at relations between businesses and various governments in Brazil, the friendly and easygoing Correa asks questions which he then answers himself:

“Why does this happen? Simply because it’s impossible for authorities that create economic plans to really understand the intricacies of the industries and the place where they need to tread more lightly. And this is how it works in all regulatory relationships. For this reason, I understand that it is not up to the private sector to influence public policy for its own benefit. But it is absolutely vital that the private sector is able to exchange knowledge and experiences with public policymakers, in an effort to prevent new rules from destabilizing the market and production.”

Another highly respected professional in Brasília is São Paulo businessman Guilherme Farah, president of the government relations firm Semprel SA. To Farah, the definition of lobbying is simpler: it is an organized activity to convince decision-makers about different viewpoints. The essential raw material of lobbying is information, and the exercise of lobbying is basically to inform in order to convince. In Farah’s view, influencing public policy is not only legitimate, but also necessary:

“I believe it is legitimate and necessary for private interests to influence the formulation of public policy. The very exercise of lobbying and the resulting influence it has on public policy, for me, constitute the backbone of democracy. Closed governments that resist influence from the private realm (including businesses, unions, NGOs, guilds, churches and all forms of interest-based associations) are destined to make ill-informed and, more often than not, bad decisions. Society’s influence is acceptable provided that it is exercised within the limits of the law. Lobbying—like any other activity—ceases to be legitimate when it is no longer closely guided by the limits imposed by a country’s laws.”

Italian-Uruguayan journalist and businessman Esteban Valenti, director of the Uruguay News Agency (Uypress), has discussed the topic of govern-

ment relations in both Latin America and Europe. He says lobbying can be defined on the basis of the words of former American President John F. Kennedy, who once said a lobbyist can explain a problem to a politician in 15 minutes, while a consultant needs several hours to do the same thing. "That's the American view. But in Latin America, lobbying sounds like influence peddling, manipulation on the edges of legality, sometimes inside and sometimes outside the law. In other words: corruption. These are the extremes of the word, which is called *cabildeo* in Spanish. It's impossible for private interests not to influence public policy in every sector. Society's acceptance depends on the history of those relations. If they are tainted by favoritism and illicit enrichment of officials and businesspeople, there will obviously be widespread societal rejection. When societies get used to that perverse system, the quality and decency of democracy suffer. In Latin America, such pathological relations between the public and private sectors have a long history and are often portrayed as a necessary and unavoidable evil. That is untrue. It is the first step towards generalized corruption at several different levels. Societies are like fish: they rot from the head down."

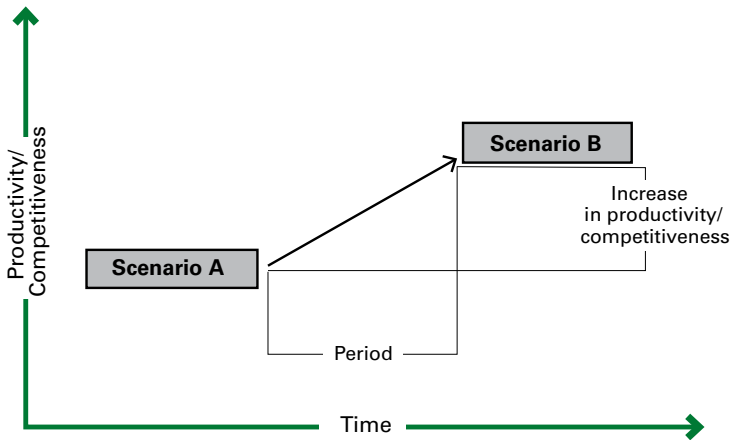
Influencing public policy and regulatory frameworks

All the lobbying professionals interviewed for this book agree that simply equating government relations with corruption is not only wrong in theory and in practice, but it is also counterproductive. How, then, do we engage with the government?

A private-sector organization should engage with government authorities using one key objective: influencing public policies that affect the regulatory framework in which they operate. The very reason to engage in the activity of government relations or lobbying is to petition government officials for changes to the regulatory framework, to alter the rules that affect industries in which the organization operates. From a strategic standpoint, when an organization seeks out government authorities,

its objective is to go from one regulatory scenario to another over a particular period of time, enabling improved conditions to increase its productivity.

Figure 1



That is not a hypothetical situation, nor is it one that is easily resolved. After a Brazilian Federal Police investigation of packing plants, which ended up being criticized for mixing wheat with chaff—companies with conscientious practices suspected of irregularities—journalist Geraldo Samor wrote the story “*A ‘marvada carne’ é a burocracia*” [The “damned meat” is the bureaucracy], offering clear examples of how changes to the regulatory framework can increase productivity and earnings for companies and society. One of the main figures in the investigation is Maria do Rocio, head of the department of animal product inspection at the Paraná State Agricultural Department. She traveled to Europe on business in 2011 with expenses paid by a large Brazilian company. In the words of Samor, the purpose of the trip was to again shine light on the influence of bureaucracy in Brazilian business life. Before the trip, the Agricultural Department did not allow the slaughter rate to exceed 10,000

birds/hour. Based on the inspector's opinion, the Department authorized an increase in the slaughter rate at Brasil Foods (BRF) to 12,000 birds/hour. In the end, the change benefited the company, the government and the country, because it enabled an increase in exports, for example. As the journalist asks: "But what ended up being the company's dilemma? In order to get the machine, BRF needed the rubber stamp, and to get the rubber stamp, the inspector needed to travel, but the Department had no money. What do you do?"

There are several ways to define a regulatory framework. In relations between different countries, the frameworks are defined by international accords and community regulations. In each country, regulatory frameworks are defined by the national constitution, supplementary and ordinary laws, decrees and ministerial directives. In states and municipalities, however, this framework is established by the state constitution, the laws of each state, municipal laws, decrees issued by state and municipal authorities and ordinances published by each agency.

Regardless of the context in which each organization would like to change the regulatory framework, three major questions will guide the work of influencing public policy. And, as in the example described by Samor, the three questions that involve relations between the government and free enterprise are truly dilemmas. But there is no easy way out: these three questions need to be answered once and for all by organizations and their representatives.

- a)** How will organized groups be ensured the right to influence public policy development within the institutional framework?
- b)** How will the exercise of that right be properly regulated so as to ensure that society's interests are guaranteed?
- c)** How does one formulate and carry out a strategy of engagement between the government and representatives of private interests in order to ensure real gains for each party, bearing in mind that society as a whole should be the main beneficiary of the synergy generated?

When it engages with government bodies, a company or a non-profit public interest organization will always be limited by the space created by the answers to the questions above. The laws that regulate that relationship are generally vague and imprecise nearly the world over, and the limits end up being imposed by how the aforementioned three dilemmas are resolved. There is a method here to help us achieve our objectives by doing things the right way. Because we have dilemmas to face, we need to choose processes and methods that help us move forward along a pre-established line of action that answers each question in turn.

From the standpoint of both managerial practice and compliance with legal and ethical limitations, an essential step is to systematize the activities with a view towards reducing the distance between the current regulatory framework and that which the organization is seeking to achieve. What does this mean and how do we do it in practice? Using processes and methods to achieve the proposed objectives can help us respond positively to the questions posed by the aforementioned dilemmas. It will always be up to the private organization to achieve the legitimacy to affirmatively answer these questions:

- a)** Can private interests legitimately influence public policies?
- b)** Are there political conditions for this in Latin America? And in Brazil?
- c)** Is there synergy in this relationship and can it be distributed to society as a whole?
- d)** Is it possible to engage with others in an ethical and professional manner?

To answer each of these points in the affirmative, it is important to analyze the political and economic situation of each nation, taking into account the actual practices of government relations. What are the actual interests of the private organization and how do those relate to the

public interest? In other words, what do they want to achieve and how do they go about achieving their objectives?

The government relations team must therefore be able to internally and externally demonstrate that the government relations activity is part of the organization's business strategy or mission. Internally, it is up to the government relations team to show that its actions are carrying out the organization's general plan, and that its objectives need to be achieved so that overall goals can also be met.

That challenge is even more important inasmuch as those areas are relatively new in private companies and organizations, and their functions and stated objectives are not generally understood. This means that what drives the government relations team are the organization's interests, the search for results, and the attempt to build a more suitable business environment so the organization can increase its productivity.

And what is it exactly that motivates government representatives, the political authorities responsible for management of the State? What engine drives them to negotiate with private-sector representatives?

Alexis de Tocqueville (2003), French political thinker, historian and writer who lived during the first half of the 19th century, recognized that there are many men of principles in political parties, but there is no party of principle. In short, it was not to defend principles that political parties were created, but rather to fight for the direction of society through control of the State. Political parties exist to defend interests and it is the interests linked to each party that control the State when that group wins an election. Public officials chosen by the winning parties to manage the State are there to defend interests. Alexis de Tocqueville (2003, p. 417) was even clearer when he stated, "more than ideas, interests are what separate people."

It is clear that when companies and non-governmental bodies seek contact with government agencies, they are motivated by a genuine interest in achieving the results they are seeking—in other words, to become

more competitive and achieve greater productivity. Different companies need and want to change the regulatory framework, whether it be the Constitution, laws, decrees or ministerial directives, because they understand that only by doing so will they increase business productivity and achieve the public objectives for which they were established. In this regard, there is no difference between the intentions of for-profit companies and those non-profit public interest organizations, the NGOs. What distinguishes them and identifies the problem are the specific interests that drive each of these organizations.

Examining the legitimacy of these interests is important, and a good place to begin is with a quote by Henri-Benjamin Constant de Rebecque, better known as Benjamin Constant, a Swiss-French thinker, writer and politician who lived from 1767 to 1830. Benjamin Constant asked (2007, p. 17): “what is the general interest if not negotiation conducted between private interests? What is general representation if not the representation of all individual interests that should find compromise in what they have in common?”

Unquestionably, what leads a non-profit public interest organization to seek dialogue with governmental bodies are its private interests. Society’s representatives, public officials, are there to represent all individual interests, trying to find a way to achieve what, according to current analysis, may be described as the common good. That analysis, however, needs to account for all interests involved, whether or not they are represented in the private meeting or dialogue.

All public interest groups relate with a number of other organizations, all with their own interests that may or may not align in a particular span of time. It almost goes without saying that we have to accept the fact that to achieve their own interests, organizations need to engage with a number of interest groups—which have their own agendas, we might add.

Those interest groups—which may affect or be affected by the actions of an organization—are certainly parties interested in its development. It is quite likely that the future of these interested parties will be affected

by either the success or the failure of the organization. In addition, they have interests that deserve to be recognized and considered by whoever has the obligation to seek the common good. So, if these interested parties are somehow affected, they should interfere in the process of engagement between that organization and government bodies.

The terms “interested parties” and “involved parties” have attracted the attention of authors of academic studies and have ended up being characterized as “stakeholders.” The concept of stakeholder was first used in 1963 at Stanford University, and it specifically involved “groups without whose support the organization would cease to exist,” (Freeman and Reed, 1983, p. 89). That characterization was later the subject of further study by R. Edward Freeman during the 1980s. Since then, it has gained wide acceptance in the business world in theories of strategic management, governance, corporate mission and eventually, in more recent discussions of corporate social responsibility.

The term was expanded to include any individuals, bodies or groups that are interested in any materiality that pertains to the organization. That definition facilitated organizations’ understanding of the need to know who their stakeholders were in order to manage the relationship. All organizations should develop a stakeholder matrix that answers the following two questions:

1. Who are the interested parties, the classic stakeholders of your organization?
2. What are the interests of each party?

A classic stakeholder matrix is as follows:

Table 1

Stakeholders	Stakeholder interests
Governments	Taxation, legislation, employment generation, investment, credibility, diversity, formality of the production chain, externalities in other chains
Employees	Wages, job security, wage value, respectful communication, health care
Consumers	Price, quality, care for consumers, products made with ethical commitments
Suppliers	Have recognition as providers of products and services in the final product to the customer, have fair business opportunities
Creditors	Positive credit scores, new contracts, liquidity
Community	Job creation, protection of the environment, new investments, credible communications
Unions	Job quality, employee protection, job creation
Controlling shareholders	Profitability, investment longevity, market share, brand reputation in the market, succession planning, capital growth, growth, corporate social responsibility (CSR)
Investors	Return on investment, profits

One of the biggest dilemmas in government relations is how to include the interests of all the interested parties without losing sight of one's own interests and convincing the government to accept the suggested changes.

The activity of engaging with government bodies, as such, is nothing new. It will always be perceived as an activity in which people and institutions come together, communicate with each other and connect in seeking to satisfy their specific interests, or at least those of the interest groups that exist around each of the institutions involved. What differentiates government relations from other forms of engagement is that they are characterized as the method that people and organizations use to address and communicate with the government and government bodies. Those government bodies, in turn, have the legitimate and irrevocable mandate to advocate for the interests of society as a whole. In other words, representatives of the government do not, nor should they, have their own interests or those of groups other than the interests of the society that granted them the mandate to serve.

Thus, that relationship has two very special characteristics. The first is that one of the counterparts is a public figure who naturally has to advocate for the common interests of society. The second characteristic is that this relationship is inevitable. The fact that the government counterpart represents the interests of all of society introduces the need for very special treatment so as not to introduce any suspicion or absence of legitimacy.

What that authority can do, and legitimately does, is expect that the society that gave it the mandate will recognize that it is capable of finding solutions to its problems through more active involvement with society's other actors.

The relationship and connection between a public interest group and a government body for the purpose of changing public policy can only be justified if it generates a synergy, from the Greek *synergía*, which means cooperation. Synergy can be defined as a task or effort to carry out a

particular activity whose outcome is the point at which the whole is greater than the sum of its parts.

A matter of argument is who can legitimately appropriate this newly acquired energy.

From that relationship, we can analyze two aspects: the role of government and the possibility that such a meeting could be avoided.

The first aspect seems more complex. What do governments gain from taking part in this process? Officials who take part in such engagement will have contributed to the creation of a process that can benefit society as a whole, and it is perfectly legitimate to be recognized for that action. That is their bonus for having participated in the process. The bonus of recognition may be reflected in an increased possibility to continue to participate in directing the State, since we believe in a democratic system that elects its leaders.

The second aspect, however, is much simpler. Considering the scope of the State's involvement in nearly every aspect of social interaction, it is very difficult to carry out business activity without that dialogue.

In Latin America—but not there alone—governments have immense power to influence life and the business of companies, either through legislation, macroeconomic decisions, rules governing the actions of its agents and the most varied forms of regulation. There is generally a marked mutual ignorance between the realities of the business world and the actions of government. That ignorance makes it hard for companies to express their demands, not to mention understand the limits of action on the part of public officials. The same process occurs on the other side. Authorities and public officials are unaware of how organizations governed by private law operate, and they tend to exaggeratedly simplify their plans and actions, generally not understanding the differences between strategies that seek results in the short and long term.

Those disparities in knowledge end up limiting mutual understanding

and hindering the potential for establishing partnerships with public objectives that could benefit society. The search for a favorable climate in which regulation of any industry brings the maximum expected benefit without creating problems for other sectors and interests requires an environment of consultation and consideration of the reality outside one's industry.

That environment of consultation and consideration must, at least, seek the audience of the other interests involved, the stakeholders around the institutions affected by the regulation. This is justified because we live in a networked society, and influences overlap. Several institutions, such as media organizations and trade associations, for example, should also receive the attention due them and be the focus of well-planned initiatives.

In order to overcome those obstacles, it is extremely important to explain things well, communicate clearly and create goodwill among a variety of government decision-makers, particularly in the executive and legislative branches. That is also a function and one of the focuses of government relations.

The great challenge in ensuring that this process takes place within existing legislation, according to acceptable ethical standards and with the appropriate transparency, also lies in the way in which this relationship transpires, and not only in its intentions.

To achieve success, that dialogue needs to be periodic so that the parties can get to know each other, but this can create a familiarity that is not always desirable. Therefore, the dialogue should be a process that involves methods, formalities and rules. To begin with, the dialogue's success depends on a clear definition of objectives, the ability to measure them and the qualifications, skills and talents of the professionals responsible for engaging in that type of relationship.

This is not a simple issue and often the parties, the government and private interests have no interest in making the process more trans-

parent. Even if we avoid the use of examples of blatant cases in which corruption has already been exposed, some reports demonstrate these points.

In May 2017, *Politico Magazine* published the article “When CEOs Visit the White House, Their Companies Profit,”¹ written by researchers Jeffrey R. Brown and Jiekun Huang. Brown is a professor and director of the College of Business at the University of Illinois where Huang is an assistant professor of finance. The report is based on an essay co-written by the two, “All the President’s Friends: Political Access and Firm Value.” They studied White House visitor logs and calculated how a visit to the president influenced companies’ bottom lines.

The authors of the article showed the importance of transparency in these relations, since there is no question that companies manage to improve their business environment when they engage with heads of state who have the power to change the regulatory environment. Some of the authors’ conclusions deserve to be transcribed below (Brown and Huang, 2017):

“Why is access to high-level policymakers so valuable?

By comparing firms with government access to otherwise similar firms with no or lesser access, we found evidence for several different sets of benefits. First, firms with access to the White House received a larger increase in government contracts following their meetings with federal officials than those firms without access. White House access makes government contracts more likely, which, for the corporations involved, means bigger profits.”

Furthermore, when compared with companies without access, the firms able to obtain White House meetings secure, on average, more favorable regulatory actions. What’s more, the affected regulatory actions, are

1 See Brown and Huang (2017).

those focused on specific firms rather than on entire industries.

Finally, companies that are privy to the inner workings of the government and the policymaking process may be better able to mitigate political uncertainties and improve corporate decision-making.

Using a measure of political uncertainty created by academic economists, the authors of the study found that firms whose executives visited the White House became less likely to cut back on investments during the periods of heightened political uncertainty relative to firms that did not visit. This suggests that politically connected firms may be better able to navigate the uncertainty by having better information. It's obvious that corporations benefit when they have political access to the White House. It's less clear whether the value created for the shareholders of a single firm is also good for the public in general.

There are, of course, instances in which the public can benefit from these meetings, as executives provide government officials with relevant information that enables policymakers to make better-informed decisions.

And the others conclude: "The facts of these encounters—who met, when, where, and how many attended, etc.—must be made available so that citizens are aware of the potential issues that might arise from such meetings, positive or negative. Firms see a tangible benefit from these meetings, trading on the power and influence of officials ostensibly working for the benefit of the people of the United States. But the people of the United States should at least have the opportunity to know who's meeting, and decide for themselves exactly who benefits. The challenge of transparency is that those who are open—those who make information available—put themselves at risk of attack over what is found in that data. Less transparent actors, meanwhile, don't take the risk of accountability, and the public suffers in the dark as a result. It's not exactly surprising that campaign contributions and lobbying efforts can open doors in Washington. Nonetheless, the public deserves to know who walks through those doors."

The pursuit of change in the regulatory framework is more legitimate when a firm has already exhausted every possibility to increase its productivity in that intended aspect within the current regulatory framework. It then becomes a decision that involves the organization's strategy at the highest level. Moreover, it involves the organization's very existence to the extent that it will be working along the fringes of current law and seeking to expand it legally and legitimately. This effort to advocate for its interests is likely to come up against the interests of third parties and affect its reputation.

In order to achieve the objective, it is very important that it be clear and concise, from the very beginning of the process. The question is: what does the organization need to improve its productivity and, from its own perspective, not be detrimental to the other interests involved?

Aside from the clarity of purpose, it is essential that the organization know how to measure the reach of that objective in order to have markers that allow it, at every step, to decide among alternatives that arise from the countless negotiations that will make up the process. By the same token, only the markers will allow it to navigate with a modicum of control as it reaches its desired destination. The existence of markers is even more important if the objective of the private firm is perceived as a solution to a problem affecting its growth. Markers then represent measurement of the distance between the organization's current state and its desired state, and will facilitate the use of problem-solving methodologies.

Equally relevant are the qualifications, training and talent of the professionals who are responsible for that type of engagement on behalf of the organization. There is a tendency to think that all that is required is a negotiation-oriented professional with some diplomatic skills to satisfactorily fulfill the task. But reality has shown that what is also required are strategic skills and an understanding of the political scenario, besides a general knowledge of institutional issues.

After all is said and done, as reports in this chapter have made abundant-

ly clear, lobbying is not viewed in a very flattering light. The terms “lobbying,” “pressure groups,” and “interest groups,” particularly after the major corruption scandals involving the State and its large service providers, bring to mind activities associated with corruption, influence peddling and use of illicit means. Likewise, these expressions and activities suggest influence in the use of economic and political power and abuse of personal relationships, in addition to the exchange of favors.

Even the Brazilian Association for Business Communication (ABERJE) says that “in Brazil, government relations, especially lobbying, have become a synonym for corruption, influence trafficking and actions on the fringes of legality. However, when exercised in a transparent and ethical manner, they should be viewed as a legitimate activity.”

The issue of engagement is part of the challenge faced by modern democratic societies as they strengthen the institutions created by society. Institutions play an enormous role in developing a society governed by laws. There is no greater benefit the relationship between public and private sector can bring than that produced by solid institutions. What then are institutions?

Winner of the Nobel Prize in Economic Sciences in 1993, American professor Douglass North believed that institutional changes were more important in explaining a region's economic development than changes in technology itself. “Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction. As a result, institutions provide the incentive structures for human interactions, be they political, social or economic. Institutional changes shape the way societies evolve over time and are thus key to understanding historical changes. There is no longer controversy over the fact that institutions affect economic performance. The fact that differential performance of economies over time is fundamentally influenced by the way that institutions evolve is also no longer a controversy” (North, 1990, p. 3).

In Latin America, most countries follow the democratic requirements

formulated by Robert A. Dahl (2005) in his essay “What Political Institutions Does Large-Scale Democracy Require?” They are:

1. Elected officials
2. The powers of the republic are independent
3. Free, fair and frequent elections
4. Complete freedom of expression
5. Broad access to alternative sources of information
6. Associational autonomy
7. Inclusive citizenship
8. The processes of social inclusion are ongoing.

Those aspects, in one form or another, are found in the region, and many societies are beginning to learn how to value and protect them. The attacks on some of these freedoms, promoted by populist or authoritarian governments, show that in order for the institutions to continue to improve, there are even greater challenges ahead. Some of these challenges are so rooted in the tradition of our societies that it will certainly take a few years for us to achieve the degree of development already experienced by other societies.

The first of these is patrimonialism, or the absence of any distinction between the boundaries of public interests and private interests. Rubens Goyatá Campante (2003) addresses this topic in his article “Patrimonialism in Faoro and Weber and Brazilian sociology.” Campante analyzes the classic *Os donos do poder: formação do patronato político brasileiro* [*The Masters of Power: The Formation of Brazilian Political Patronage*], by Raymundo Faoro (2012), required reading for gaining an understanding of some of the issues involved in government relations: “The State does not assume the role of guarantor and keeper of the impersonal and universal legal order that enables the economic agents to be accountable (a word dear to Weber and used extensively by Faoro) for their actions and to freely develop their potential; on the contrary, it intervenes, plans

and directs the economy as much as possible, bearing in mind the private interests of the group that controls it, the Stand. Economics has no firm “rules of the game” because rules comply with the subjectivism of those who hold political power. That type of capitalism adopts the techniques, machinery, and enterprises of modern capitalism—without however accepting the “soul;” the impersonal and universal legal rationality. It is a traditional yet malleable arrangement in the face of modern capitalism, which it selectively accepts, but without selling its soul—shaped to egocentric and casuistic rationality. Capitalism does not emerge spontaneously in society, but is vitiated from stimulation and state authority: take the State out of Brazilian capitalism and little or nothing remains, warns Faoro,” (Campante, 2003, p. 153).

The second major opportunity for improvement that Latin American societies have is the lack of formality in relations between parties that represent different interests. In the article “*Instituições e cooperação social em Douglass North e nos intérpretes weberianos do atraso brasileiro,*” [Institutions and social cooperation in Douglass North and Weberian interpretation of Brazilian backwardness] published in the journal *Estudos Econômicos*, Hélio Afonso de Aguiar Filho and Pedro Cezar Dutra Fonseca (2011) of the Federal University of Rio Grande do Sul (UFRGS) point out that, “Douglass North begins his economic analysis by seeking to understand the mechanisms that shape social relations. What is fundamental becomes the understanding that without institutions, there is no political, social or economic exchange. Institutions reduce the uncertainties inherent in human interaction and, as a result, provide incentives for cooperation. Depending on the type of social cooperation that is established, there may be major incentives for growth or long-term economic stagnation. The kinds of cooperation there are may be based on personal or impersonal mechanisms. From that comes an important principle of North’s theory: institutions arise with different degrees of efficiency from one society to the next to promote cooperation among the agents” (Aguiar Filho and Fonseca, 2011).

Therefore, the search for relations without the appropriate formality, and

further, the devotion to improvisation and the regional “Brazilian way” may be one of the important factors in explaining the nation’s as well as the region’s difficulty in cooperating for development.

It is no coincidence that the Latin American business environment is rather unfriendly with regard to free-enterprise institutions. The World Bank Group publication (2017) *Doing Business 2016: Equal Opportunity for All* shows, for example, that Brazil, one of the 10 largest global economies, ranks 123rd among 190 countries. The indicators attest to the difficulties free enterprise faces in the country. Brazil’s performance compared to other countries may be observed in the document published by the World Bank and found at: <http://www.doingbusiness.org/rankings>.

It is in that environment that the activity of government relations serves as a tool for creating a new regulatory framework, which from the standpoint of an organization will be more suitable to increasing its productivity. But how can this be done? We will answer that in the chapters that follow.

What we learned in this chapter

- Government relations have two particular features. The first is that one of the parties involved is a public entity that by nature advocates for the interests of society as a whole. The second feature is that this relationship is unavoidable.
- To achieve an objective, it is very important that the objective be clear and precise, from the very start of the process.
- Organizations must measure the scope of that objective to obtain markers that allow it, at each step, to make decisions among alternatives that arise in the numerous negotiations that occur in the process.

- Organizations need to know who their stakeholders are so that they can manage their relationship.
- All organizations should set up a stakeholder matrix that answers two questions: Who are the interested parties, the classic stakeholders of their organization? And what are each party's interests?

4



We want to speak to the government.

Who are we?

Victório Carlos de Marchi is a successful businessman with extensive experience in the mass production consumer goods market. Marchi knows the Brazilian market and its regional nuances. But he also knows the governments with which he has negotiated industry interests over many years.

When asked about the legitimacy of private interests in influencing public policy, Marchi explains:

“Private initiative is a part of organized societies in democratic States. That fact inherently ensures it legitimacy, even in terms of public policy. Such initiatives are intended to be discussed with other members of society, and that right should always be accepted within the overall context of the proposal. Of course, the public interest should always prevail over private interests.”

The position argued by Marchi reveals the importance that private enterprise places on the interests of society and the value of a socio-economic development process that can be shared by private enterprise and society as a whole. That position assumes the existence of limits that define a systematic relationship between a private organization and a government agency that can be publicly accepted. With respect to ethical dilemmas, Marchi is similarly instructive:

“The great dilemma that establishes itself in this relationship is that public interests should always prevail over private interests. However, there are many issues that can move forward together and bring benefits to both public and private interests. The first issue is the legitimacy of the

parties involved. Distrust or the perception that the parties want to “take advantage” of each other eliminates dialogue. How do we achieve these basic conditions? Through open discussion without mental reservation, and with respect for legal and ethical principles.”

In other words, government relations can only be justified when their purpose and objective is to create shared value for society, for organizations—by making them more competitive—and for the public officials who make that engagement possible by granting them public recognition.

As discussed in the previous chapter, from the standpoint of a company, or more broadly, an organization, its interest in engaging with governments is to change the framework of laws, rules and regulations so that it can become more competitive. An organization should realize that there will only be legitimacy in that relationship if it is able to generate a synergy, a value not yet taken into account, that will benefit society as a whole since society should be the main beneficiary of commitments negotiated.

Still from the company’s standpoint, the pursuit is for a framework that will allow it to increase its competitiveness and improve its earnings, but it knows that it is unlikely to achieve this objective if it fails to show the gains society will achieve from the agreement it is seeking to negotiate.

The activity of government relations, within an organization, thus has two ongoing tasks. The first is to design a framework that will give it the ability to be the most competitive, and the second is to objectively identify society’s gains in that arrangement. But in order for this activity to be possible, it is important that the team responsible for engaging the public sector as well as the other stakeholders (as defined in the previous chapter) has an up-to-date understanding of the organization’s strategic interests.

That statement may seem obvious, but it is far from it. In today’s world, with the tremendous energy shown by both society and markets, orga-

nizations' strategies change at regular intervals, affecting the interests of organizations with regard to the government as well as the opportunities for offering gains to society. In order for this function to be effective and efficient, it needs to be built into the team responsible for the strategic management of the organization, so that the organization can understand the demands and changes that periodically occur.

The starting point, and one of the most important points of government relations activity, is having clarity with regard to the objectives to be achieved and the ability to express those objectives to one's counterpart. That will only be possible if the government relations team thoroughly understands its own organization. In short, 21st-century institutional relations teams need to revisit one of the ancient Greek aphorisms of Delphi: "Know thyself." Many companies fail miserably in this regard.

One of the greatest leadership examples in government relations is Ron Withem of the University of Nebraska. In 2013, Withem was named recipient of the Government Relations Achievement Award to acknowledge his prestige as a leader in the field of government relations. Before joining the team at the University of Nebraska, Withem was a Nebraska State Senator, widely recognized as a great strategist. His colleagues consider him one of the main people responsible for the success of the university in its numerous public battles to obtain additional state funding. J. B. Milliken was university president at the time the award was given to his colleague. When asked in an interview what he believes was Withem's greatest impact, Milliken did not hesitate: besides being a great strategist, Withem has a profound understanding of the institution he works for.

Really knowing the institution one works for and being able to describe it succinctly to the audience one is speaking to without forgetting a single important detail is the first of several great features a government relations team needs to have. To facilitate the pursuit of a new regulatory framework, we are going to propose a model of an institution that serves

to organize its information and allows it to be efficiently described to each of its target publics.

A model is an abstract, conceptual, graphic or visual representation of phenomena, systems or processes for the purpose of analyzing, describing, explaining, simulating, investigating, controlling and predicting those phenomena, systems or processes. Our objective is to present a model that serves to represent companies, foundations, and non-profit institutions, with or without connections to the government. In short, all the organizations involved in the production or distribution of goods and services.

Before creating any model, two definitions are in order. First, for the purposes of engagement, it is very important to distinguish organizations from their owners, even though we know public officials would rather speak to business or institutional representatives who “own” their businesses, because they are the ones who have the ability to compromise on principles and objectives for the greater good, and thus seek points of agreement to find possible solutions. To eliminate that confusion, we will define institutions or organizations as those engaged in the activity of producing or distributing goods or services, while “owners” are the people who legally control the institution or organization.

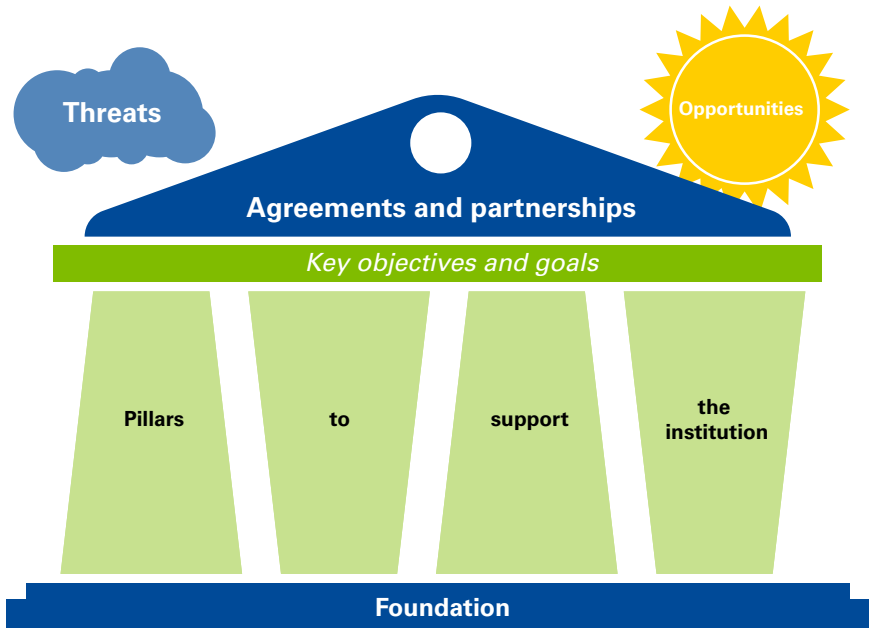
Besides making a distinction between owners and organizations, the success of an institutional relations team depends largely on metrics. William Edwards Deming¹ is the creator of one of the slogans of modern business management:

1 Deming was an American statistician, university professor, author, lecturer and management consultant who died in 1993 at the age of 93. He devoted himself to studying and proposing improvements to manufacturing processes and thus is more well-known for his work in Japan. As of 1950, in the immediate post-war period, Deming studied and improved processes aimed at improving designs, product quality, tests and sales by applying statistical methods such as variance analysis and hypothesis testing. Besides being a great scholar of business management and the use of mathematical techniques and methodologies in business, Deming was a great phraseologist.

Figure 1

GOVERNMENT RELATIONS IN BRAZIL

A typical organizational model



“You can’t manage what you can’t measure, you can’t measure what you can’t define, you can’t define what you don’t understand and there is no success that cannot be managed.”

That slogan will be an inspiration for building our institutional model, which in turn will serve as incentive for finding objective indicators, numerical whenever possible, to define each part of the model.

Several models may be used to describe an organization, and all of them serve the purpose of offering a mental representation that helps compose the narrative and allows us to quantify and measure each individual aspect. For our purposes, comparing an institution to a house is interesting because it specifies the relationship function with non-com-

mercial stakeholders, of which public agencies are the part most visible, although certainly not the only one. The model of the house as presented in Figure 1 suggests the existence of a foundation that reinforces it, pillars that ensure support to its key objectives and goals, and a roof that represents the partnerships and agreements that will allow it to protect the house against threats from regulatory officials, as well as receive the necessary support to secure opportunities that could arise within a new regulatory framework. Over the next few pages, we will present each element of the model separately.

a) Foundation

Sandro Magaldi is CEO of the Value Generation project and has over 25 years of experience in sales, in addition to a solid academic CV. His book *Vendas 3.0: uma nova visão para crescer na era das ideias* [Sales 3.0: a new vision for growth in the era of ideas] (Magaldi, 2013b) was named in the introduction by Philip Kotler as “one of those books that makes us think.” Magaldi is also the author of the book *Movidos por ideias: insights para criar empresas e carreiras duradouras* [Driven by ideas: insights for creating lasting companies and careers] co-authored with José Salibi Neto (2010). In an article published on the Endeavor website December 16, 2013, Magaldi encourages his readers to think about the core value of their business. He holds that it is crucial to know the core value you bring to the market and the value your customer perceives through interactions with your company. In one of his writings aimed at sales professionals, Magaldi (2013a) advises:

“It may seem like very basic advice, but I can assure you that most organizations, and as a result, their sales professionals, do not know how to answer that question. In fact, they do not really know what they sell. Immersed in the day-to-day operations and focused mainly on survival, many leaders themselves are unable to invest time in thinking about the core value of their business. And as a result, I would hazard to guess that whoever tries to incorporate those concepts could get ahead.

If you and your associates do not have a clear vision of your core value, what do you think your customers' reaction will be? Whenever the customer commodifies your offer, it is a sign that he does not understand the value you are creating. In short, it is a sign that he did not understand the core value of your business."

Magaldi encourages his readers to look for the core value of their business.

"The great paradox is that, in order to look outward, you have to first look inward, identifying your origins, beliefs and the basis of everything you have built. That reflection will give you incredible insights into the core value of your business. Take advantage of that opportunity and immerse yourself in your organization's world view. Try to plumb the depths of your beliefs and values to then analyze your customer interactions" (Magaldi, 2013a).

If that is true in the field of sales, it is even more important for the team that is selling the idea of changing the regulatory framework so that the institution can become more competitive, as it promises to create value for society.

What Magaldi calls the core value of a company, we consider the foundation in our model.

The foundation of a house represents the base of the institution, the gears of the engine, the driving force that has brought it to a particular point in time. It is important to fully understand the core value of the institution in order to place upon that fortress the most important challenges that may arise in any negotiation process. Not only does the foundation represent the gears that have been the driving force of the organization up to this particular point in time, but they are the gears that will continue to lead the institution forward.

It is not always easy to identify the gears of a business, but there are methods that can help. An institution, a company or an NGO engages in

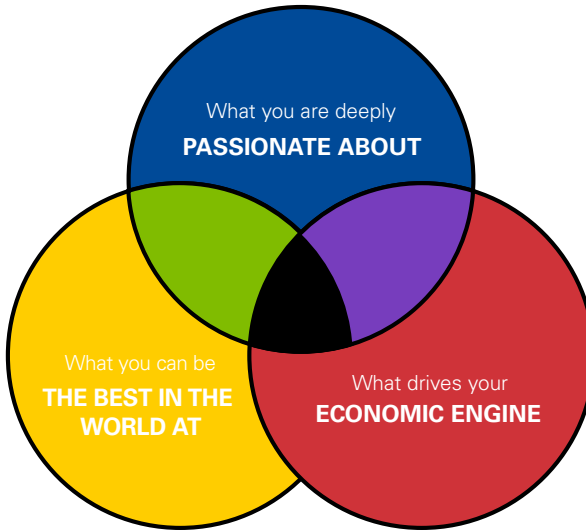
different activities over the course of its existence, and if we look at each of the departments and describe what they produce, we may not get a clear picture of the organization's core value. But the editorial team of the website MindTools² reminds us of an ancient Greek parable used to help find the soul of an institution. It said that "the fox knows many things, but the hedgehog knows one great thing." That parable tells the story of the eternal struggle between the fox and the hedgehog, the ending of which is always the same, regardless of the variety of strategies used by the fox. In the end, the cunning fox goes away defeated with a body full of spines. The fox does not understand that although he attacks in any number of ways, including by doing something different and surprising the hedgehog, the hedgehog will always do the one great thing it does perfectly: defend itself.

Based on this parable, British philosopher and politician Sir Isaiah Berlin, considered to be one of the principle liberal thinkers of the 20th century, wrote the famous essay entitled, *The Hedgehog and the Fox* (Berlin, 1953). Berlin divided people into two basic groups: foxes and hedgehogs. In his essay, he argues that foxes are sleek and crafty animals that pursue many ends and interests at the same time. Due to this great variety of interests and strategies, their thoughts are scattered and unfocused, and ultimately, they achieve very little. Hedgehogs, however, are slow and consistent, and people often ignore them because they are calm and unpretentious. But, unlike foxes, hedgehogs are able to simplify the world and focus on a single, overarching vision, which they then achieve. That is the principle that guides everything they do, and helps them be successful in fighting off all the ways in which foxes attack them.

Stanford professor and business consultant Jim Collins developed that idea further in his classic 2001 work entitled *Good to Great: Why Some Companies Make the Leap... And Others Don't*. Collins writes that organizations are more likely to be successful if they focus on one thing and

2 See "The Hedgehog Concept": MindTools. Available at: <<http://www.mindtools.com/pages/article/hedgehog-concept.htm>>. Accessed on: 31 Aug. 2017.

Figure 2



Source: Adapted from Jim Collins (2001).

do it well. By doing that, they can beat their competitors and become truly great companies. An organization can find its “hedgehog concept” by conducting three separate assessments:

1. Understanding what your people are truly passionate about
2. Identifying what the organization does better than anyone else
3. Identifying which of the activities in your field of business is good for generating revenue

Where all three responses overlap is where the core strength of the institution lies, as shown in figure 2.

The work proposed by both Jim Collins the staff at MindTools aims at identifying the area on which an institution should focus so that it can be successful. For Collins, once an institution identifies its hedgehog concept, its leaders should devote all their energy and resources to focusing on what they are really exceptional at doing. Collins argues further that when things get tough, the organizations that focus on their potentialities instead of pursuing alternate strategies are the ones that survive and prosper. (MindTools, [n.d.]).

We, however, propose use of the hedgehog method and concept to try to find the institution's core value, which may not be where it is presently focused. Some companies manage to clearly articulate the engine that underpins their growth while others do not explicitly do so, either because they do not know what it is, or because they believe it is strategic information.

b) Economic pillar

The economic pillar is the first of the pillars that sustain the representational model of an institution. It embodies the organization's economic and financial performance and measures how the institution creates economic value.

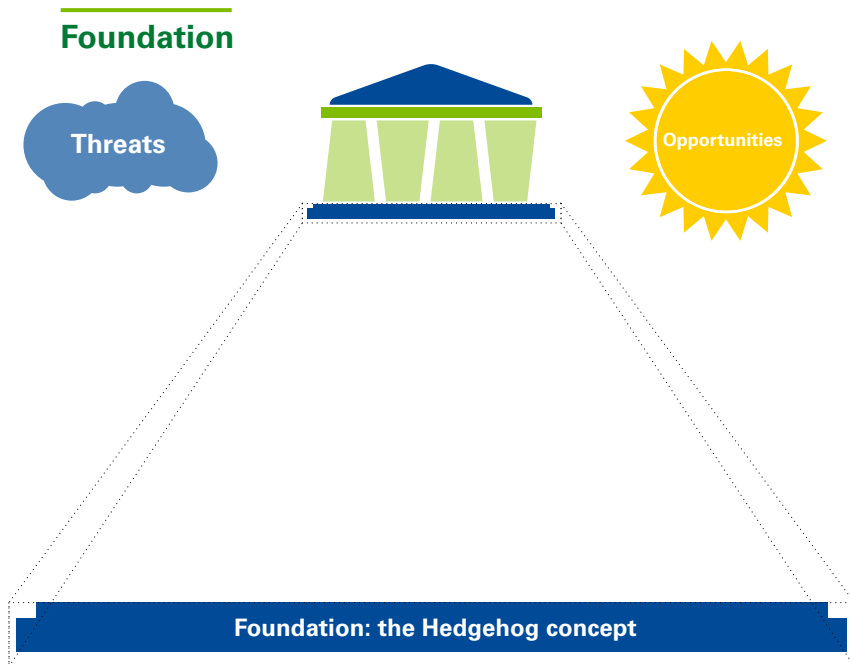
If the institution is a profit-seeking company, this pillar will account for generating shareholder value.

If the institution is oriented toward the public interest and does not generate earnings for its founders, the pillar will indicate the volume of resources the trustees are allotted to fulfill their functions.

One important aspect for our objective is to remember that regardless of an institution's purpose, this pillar allows us to show those with whom we engage on the government side the economic and financial size and extent of the business generated by the institution.

The leading economic indicators for describing how shareholder value is

Figure 3



generated and how it contributes to economic growth can be selected from among the financial parameters used by organizations. The website Investopedia³ provides the following definitions:

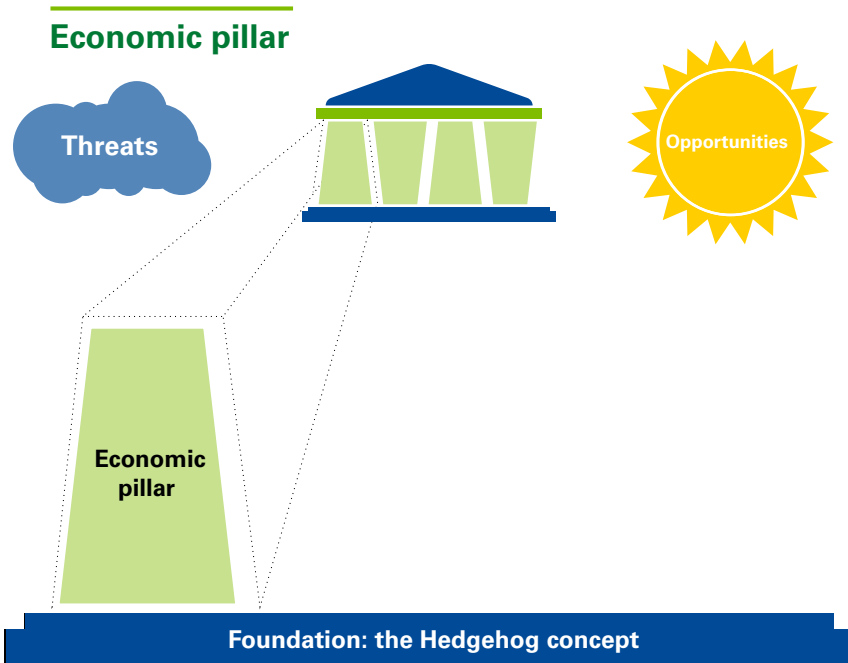
- a) EBITDA is the abbreviation for *earnings before interest, taxes, depreciation and amortization*. It is a financial indicator that represents how much a company generates in terms of resources through its operating activities, without counting taxes and other financial charges. EBITDA is important for business owners and managers because it offers the possibility for analyzing and comparing the

3 See Investopedia. Available at: <<http://index.investopedia.com/index?q=market+share&qsrc=1&qo=serpSearchTopBox&o=40186&l=&ad=&ap=investopedia.com>>. Accessed on: 31 Aug. 2017.

operating performance of companies in the same industry, looking not only at the organization's final results, but at the process as a whole. EBITDA is basically used to analyze an organization's performance because it is able to measure the productivity and efficiency of the company, and its management capacity—a point that is essential for business people who are planning to invest. EBITDA margin or EBITDA to sales ratio (the ratio between EBITDA and revenue) is widely used by financial analysts to evaluate corporate financial statements.

- b)** EPS is the abbreviation for *earnings per share*, and is the portion of a company's profit allocated to each outstanding share of common stock. Earnings per share serves as an indicator of a company's profitability.
- c)** ROI is the abbreviation for *return on investment*, and is a performance measure used to assess the efficiency of an investment or compare the effectiveness of various investments. ROI measures the financial return on an investment in relation to its cost. To calculate ROI, the benefit (or return) on one investment is divided by the cost of the investment, and the result is expressed as a percentage or as a ratio.
- d)** *Market share* represents the percentage of an industry that is earned by a particular company over a specified time period. Market share is calculated by taking the company's sales over the period and dividing it by the total sales of the industry over the same period. This metric is used to give a general idea of the size of a company in relation to its market and its competitors. Market share can be calculated by sales volume or by the monetary value of the volume sold.
- e)** Revenue is the amount of money that a company receives in exchange for the sale of its products and provision of services. Revenue received by a company is normally listed on the top line of the income statement as revenue, sales, net sales or net revenue.

Figure 4



c) Social pillar

The social pillar, or the description of the value that the institution generates for society, is the second pillar that sustains the model that describes the organization. All companies generate value for society in one form or another. Sometimes, however, information about those actions and activities is not organized in a way to compose a narrative that stakeholders can discuss and accept.

The main difficulty is that the business narrative regarding social responsibilities should be based on indicators that are recognized and accepted outside the organization. It is important to consider that it is not enough to simply describe actions and events that cannot be substantiated, or

whose importance is unable to be considered by third parties. That is why it is suggested that organizations look for classic and internationally recognized indicators such as those described among the Millennium Development Goals.⁴

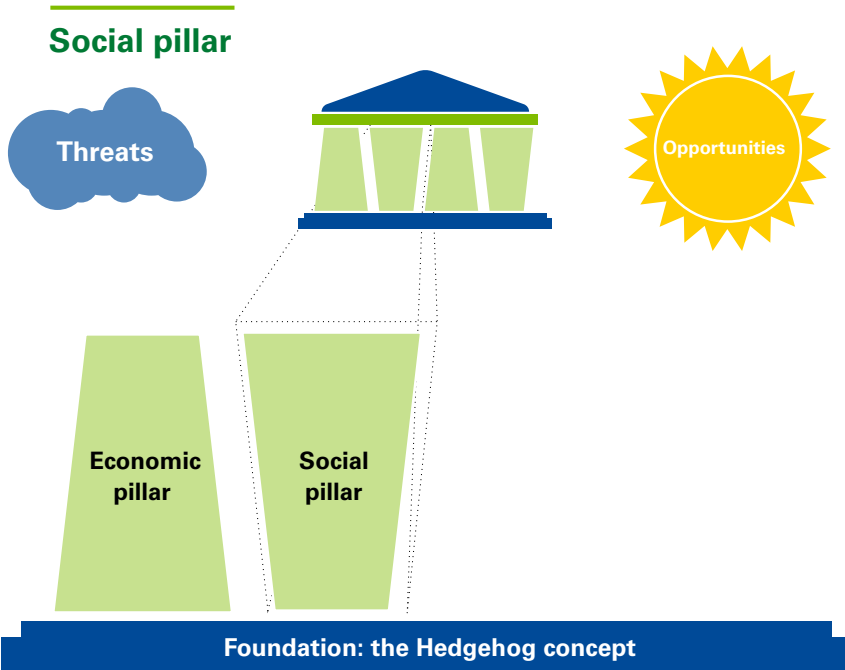
Those goals, presented in the United Nations “Millennium Declaration” and adopted by the 191 member States on September 8, 2000, were updated in 2016. According to these goals, good social responsibility initiatives are identified as any and all that demonstrate concrete and effective measures towards:⁵

- a)** eradication of poverty;
- b)** ending hunger and promoting sustainable agriculture;
- c)** good health and well-being;
- d)** quality education;
- e)** gender equality;
- f)** clean water supply and sanitation;
- g)** affordable and clean energy;
- h)** decent work and economic growth;
- i)** industry, innovation and infrastructure;
- j)** reduced inequality;
- k)** sustainable cities and communities;
- l)** responsible consumption and production;
- m)** action against global climate change;
- n)** life below water;

4 See “Os objetivos de desenvolvimento do milênio” [Millennium Development Goals]. ODM Brasil. Available at: <<http://www.odmbrasil.gov.br/os-objetivos-de-desenvolvimento-do-milenio>>. Accessed on: 31 Aug. 2017.

5 To learn more, watch the UN video at: <<http://www.youtube.com/watch?v=Toiu7aWYdv4>>.

Figure 5



- o)** life on land;
- p)** peace, justice and strong institutions; and
- q)** partnerships and means of implementation.

It is important to note that all companies and institutions are responsible for generating value for shareholders or trustees as well as for society. Just because an institution is unable to describe its commitments to generating social value does not mean that it does not have such commitments. What it means is that the institution does not know how to describe them or admit that it failed to meet them. What might have been an asset for engagement thus becomes a debt, which in time will exact a price.

d) Environmental pillar

The third pillar is the environmental pillar, or the set of activities and initiatives the institution engages in to contribute to environmental sustainability. As with the social pillar, it is important to identify indicators that are socially recognized and that allow the institution to present a credible narrative about its environmental responsibility.

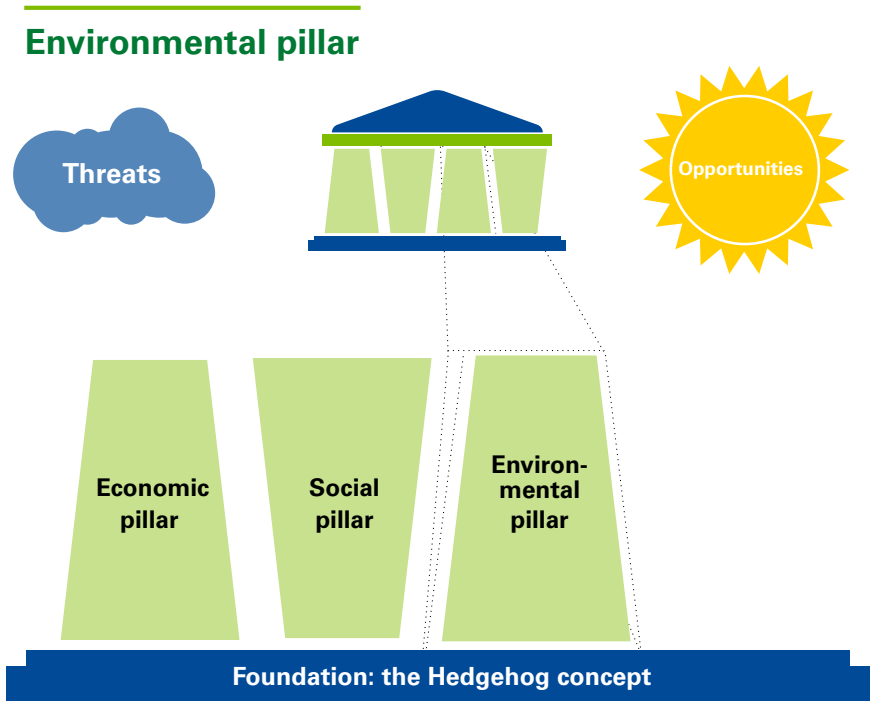
The same Millennium Development Goals serve as an excellent guide for selecting indicators that will allow an organization to describe the commitments it has assumed. The UN document states:

“One billion people still lack access to clean drinking water [...]. Water and sanitation are two environmental factors that are key to quality of life and are part of a wide range of resources and natural services that make up our environment—climate, forests, energy sources, air and biodiversity—and on whose protection we and many other creatures on this planet depend.”

Appropriate indicators emerge from these, such as institutional commitments with regard to the following:

- a)** Solid waste: reduce, treat and provide appropriate disposal of an institution’s solid waste.
- b)** Water: reduce the total consumption of water, make use of rain water, treat all waste for reuse. Have treatment plants.
- c)** Gas emissions: reduce, reuse, filter and measure gases emitted in manufacturing processes.
- d)** Deforestation: reduce and reforest management areas.
- e)** Certification: use products that are certified and obtained through audited processes

Figure 6



f) Green fleet: use biomass fuel in vehicle fleet, etc.

It is also important to consider that all organizations have commitments to environmental development since they use natural resources to make products that will be sold on the market.

Companies that provide services also have environmental responsibilities, given that their services directly or indirectly benefit from nature. Thus, the absence of a narrative about an institution's environmental commitments will certainly constitute a debt to be collected by society in terms of regulations that limit its activity or by imposing additional costs.

e) Reputation pillar

The fourth pillar of the model that describes an institution is its reputation, in other words, the effort to build trust that the institution needs to have among its stakeholder group. Wikipedia defines reputation as: “The opinion (or technically speaking, the social assessment) of the public towards a person, a group of people, or an organization. It is an important factor in many fields, such as business, online communities or social status.”⁶

In his book *A reputação na velocidade do pensamento* [Reputation at the speed of thought], journalist Mario Rosa summarizes the importance of reputation to an institution: “Reputation does not guarantee that it will be selected, but the absence of reputation may serve as a gateway to being discarded. That is why it is important to fight for one’s reputation, to defend it and protect it, and be mindful of the impact the various strategies and initiatives we take will have on it.” (Rosa, 2006, p. 132)

In the same book, the author notes that important changes have recently occurred in the process of building and maintaining an institutional reputation as a result of advances in information technology, particularly the overwhelming popularization of social networks. On that basis, Rosa (2006) advises institutions to be prepared:

- a)** for more auditable professional ethics
- b)** to be more scrutinized
- c)** for having their consistency more tested
- d)** to have symbolic DNA
- e)** to understand that it is part of the whole
- f)** to incorporate media as a fundamental part of everyday business
- g)** to use its reputation as an antidote

6 See the article “Reputação” [Reputation]. Available at: <<http://www.pt.wikipedia.org/wiki/Reputa%C3%A7%C3%A3o>>. Accessed on: 31 Aug. 2017.

- h)** for inevitable criticism
- i)** for human centric branding (brands are nearly people)
- j)** for corporate branding (corporate personas).

Just as with the other pillars, and in fact everything that refers to managing organizations, reputation has to be measured and compared with other institutions in the same market or social group. Therefore, it is important to find ways to measure an organization's reputation. Opinion polls are the most suitable mechanism for learning how an institution is perceived by a social group. The great challenge is asking the appropriate questions so that the assessed reputation can be accurately quantified.

Besides that measurement, it is important to identify which factors affect an institution's reputation. Edelman, for example, is one of the world's largest public relations firms. Each year it publishes the "Edelman Trust Barometer," which measures trust in institutions. The survey, which addresses the levels of trust in business, government, NGOs and the media in 28 countries, weighs the percentage obtained by each, and reveals a global trust index of 50 points on a scale of 0 to 100.

Edelman⁷ suggests five performance clusters and 16 attributes that are relevant for building trust in an institution:

Engagement cluster

1. Listen to your customers' needs and feedback
2. Treat employees well
3. Place customers ahead of profits
4. Communicate frequently and honestly on the state of your business

7 See: "Building Trust." Available at: <<http://www.edelman.com/insights/intellectual-property/trust-2013/building-trust>>. Accessed on: 31 Aug. 2017.

Integrity cluster

5. Follow ethical business practices
6. Assume responsibilities and take initiatives to address an issue or a crisis
7. Be transparent and open in your business practices

Products and Services cluster

8. Offer high-quality products and services
9. Be innovative in your products, services and ideas

Purpose cluster

Figure 7

Engagement and integrity: priority areas for companies to build trust

Stated importance versus stated performance on 16 trust drivers

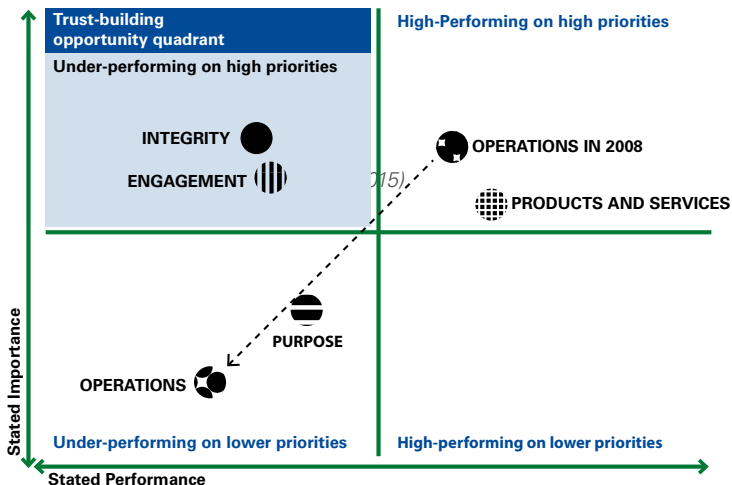
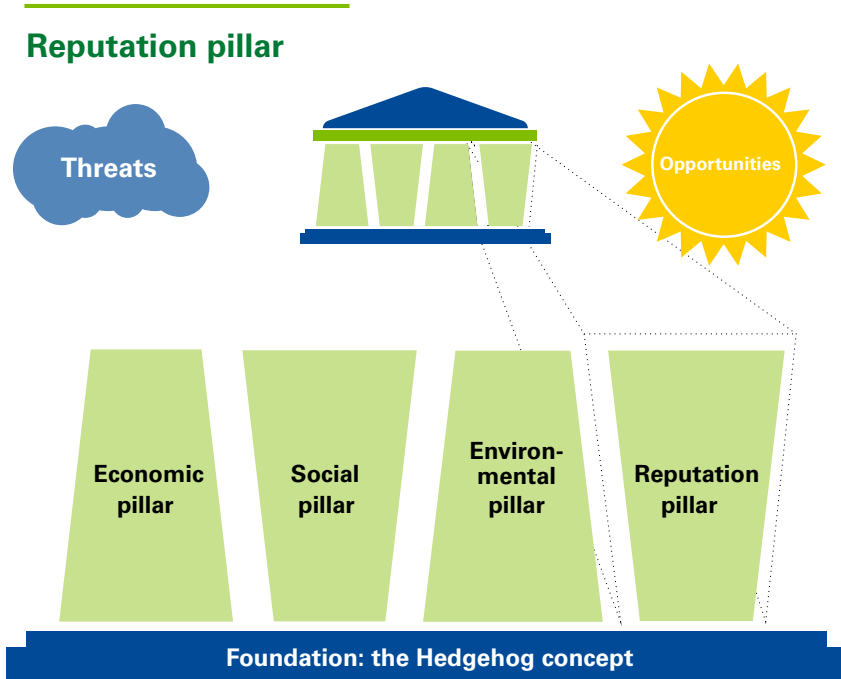


Figure 8



10. Work to protect and improve the environment
11. Think about society's needs in your everyday business
12. Establish programs that positively impact the local community
13. Align yourself with NGOs, governments and other partners to help resolve society's needs

Operations cluster

14. Be a visible and widely admired leader
15. Compare yourself to the best companies and institutions. Know your ranking
16. Deliver consistent positive financial returns to investors

According to Edelman, those attributes have an important purpose in

building an institution's reputation: "For companies that are trying to build or restore trust in themselves and their innovations, the '2015 Edelman Trust Barometer' offers *insights* on attributes and behaviors that build trust" (Edelman, 2015).

Trust is built through specific attributes that can be organized into five performance clusters: integrity, engagement, products and services, purpose and operations. Of these clusters, the Trust Barometer reveals that integrity is most important, followed closely by engagement. Areas such as excellence in operations or products and services, although important, are simply what is expected.

The 2015 Trust Barometer says: "The trust-building opportunity for business, therefore, lies squarely in the area of integrity and engagement. These areas encompass actions such as having ethical business practices, taking responsibility to address issues or crises, having transparent and open business practices, listening to customer needs and feedback, treating employees well, placing customers ahead of profit and communicating frequently on the state of the business—the very qualities also evidenced to build trust in innovation." (Edelman, 2015).

One major reputation-builder is the public recognition an institution receives over the course of its existence. Awards, competitions and rankings are important for demonstrating through third-party testimony the commitments assumed by the institution in its various areas of activity.

Examples of these awards are competitions for Best Places to Work, Company of the Year, Most Memorable Companies, etc.

f) Mission

Above the pillars is the crossbeam of an organization, which is its reason for being, its great vision, or simply, its Mission.

A mission energizes everyone in the organization and guides the institutional

Figure 9



team to work in the same direction, seeking to achieve the same objectives.

But there is one thing in particular that makes the organization's mission more than simply an incentive or a call to great adventure: a mission can be translated into math!

Missions should therefore be described. They also need to be quantified and require determination of a time frame in which they will be achieved, in addition to identifying checkpoints along the way.

A few examples of missions pursued by well-known companies may be found on their websites and include:

1. Create value for our customers, shareholders, employees and society by operating as a sustainable steel business. Being a

global organization and a benchmark in any business we conduct (Gerdau).

2. Pursue something bigger than ourselves, establishing clear, bold long-term goals. Work with passion to achieve one's purpose and challenge oneself to go further (Fundação Estudar).
3. Our mission is to create and sell products and services that promote well-being and being well. Well-being is the relationship people have with themselves and their bodies. Being well describes relationships with other people as well as with nature. (Natura).
4. Connect, facilitate and disseminate initiatives that promote a more innovative and digital country (Fundação Brava).
5. Be one of the world's five largest integrated energy companies and our public's preferred company (Petrobras).
6. Innovate to bring therapies to patients that significantly improve their lives. Be the best and most innovative biopharmaceutical company (Pfizer).
7. Be the world's best beverage company, bringing people together for a better world (Ambev).

In each of these examples, it is relatively easy to identify the alternatives for defining a value to be achieved, a time frame for reaching this value and the indicators that determine whether the path pursued is the right one.

g) Agreements and partnerships

Above the crossbeam that represents the mission, the house raises its roof, which serves to give it protection and support. The image of the house and its parts helps us understand agreements and partnerships as a function of something loftier. The function of engaging with interest groups, the stakeholders, is the roof of the institution, connecting it

to its surroundings and allowing it to defend itself from threats while identifying and taking advantage of myriad opportunities the corporate environment has to offer.

That is a practical question for many companies. For example, João Mauricio Castro Neves was an important leader at Anheuser-Busch InBev, where he led operations in Brazil, Latin America and North America. Because of his unique position, he was able to observe the importance of building partnerships. In an interview for this book, he provided us with his first impressions upon returning to Brazil after a period abroad as CEO of the firm Quilmes, in Buenos Aires.

The industry [of cold drinks, beer and soda] is completely unknown to Brazilian society and government. Few are aware of the contribution this industry makes in the economic, social and environmental realm. In addition, there is a dysfunctional system of taxation that hinders the process of increasing competitiveness on the part of the industry as a whole and undermines its rhythm of growth and job creation. How can we become involved in public policy if the industry is unknown and, furthermore, divided? Our most immediate task seems to be re-establishing internal partnerships in the industry, leaving the necessary competition to the market, but creating an agenda for growth that could interest society and government.

Jane Nelson, adjunct lecturer in public policy and director of the Corporate Responsibility Initiative at Harvard Kennedy School, is recognized for her articles and positions with regard to the building of innovative alliances involving institutions and their stakeholders for the purpose of maximizing the impact of the organization's presence in the society in which it operates.

In several papers, interviews and videos, Nelson calls attention to the fact that in recent years, enormous advances have occurred in the social responsibilities of large business corporations that operate on a global scale—advances that until recently were not clearly perceived. The

Harvard professor tells us that the biggest innovation is the fact that new frontiers have opened up for advancing the social contributions of private institutions by creating collective platforms that involve several institutions.

The first of these opportunities is due to the joint action of industry segments, through trade associations, in pre-competitive arrangements that allow them to seek mutual regulatory advantages and develop improvements for society and the environment.

Nelson reminds us, though, that it is through collaborative platforms, those involving industry, governments and organized civil society, that opportunities for breaking with traditional models arise. Those platforms are powerful enough to address complex contemporary issues such as those brought about by climate change, corruption and poverty reduction.

The issue of partnerships and agreements between different segments of society needs to be examined on the basis of three points.

The first is learning why businesses should invest time, money and effort in building alliances. The second point is examining which types of alliances are possible and what potential is offered by each. Finally, businesses need to figure out how to build more effective alliances to achieve both of the proposed objectives: society's goals and the goals of the business itself.

Alliances and partnerships need to be built because we live in an organized society in a democratic State under the rule of law. That is precisely why we have an ongoing duty to consistently seek to influence public policy. That is, to ensure that there is a majority so that policies can be developed or altered according to our interests. In a democracy, building a new regulatory framework created by a set of public policies and their rules occurs through the process of building and consolidating majorities.

For that, we need to find strategic allies that will be with us for the long haul as well as tactical partnerships whose loyalties will change according to their own legitimate interests.

It is good to be suspicious of a framework that may suit only a single organization or segment, or even a single industry. It is highly unlikely that this interest would be able to succeed within the democracy when it does not meet a wide variety of interests.

The building of alliances and partnerships takes place at three basic levels, and each is relevant in its own way when it comes to influencing public policy.

The first level involves building, through the institution itself, the sphere of interest we are considering. In this case, nearly all the partnerships would refer to interests that are very much aligned and that have something to do with the workplace, the market and the supply chain.

The second level of partnerships and agreements refers to the community around which the institution develops. Those agreements are generally in the areas of philanthropy, social investments, local community development and dialogue with the community in order to understand its concerns and engage in volunteering.

Finally, the third level of agreements and partnerships arises with the system in which the institution is a part. It is almost always the industry that can bring lawsuits or that seeks to influence public policy, strengthen society's institutions and assemble the rules and regulations that govern the operations of a particular economic segment.

The big question that institutions regularly pose is why they should invest time, money and effort to build alliances and partnerships, aside from the general reasons already mentioned.

Quite a wide range of reasons may be given in response to this frequent question. Some of them are:

- It is an excellent strategy for building and sustaining stakeholder trust and improving the institution's reputation.
- It lets the institution get closer to civil society organizations that

continue to receive the highest level of trust from a public that believes them most trustworthy on key issues.

- It is a unique opportunity at a very low cost to identify and manage new risks and new societal expectations in relation to the institution, and to identify new opportunities that will enable the institution to remain competitive.
- It is an effective strategy for making sure the institution's actions in the areas of corporate social responsibility increase in scale and scope.
- Partnerships and agreements with entities unfamiliar with the competitive world help create a more equitable environment with partners.
- Agreements increase the institution's legitimacy and help build trust in the institution on the part of society.
- Agreements offer institutions a great educational opportunity to improve by learning about a variety of organizations, listening to new perspectives and expanding its horizons.
- Finally, it is an excellent exercise in perfecting the institution's leadership role in society, not just in the market.

Because partnerships are voluntary agreements in which participants consent to work together, seek common goals and share risks, responsibilities, resources and benefits, we can describe the two main types of partnerships as:

- those that minimize damage: several institutions work together, through precompetitive agreements, to jointly face a threat identified by the group;
- those that create opportunities: the group, spurred on by an institution, identifies an opportunity that can be achieved if they work together.

The structure of the agreements and partnerships cannot hide the major challenge, which is building effective alliances that are capable of achieving the proposed objectives.

The first major challenge is surmounting operational obstacles that may be described as:

- Overcoming mutual misgivings among the partners.
- Building bridges between different points of view
- Facing the issue of partnership governance. It is important to discuss and clearly establish “who does what.”
- Learning to manage unrealistic expectations that usually arise in agreements and understandings among different partners, in which each tends to overestimate each other’s strengths.
- One of the greatest challenges and obstacles of partnerships is “reputational risk.” Partners fear that their reputation among certain stakeholders will be adversely affected by proximity to new partners, as a result of the understandings they have reached.
- One natural obstacle is the possible existence of conflicts of interest within the alliance on issues other than that at stake.
- Absence of qualified personnel capable of carrying out the ambitious plans of the partnership. This risk increases when all the partners delegate practical day-to-day conduct of the alliance to outside their sphere of influence.
- Finally, the great difficulty in measuring the impact and value added by the partnership constitutes its own challenges and practical obstacles to achieving success.

Besides the practical obstacles, there are important strategic dilemmas in establishing alliances, partnerships and agreements.

Among those, three are very important, especially if one of the partners is a government agency.

The first dilemma is project scale, which is critical, particularly when one of the partners is a government agency. Achieving scale is a particularly salient point because governments have neither the experience, the patience nor the inclination to carry out pilot projects simply for the purpose of learning. In most cases, the government partner wants to begin the project on a massive scale, placing private partners in a difficult situation since they normally scale up only after experimenting on a smaller scale.

The second big dilemma refers to the topic of accountability—an incredibly important element with regard to public organizations and the representativeness of the people who make up the administrative core of the project. All of these aspects impart a character that tends to diminish the speed of implementation and progress on the activities. Despite the desire to move quickly, these aspects must be rigorously observed to avoid problems in the alliance itself.

Finally, another dilemma with alliances is that no matter the progress made in achieving objectives, they neither can nor should replace or perform the role of government. This respect for public legitimacy must always be heeded.

Some critical factors for success in pursuing an alliance can be summed up in three points: purpose, process and progress.

Purpose involves fully understanding the goals and objectives of the alliance and getting to know more and more about the partners involved.

Process means always being mindful of your institution's role and knowing how to properly communicate within and outside the alliance.

Finally, progress refers to knowing how to assess what you are

achieving, learning how and when to mark results, modify the project and understand that it has fulfilled your objectives and is therefore complete.

What follows is an example of partnership success in changing a regulatory framework. The account is by Pedro Mariani, corporate affairs executive officer and general counsel at AmBev:

Traffic violence is a global problem. Every year, more than 1.25 million people die in collisions and pedestrian accidents all over the world. In 2012, traffic accidents were the ninth leading cause of death globally. If the trend is not reversed, the World Health Organization (WHO) predicts that by 2030, highway violence will become the seventh leading cause of fatalities, surpassing diseases such as diabetes and hypertension.

In order to coordinate global efforts focused on improving road safety, the United Nations (UN) proclaimed 2011-2020 the “Decade of Action for Road Safety.” In practice, the UN began to direct and support the development of regional and domestic plans that include five basic pillars for the topic: road safety management; safer roads and mobility; safer vehicles; safer road users; and post-crash response.

During this decade, the UN established a worldwide goal of saving five million lives, which means reducing the number of deaths by nearly 33% based on 2011 rates, or by 50% compared to projections for 2020 according to projections for 2020, halving the number of global deaths and injuries from road traffic accidents. Following the example of nations that have obtained a reduction in the number of deaths, the UN recommends that road safety management be carried out across industries as well as by networks, with goals and benchmarks defined and broken down according to the aforementioned five pillars.

With systematic assessment, it is possible to establish a broad and inclusive decision-making process, using methodology, management and participation by all agents involved in the issue of road safety.

The Road Safety Project began to be part of the agenda for corporate social responsibility at AmBev in 2014, when we realized that our alcohol and driving campaigns, although well-intentioned, were having a negligible practical effect on the public's behavior. From the reputational standpoint, because we always invest significantly in prevention campaigns (including those on broadcast television) we started to believe that the link between alcohol and driving had begun to be seen as the leading cause of Brazilian traffic deaths.

We have never wavered from our responsibility regarding the issue, nor could we ever do so. But two things have been brought to our attention. First, we needed to know if there was reliable information available about the number and nature of traffic accidents. We needed to understand all possible causes, such as traffic education, cell phone use, an increase in the number of motorcycles on the road, the physical condition of roads, and policing. In addition, we thought: why don't we use our experience and capacity to manage and mobilize to stop being part of the problem and start being a driving force in finding a solution?

Thus, the São Paulo Traffic Safety Movement was born and continues to have the ambitious goal of achieving a 10% annual reduction in traffic deaths in selected municipalities,⁸ in line with the goal established by the UN. The success of a project of this magnitude is based on the fundamental premise of political goodwill and dedication on the part of public officials, coupled with the engagement of private partners.

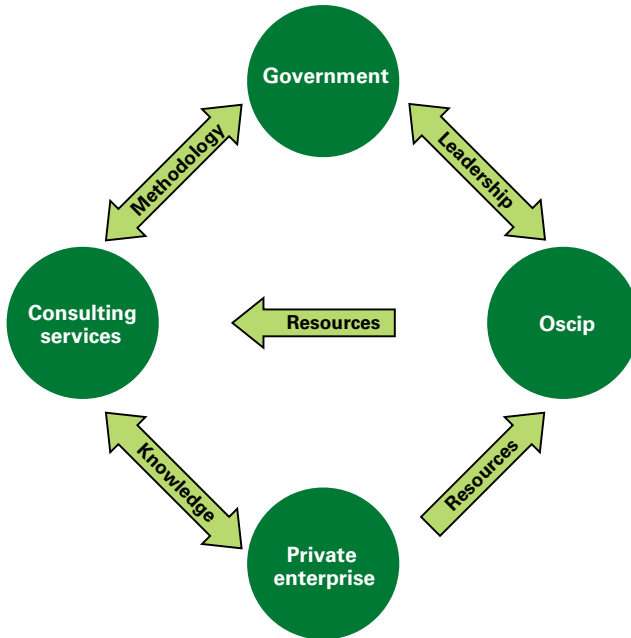
The movement was formed in partnership with the São Paulo State government, through the Office of the Secretary, responsible for coordinating the project with all agencies handling traffic in the state of São Paulo. The state signed an agreement with the Center for Public Leadership (OSCI, the public interest civil society organization). That agreement was what allowed participation of the Center for Public Leadership which, together with Falconi Consultores, began to work on

8 That 10% reduction became the goal of AmBev's entire social responsibility area.

Figure 10

Organization of the Movement

The São Paulo Traffic Safety Movement is made up of executive, advisory and regulatory government entities, in addition to private sector representatives.



consolidating the available database of traffic accidents in the state of São Paulo. That data, scattered among numerous public agencies that did not act in a coordinated manner, often took as long as two years to be made available.

In parallel, AmBev began to mobilize other private sector partnerships, which resulted in the following final group of sponsors in the first year of the project: AmBev, Porto Seguro, Arteris, Banco Itaú, Abraciclo, Grupo Ultra, Confederação Nacional das Empresas Seguradoras (CNSeg) and Raizen.

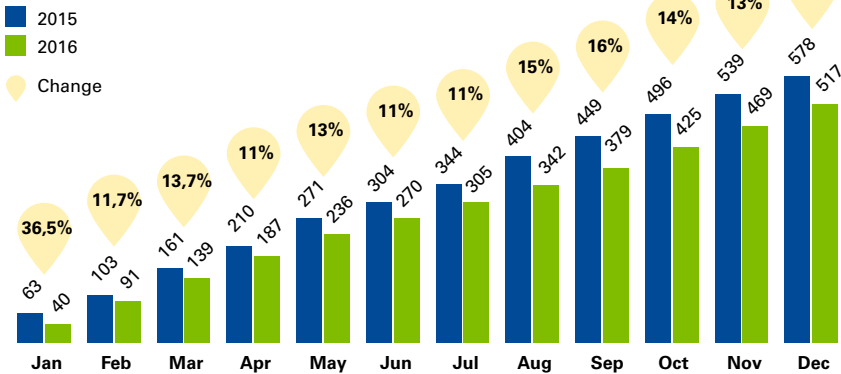
The project structure can be summarized as seen in Figure 10.

The collection, systematization and organization of traffic accident data

Figure 11

Growth in the number of fatalities

15 partner municipalities



in the state of São Paulo, the first step of the project, enabled the establishment of Infosiga,⁹ a traffic accident information management system website that began to publish monthly detailed data on the state's traffic situation. Among other information there, it is possible to find the precise site of accidents and fatalities by gender, age and type of vehicle.

As a result, the project made it possible to effectively measure the traffic situation in every municipality of the state. After that, 15 cities were selected to become pilot platforms so that the project teams could, *in loco*, diagnose which actions, in each municipality, were capable of reducing traffic deaths. In all, 118 actions were carried out in the first year in these 15 municipalities. These included: the installation of 59 raised pedestrian crosswalks, six speed bumps and 14 traffic lights; the painting of two pedestrian crosswalks, the refurbishment of horizontal and vertical road

9 See Infosiga SP. Available at: <<http://www.infosiga.sp.gov.br>>. Accessed on: 31 Aug. 2017.

signs along 18 thoroughfares, the adjustment of the system for police checkpoints in five municipalities, the repaving of six thoroughfares, the acquisition of three patrol cars, the installation of speed measurement radar, the training of two transit agency managers, the revitalization of public street lighting along one thoroughfare and the construction of a pedestrian walkway. All of these actions are designed to address the specific causes of deaths and accidents in each location.

Those simple yet focused actions caused outcomes in the project's first year to exceed the 10% goal of reduction in the 15 selected municipalities. The drop was 10.6%; while from January to December 2015, there were 578 traffic deaths in these municipalities, from January and December 2016, there were 517 deaths. The results shown in the first group of municipalities have led the São Paulo State Government to expand the program from 15 to 67 cities in 2017.

The experience in *São Paulo* combined the legitimate concerns of the companies that took part in the project—reduction of the harmful consumption of alcohol in the case of AmBev, reduction in the number of deaths caused by motorcycles in the case of Abraciclo, reduction in the number of highway deaths in the case of Arteris, reduction in the number of claims in the case of CSeg—with the state's interest in implementing successful public policy to reduce traffic fatalities. The method, which can be easily replicated in other municipalities or states, is simple and has proven effective, resulting in the adoption of more successful interventions to address the problem using fewer public resources.

In 2017, AmBev took the Road Safety Program to Brasília, where it added traffic accident injury monitoring to the goal of reducing mortality. Steps implemented in the Federal District followed the lessons of *São Paulo*, and as of the date of this book release, have also had significant results. From January through May, 2017, there were 90 fatalities on Federal District highways, 74 fewer fatalities than those reported during the same period of 2016.

Monitoring and actions to reduce accident injuries have also brought about another important aspect in terms of budget administration: the reduction in the number of hospital beds occupied by victims of accidents. By achieving the goals for reducing injuries set in the Federal District, it is estimated that there has been a savings of approximately R\$1 billion in three years, which will now be better used on other public health issues.

As a next step, AmBev will export the methodology to the Dominican Republic and South Africa. The projects in these countries are in their early stages, but the purpose is to form a partnership between private entities and local governments along the lines of those in *São Paulo* and Brasília. In conclusion, the experiences in *São Paulo* and Brasília show that it is possible to implement partnerships that both meet legitimate private interests and implement successful public policies.

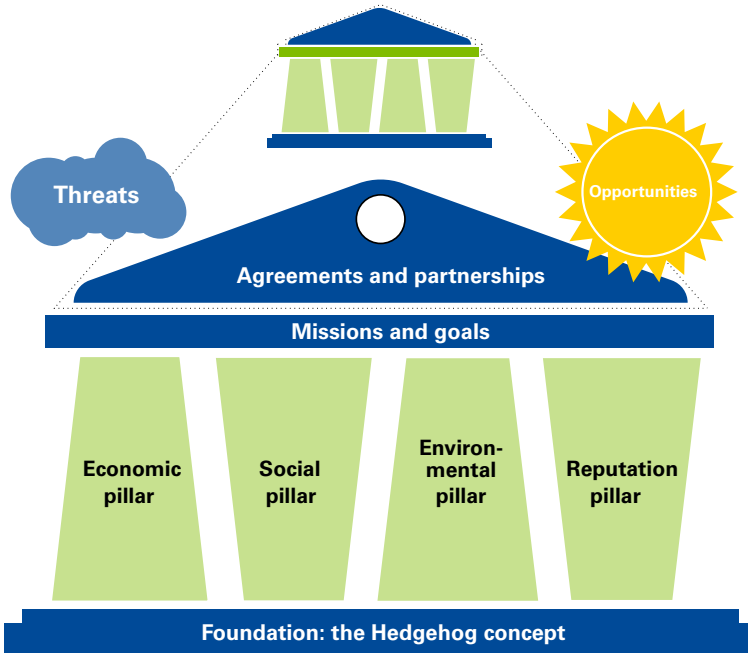
As demonstrated in the previous examples, by using a foundation, pillars, beams and a roof, the house is able to withstand external threats and harness the energy that flows from the opportunities generated in its external environment.

What we learned in this chapter

- Government relations can only be justified when their purpose and objective is to create shared value for society, for organizations—making them more competitive—and for officials who make that engagement possible—granting them public recognition.
- Understanding the institution for which one works and being able to succinctly describe it to one's audience, without forgetting a single important aspect, constitutes the first of the great features of a government relations team.

Figure 12

Organizational model of a complete house



- Use of the hedgehog method and concept to try to find the core value of the institution, which is not necessarily where it is presently focused.
- With a foundation, pillars, beams and a roof, the house is able to withstand external threats and harness the energy that flows from the opportunities generated in its external environment.

5



A strategy for changing regulatory frameworks

The authors understand government relations to be those that exist between any government body and private organizations (for profit or non-profit) for the purpose of influencing the formulation of public policy with a view towards changing any aspect of the regulatory framework. We also understand that the engagement will only be legitimate when its purpose and objective are to create shared value for society, for organizations by making them more competitive, and for the public officials who make that engagement possible, by granting them public recognition.

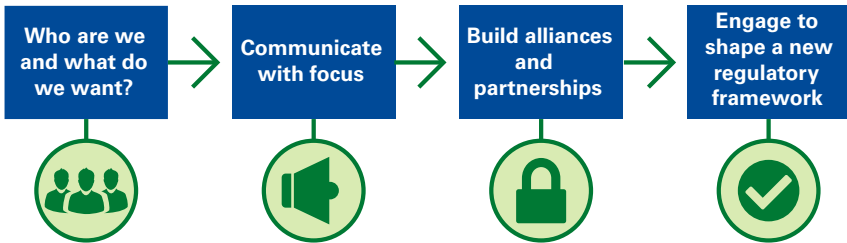
Therefore, by our definition, that engagement serves the purpose of influencing public policy with the goal of generating value for society and making firms more competitive.

Within an institution that manages by objectives, the team responsible for establishing relations with government bodies has to be viewed as a line of business. The leader of the team is then “owner” of that business, which means he has authority over the means placed at his disposal. Thus, he is also responsible for leading his team in order to achieve the expected results. But what exactly are those results? Which ones are they, and how are the goals selected for a team that is part of the institution’s management?

Like any business, the government relations team should be able to identify what its product is, who its customers are, what it does to turn inputs into products and who supplies its inputs. We will revisit this topic in the next chapter.

Figure 1

Government relations strategy



What is important now is understanding that if this process is systematized, as part of the management routine, customer needs will become goals to be achieved by the government relations team. To achieve those goals, it will be necessary to establish a management process. As Peter F. Drucker (1992, p. 188) stated simply, “management is an operating process composed of functions such as: planning, organization, direction and control.”

An institution’s resources need to be mobilized in order to reach the desired objectives, to borrow a military concept. To achieve the objectives or goals, the leader is expected to propose a strategy. More than that, he needs to define offensive or defensive actions to create a regulatory framework that corresponds to the institution’s defensible stance to successfully face the forces of competition, and thus obtain a greater return on investment, according to the generic definition offered by Porter (1980).

Henry Mintzberg (1987b) holds that strategy can go well beyond the perspective of achieving an outcome, using the fewest possible number of resources. He formulated the definition of strategy as five different approaches, depending on the characteristics of each institution, and called his definition the five “Ps:”

- Strategy as a plan: a way to win a game with rules established in advance through a formal analytical process developed purposefully and consciously.

- Strategy as pattern: consistency of behaviors, the play between an organization's internal and external actors, the process of learning, incrementalism and constructivism, model of evolutionary adaptation.
- Strategy as position: the fit between a company's external and internal environments, defining what should and should not be done.
- Strategy as perspective: it is the company's way of viewing the world, acting in accordance with that view, imbued with a collective spirit.
- Strategy as ploy: an intentional or unintentional maneuver, a pre-determined or emerging mode of action. This approach may include the degrees of freedom the company may use and the weapons it has to play the game of survival and sustainability.

What is expected of the leader and the government relations team is an auditable strategy clearly showing that the purpose of engaging with public bodies is to create value for society, the companies and the public officials involved in this relationship.

That creation of three distinct values leads to a second issue: the need to define the limits of the engagement so that it is ethical and has the desired transparency to address topics of public policy in the public interest.

This chapter's proposed strategy consists of four major components, each with several specific activities:

- **First** — determine who we are and what we want to do
- **Second** — communicate with focus
- **Third** — build alliances and partnerships
- **Fourth** — engage to shape a new regulatory framework

Who we are and what do we want?

The first challenge for the government relations team is to stop pretending that the people we speak to know us. No one knows us in the way we would like to be known and perceived in each of our negotiations. It is important to note that in each round of negotiations, we will face a variety of interests and values unlike our own that may have a distinct relationship with our institution.

Therefore, we need to understand, first and foremost, that our institution is the sum of the three dimensions in which it creates value: the economic, the social and the environmental.

In order to introduce our institution to counterparts, it is important to have detailed knowledge about the institution, its market segment and the industry it belongs to. That information is available in an array of documents containing data about the institution's value in particular and the value of its segment in general.

Generally speaking, annual reports along with sustainability reports are able to provide most of the structured information we need. Other key sources of information are consolidated balance sheets, reports from analysts, internet research and interviews with key leaders in the organization.

It is a good idea for larger corporations to consult bank analysts regarding an institution's performance because they generally pinpoint positive aspects in addition to opportunities for improvement, which may be highlighted in an introduction. In both cases, it is important to use traditional indicators accepted by society as a whole.

It is relatively easy to gather and organize structured information. The main challenge is remembering to focus on all the dimensions through which the institution is able to create value, because it is those strengths and weaknesses that will become part of an introduction.

The next challenge is to select the emphasis we would like to make in our introduction of “who we are.” Is organized data enough to help us do that? Structured information is definitely necessary but is not enough.

It is not enough because it talks about our organization without considering the interests of specific stakeholders, thus making it hard to identify possibilities for engagement that might arise by showing a specific stakeholder, with particular interests, institutional features that can help us achieve our objective together.

The information usually laid out by institutions basically takes into account traditional sources of information and operates on the basis of consolidated and discrete data.¹ But how do we gather the information that will be relevant to each counterpart? How do we identify which institutional information may be of interest to each key stakeholder?

Big Data

The answer to the previous questions may come from Big Data. As a result of developments in information technology, particularly its massive current digital infrastructure, we are now able to produce volumes of information at levels until recently unimaginable. Olivier Toubia (2016) of the Columbia Business School at Columbia University estimates that 2.5 million terabytes of new information are generated every day. That is correct, every day.

Big Data is the technology for digitally processing extremely large and unstructured data sets. The amount of information is of such scale that it requires the use of specially designed computer tools and equipment

1 Discrete data are numerical data with gaps in the sequence between numbers. For example, the number of tennis balls. There can only be a whole number of tennis balls (0.3 ball would be impossible). Exam grades and shoe sizes are other examples. Continuous data are those in which any value is possible. There are no gaps between them. The size of the tennis ball can be anything: 10.53 mm, 10.54 mm or 10.536 mm. The size of a foot is another example, unlike the size of the shoe, which is a discrete data.

to handle large volumes of data, at a high speed, so that every piece of information can be found, analyzed and used in a timely manner.

The purpose of analyzing large quantities of data is to look for correlations, which in smaller volumes would be hard to do.

With regard to information technology (IT), Big Data refers to the high-speed processing of huge volumes of data in an immense variety of content and formats, with demonstrated veracity, for the purpose of finding value for a specific demand. The five “Vs” (velocity, volume, value, variety, and veracity) define the innovative characteristics of that technology.

For government relations, that technology is important for discovering the points at which the interests of our counterparts and the interests of our institution intersect.

We can discover what is truly meaningful for government authorities, partners in other institutions and other stakeholders from the information they generate and make available in unstructured form. Therefore, besides structured data, we need to use modern technologies such as Big Data to complement the information we include in our organization’s introduction.

But where does this previously unavailable data come from? It comes from companies, public institutions, individuals and other actors increasingly using the internet.

The exponential growth of available information on networks is due to a variety of causes such as the popularization of social networks, smartphones linked to GPS, and the growing importance of the internet of things (IoT) in which built-in devices and furniture will be part of the many different objects used on a daily basis. It is estimated that by 2020, more than one trillion objects will be connected to the worldwide network of computers, providing updated information in real-time. In addition, millions of emails are sent every hour, millions of WhatsApp

and SMS messages are generated every minute, millions of bank transactions are conducted every second, and, finally, billions of cellular telephone lines are installed on equipment all over the world.

The main difference with Big Data is that the existence of large data warehouses, normally installed in the data processing centers of large institutions, are no longer the main focus. Data warehouses store and handle a subject-oriented, integrated, time-variant and non-volatile collection of structured data. But Big Data handles massive volumes of volatile or non-volatile data that can only be processed with the enormous computational velocity available in modern computers. Big Data technology allows us to collect all possible data and search for correlations that can answer our questions.

The stakeholders on the government relations team are on social networks and have a presence on the worldwide computer network. Thus, with aggregated data about the institution as well as data from these new and often overlooked sources of information, we can select the best strategic plans for reaching the proposed goals. Only in this way is it possible to introduce the institution by emphasizing where the interests share common ground.

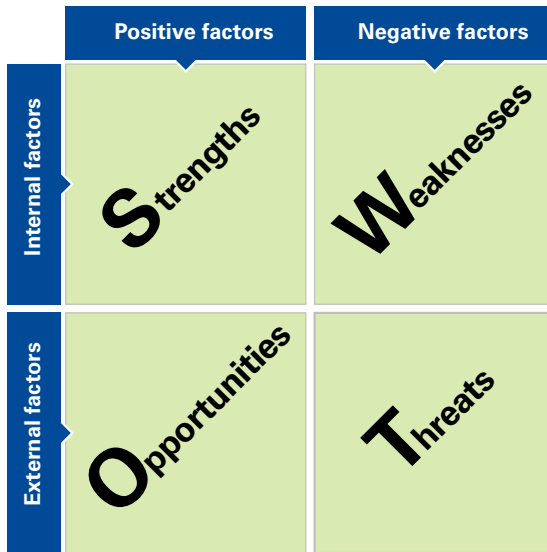
Furthermore, it is entirely viable in this way to identify possible new relationships—interesting partnerships and alliances with the potential to make a difference.

Likewise, the use of technology to handle large volumes of information allows us to determine the short and medium-term objectives of government bodies.

Some of those plans are attracting media interest, either due to the importance attributed them by the government itself or by their popular appeal. In those cases, it is easy to find common ground between the institution and the government. However, most governmental plans do not have that visibility. That is why we can use the data now available to help us introduce the institution and the points where all interests align.

Figure 2

SWOT analysis



Now we know which aspects of our institution should be spotlighted for our counterparts and partners. Everyone now knows “who we are.” The next challenge is to focus on where we want to go, or what we want out of these engagements and partnerships.

Focus on the objective: which regulatory framework do we want?

Although it may seem trivial to focus on the institution’s need to be clear in its objectives when seeking an understanding with a government body, the process involved in achieving that clarity is more complex than it first appears, and it is often ignored.

Time and again, due to reasons within an institution and/or imposed upon it by society, the list of objectives becomes muddled, requiring

additional thought and decisions among alternatives.

For that purpose, let's assume that whenever an institution and government authorities engage, the objective is to discuss the public policy affecting the legal or regulatory framework under which the institution operates.

There are two general scenarios for why an institution seeks engagement with government authorities. The first is when it perceives that government bodies are planning or being pressured to change a public policy that benefits the institution. In that situation, the institution should take a reactive position. The second scenario is when the institution itself understands that its level of competitiveness within the current framework is limited, and it seeks to alter that framework. In that scenario, the institution should take the initiative to propose the desired change.

At what point does the institution decide the time has come to engage with government agencies? To begin with, we recommend an assessment of the institution's internal characteristics and its external environment.

SWOT analysis

Organizations regularly use methods to study their internal environment, with its strengths and opportunities for improvement, as well as identify the opportunities and threats that arise in the external environment surrounding it.

One of the most commonly used (though not the only) method is SWOT analysis. O website *Significados* provides a good explanation of the method: "SWOT is the abbreviation for *Strengths, Weaknesses, Opportunities and Threats*, which comprise a popular analytical tool used in the business world."²

2 See "Significado de SWOT [Meaning of SWOT]. "Available at: <<http://www.significados.com.br/swot>>. Accessed on: 31 Aug. 2017.

In business administration, SWOT analysis is an important tool for strategic planning and consists of collecting data that characterize an organization's internal environment (strengths and weaknesses) and external environment (opportunities and threats). Given its simplicity, it can be used for any type of scenario analysis, from starting a blog to managing a multinational corporation.

The technique of SWOT analysis was developed by Albert Humphrey while conducting a research project at Stanford University in the 1960s and 1970s, using data from *Fortune 500*, a magazine that ranks the largest companies in the U.S.

The information listed below should be grouped into the SWOT categories to conduct a scenario analysis of the company:

Strengths — the company's internal advantages with regard to its competitors. For example: the quality of the product sold, good customer service, financial soundness, good capacity for dialogue with a variety of stakeholders, excellent taxpayer status, large employer, knowledge of structured and unstructured data from the surrounding environment, etc.;

Weaknesses — the company's internal disadvantages with regard to its competitors. These include: high production costs, poor image, inadequate facilities, weak brand, does not belong to any industry group, does not have a government relations team, etc.;

Opportunities — positive external aspects that can strengthen the company's competitive advantage. Examples include: changing customer tastes, competitor bankruptcy, government's unemployment concerns, etc.;

Threats — negative external aspects that can place a company's competitive advantage at risk. For example: new competitors, loss of key workers, government faces a fiscal deficit; new government team is ideologically positioned against well-performing companies, etc.

Cross SWOT analysis

Cross SWOT analysis consists of cross-referencing the information found in the four quadrants in order to obtain a framework that allows the company/institution to outline important strategies for the future.

Cross SWOT analysis first requires a clear assessment of the environment, in other words, extensive research into the strengths and weaknesses, and knowing how to identify the opportunities and threats. For each Cross SWOT, it is important to know how to establish objectives/strategies:

Strengths × opportunities = offensive strategy/development of competitive advantages.

Strengths × threats = confrontational strategy to modify the environment to benefit the company.

Weaknesses × opportunities = strategy for capacity-building so as to take better advantage of the opportunities.

Weaknesses × threats = defensive strategy with potentially extensive changes to protect the company.

Once the institution has a solid up-to-date SWOT analysis, it can begin the process of identifying its priorities for action.

Map of regulatory topics

The first step is to analyze the key regulatory issues affecting the organization.

For this purpose, we suggest mapping the key regulatory issues that are affecting the organization. The map should use large numbers to identify how much each change in one of the issues could influence the organization's performance.

A sample regulatory issues map developed for a fictitious institution is presented below:

Area	Issue	Value at stake
Finances	Taxes	High (>100)
	Tax incentives	Medium (>50<100)
	Labor costs	Low (< 50)
Commer- cial	Advertising and promotion	High (>100)
	Logistics	Medium (>50<100)
Industrial	Operating licenses	Low (<50)
	Importation of raw materials	Medium (>50<100)
Innovation	New products	High (>100)
	Registrations and approvals	Low (<50)

The degree of detail as well as the area pertaining to the regulatory issue will depend on the characteristics of each institution and the ability of the government relations team to address each public policy that make up the regulatory framework under which it operates.

Identifying the value at stake is a complex assessment, and that value does not need to be specified in detail. Simply establish three or four categories and classify each issue within them. That process may be facilitated by interviews with key organization leaders who could quantify the impact of each of the regulatory issues.

The regulatory map is an initial step in prioritizing the issues to be addressed with government bodies. However, selection of the issues will emerge from the organization’s long-term analysis. An issue that may be

very important in the short-term could subsequently be less important soon thereafter in the event of changes to some of the external characteristics. The map is just the beginning of the process of selecting the regulatory framework the institution plans to develop in partnership with government authorities.

Quite often, however, the initiative comes from the government bodies, which find the organizations unprepared. To avoid that unfortunate surprise, it helps to conduct a study on the likelihood of each issue being altered as a result of a government initiative.

Likelihood of changing a public policy or issue

We suggest that the choice of policy whose change could benefit the institution be done based on an analysis of four categories. The use of categories such as cold, lukewarm, heating up and hot, for example, can help separate the options. In the end, not every topic has the same likelihood of occurrence, nor the same degree of difficulty. Our idea is that the following characteristics be considered for each category.

Highly unlikely or cold — the issue has little and negligible interest among stakeholders, receives little mention in traditional and social media, and no large NGO is discussing and embracing the issue.

Unlikely or lukewarm — the issue is already regulated in other countries as the institution fears it to be, but it is still not being discussed in Brazil. Internal assessment indicates the potential for it to become an important issue and there is already some media exposure.

Likely or heating up — a greater number of stakeholders is advocating for this regulation, it is receiving considerable coverage in traditional and social media, there are clear indications that society is concerned, and the issue may become high-risk in the future.

Very likely or hot — there is already well-established regulation in other countries, there is intense debate and public pressure on the government

for change regarding the issue, key stakeholders are advocating for change and the risk is imminent.

The map of regulatory issues now has one additional column that refers to the likelihood of occurrence.

Area	Issue	Value at stake	Likelihood of occurrence
Finances	Taxes	High (>100)	Hot
Finances	Tax incentives	Medium (>50<100)	Lukewarm
Finances	Labor costs	Low (<50)	Heating up
Commercial	Advertising and promotion	High (>100)	Cold
Commercial	Logistics	Medium (>50<100)	Heating up
Industrial	Operating licenses	Low (<50)	Lukewarm
Industrial	Importation of raw materials	Medium (>50< 100)	Cold
Innovation	New products	High (>100)	Hot
Innovation	Registrations and approvals	Low (<50)	Lukewarm

The priorities of the government relations team can thus be defined by using the map of issues that the institution believes warrant consideration. The value at stake and level of urgency can serve as excellent indicators.

However, we still need to determine where the institution wants to go and identify not only what the institution believes is essential, but tease out what is good and what the institution could live without.

Current situation, desired situation and limits

To understand the range of alternatives when talking about public policy, we can do an exercise that uses four descriptions of a regulatory framework related to the issues we are addressing. In this exercise, we will provide a general description of the limits a public policy may have for a specific issue, and its consequences for the institution.

a) Describe the worst possible regulatory framework

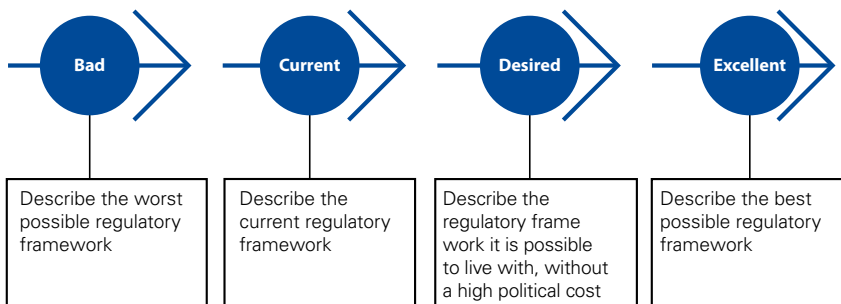
Identify the worst possible public policy a government agency could set for a particular issue. For example: a 100% tax increase, a ban on product and brand advertising on a particular channel or broadcast schedule, a ban on a product launches, etc.

b) Describe the current regulatory framework

Describe current public policy as it pertains to this issue. For example: what is the current tax rate on a particular product, what regulatory features govern product and brand advertising, by channel and broadcast schedule, what process is in place for licensing and authorizing product launches, etc.

Figure 3

Current situation, desired situation and limits



c) Describe the ideal regulatory framework

Describe a public policy on this issue that may be considered ideal. For example: what would be the tax rate closest to zero for a particular product, how would complete deregulation of product and brand advertising by channel and broadcast schedule look, what would be the simplest process for communicating product launches to authorities, etc.

However, the ideal framework is not required for the institution to operate more competitively, and the battle to obtain that particular public policy, besides being very tough, could expose the institution to criticism and confrontation, which on final analysis might show that it is inadvisable to pursue such an objective.

What then is the regulatory framework you could possibly live with without exaggerated cost in terms of reputation? It would be the framework that makes it easier to find alliances and partners, and offers better chances for persuading government leaders.

d) Describe the target regulatory framework

Describe a public policy pertaining to this issue that overcomes impediments identified in the current policy. For example: a tax rate below the current one that would lower consumer prices, regulations that allow advertising product and brand benefits, by channel and broadcast schedule, while protecting innocent social segments from inappropriate content, a more agile and objective licensing and authorization procedure for product launches, etc.

Communicate with intensity and focus

Influencing the formulation of public policy is a complex process that involves many actors and a precise strategy.

At several points in that process, we can lose sight of the public interest,

for example, State participation in regulating a particular aspect of life in society, or the provision of a particular service.

That is why we need to think about the importance to society of communicating why the institution would like to change a public policy in the public interest. Nothing should be done behind closed doors. This is because sooner or later, society will learn about the initiative and its consequences. It is much better if the institution plays an active role in that process.

We can simplify the duties of the various communication professionals in the following way: journalists work with the news, advertisers or sales representatives work on advertising, and public relations professionals work on the relationship between their organization and society. However, convergence and inter-disciplinarity have gradually expanded in that field.

In the strategy for engaging with the government, communication plays what would be the role of the Air Force in military strategy.

Since, according to our definition, we are seeking to influence a policy that interests society as a whole, we need to know and influence public opinion (reconnaissance). Therefore, we should develop the capacity to participate in and win debates over public opinion (aerial superiority), but not in just any old way. We need to be able to find the exact audience and stakeholders to target, and determine where our message must go (battle focus). Finally, we need to present our arguments in a way that makes it clear to the public that our interest is worthy of merit and allows value to be created and shared with society as a whole (strategic combat).

We, just as combat aircraft, have to hit the target and nothing else. To do that, we have to plan our communication activities with the appropriate focus and intensity so that we do not misaim or come on too strong. We need to remember that we are never alone in disputing public opinion. There is always the “other side” that is also fighting to get public opinion to be aware of and agree with its arguments.

Since we are facing a problem that involves generating resources in pursuit of a pre-determined outcome, we have to remember the words of Professor William Edwards Deming: “You can’t manage what you can’t measure, you can’t measure what you can’t define, you can’t define what you do not understand, and there is no success that cannot be managed.”

Thus, the first great communication challenge is determining how to measure your impact in terms of intensity and target public.

The first step is to select a good performance indicator (known as a key performance indicator, or KPI) that can be calculated periodically.

The choice of indicator can be facilitated by selecting one of the many available on the market, sold by public relations companies that provide corporate communication consulting services.

What is important is using the selected indicator to track what is being publicized about a certain issue, person or organization, and thus calculate the value of a given coverage over time, taking into account the value of each news item.

But how do we calculate these indicators and thus, the value of a news item? It is important to assess a few criteria with regard to each news item pertaining to a particular issue. Created initially for print media, those criteria have been adapted over time to other media such as radio and television.

- **Vehicle:** means of communication through which the information is published.
- **Content:** very positive, positive, slightly positive, neutral, slightly negative, negative and very negative.
- **Subhead:** presence on the cover, section cover, etc.
- **Prominence:** location within the body of the vehicle and position on the page indicate the level of prominence: high, medium and low.

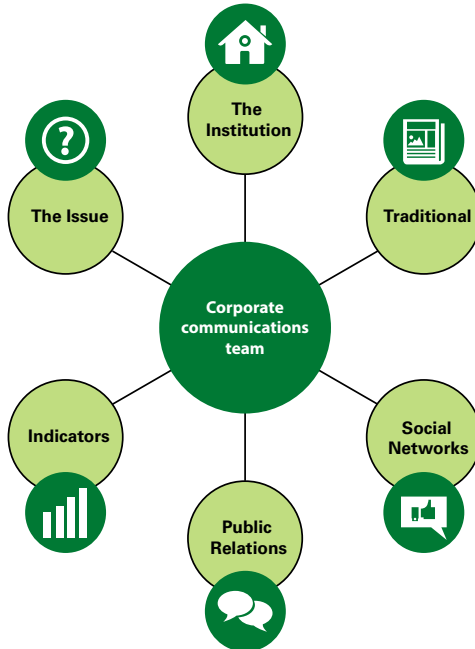
- **Author:** journalist who writes the story.
- **Illustration:** presence of images (photos, illustrations, etc.).

Based on that analysis, it is possible to quantify each article published, attributing it a value determined by its journalistic features. That value of published material is a unique number that brings together the aspects that are important for ascertaining the qualitative impact that a particular piece of news has on the institution. The value of the information comes from converting the quality of the published material, in relation to the institution's Interests, into a quantifiable amount that enables us to manage communications.

Value of the information = f (vehicle, content, subhead, prominence, author, illustration)

Figure 4

Communications management



For each variable, we need to establish objective criteria that will be valid for each institution. Depending on the focus of an organization's operations, for example, the ranking of communication media and journalist opinion leaders could change completely.

In addition, the daily reading of each published piece important to the organization will allow:

- Classifying the content of each story, whether positive (+) or negative (–)
- Identifying whether there is a subhead or presence on the cover, giving it a grade
- Identifying whether the article has prominence and giving it a grade
- Identifying the page on which it was printed and giving it a distinctive grade
- Seeing whether the article is illustrated and also giving a grade for this.

The recurring question among government relations teams is about the possibility of managing communication, attributing to it goals and objectives, and monitoring its outcome. Once there is an indicator that allows quantification of a published article, it is possible to manage communication and seek strategically determined objectives.

With a communication impact indicator established on the basis of the value of the article, it is possible to quantify the needs, and consequently, the goals that the government relations team needs to “contract” with the social communication unit.

In turn, with a reliable indicator, the communications team will have a verification mechanism and the statistics it needs, based on a historical series, to identify opportunities and propose a plan.

It is the quantification process using that indicator that will allow the

appropriate choice of the vehicle, formulation of the right message and the decision concerning the volume and intensity of transmission. It is the decision to convert the piece into something mathematical that allows us to objectively view what occurred in the past and plan for what we would like to occur in the future.

An indicator with those characteristics will allow us to distinguish negative pieces from positive pieces, and even devise a plan to make up for the negative pieces. That can be done by increasing the amount of positive material, explaining the positions assumed and the actions taken with regard to the institution's objectives, likewise disseminated to the public.

It is always good to remember that we are still talking about corporate communication or print outlets whose publication depends on convincing a journalist in search of newsworthy facts to publish, and not just material that concerns us. No relationship with the sales area of those outlets is considered or should be taken into consideration.

Relevant media, those that most affect the perception of their readers, listeners, subscribers, television viewers and participants, do not usually mix the interests of their commercial areas with news reporting. Doing so causes them to resemble unethical companies, and those two groups are not the subject of our consideration.

For the relevant group of media, it is possible to outline a suitable strategy for each of the major channels, emphasizing that for the most part, we should use all of them at the same time.

In a world with an excess of information and little trustworthiness, it is from the confluence of the channels that public opinion is created. When information is simultaneously present in traditional media, social media and in meetings between representatives of private institutions and government officials, it is sufficiently widespread.

Traditional media – print, radio and TV

The process of convincing the person responsible for publishing an article is a topic for experienced journalists who work for the institution. Those professionals are able to identify which article on the subject they wish to communicate.

At the same time, it is important to have an ongoing relationship with those responsible for the editorial desks. It is a good idea to develop a chart of media stakeholders, monitoring how many times each is contacted and which subjects are covered.

The main communication stakeholders are as follows:

- owners
- CEOs
- publishers
- news directors
- executive editors
- editors
- industry section editors
- environmental section editors
- society section editors
- other section editors.

In the battle of corporate communications, there are two different approaches: proactive communication and reactive communication.

Proactive communication

This type of communication is used when the institution decides and plans to disseminate information in order to gain public support. The work process involved in proactive communication consists of the following:

- Define a goal, objective and a numeric value
- Obtain a historical survey of the past year
- Define performance indicators
- Define verification indicators
- Analyze the situation
- Devise an action plan involving:
 - preparation of the material to be communicated;
 - choice of the channel and appropriate vehicle and the editors there who may be interested in the communication;
 - selection and training of an appropriate spokesperson for the importance and relevance of the topic;
 - visits to journalists with the material and the spokesperson; and
 - measurement of results.

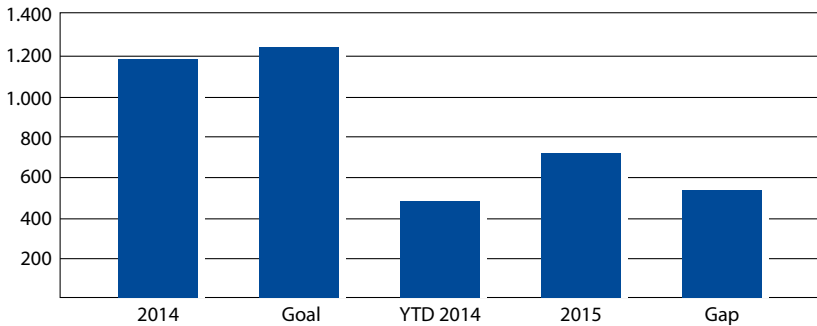
That process will allow monitoring through the use of graphs similar to those presented below. The graphs may be produced for each issue the organization deems relevant.

By using the selected indicator as a metric, in each graph you can see the goal for the current year, the results obtained in the previous year, what has been produced up to this point (YTD 2014), what was produced up to this same period one year ago, and finally, how much is left to reach the goal (gap).

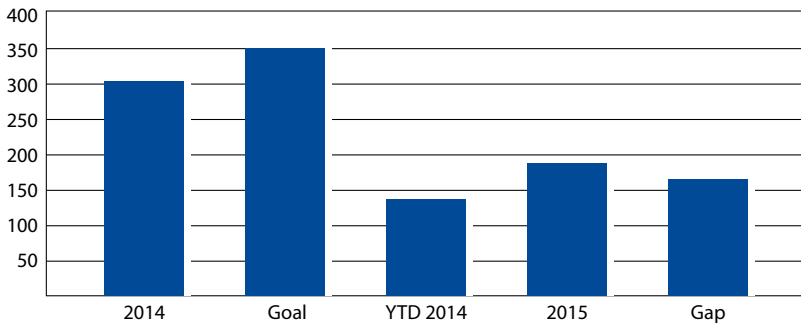
The process above assumes that the driving force for publication will come from the institution, but often that is not the case.

Figure 5

Results of selected indicators



Number of articles published

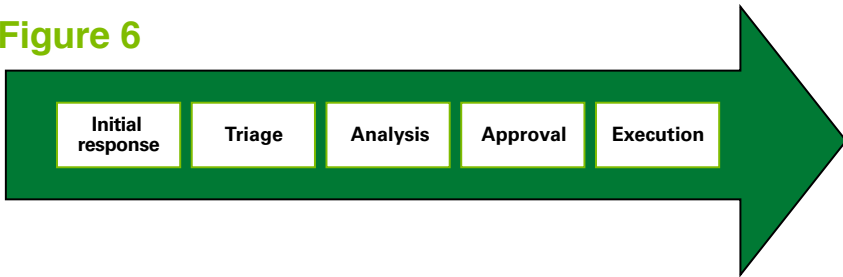


Reactive communications

On several occasions, an institution can be surprised by media interest in journalistic material that was not part of the organization's plan. In that form of communication, the response will be reactive and the process will be similar to that discussed above, but there are a few basic differences.

In reactive communication, there is little room for detailed planning because journalism deadlines are quite different from the deadlines in an organization. The procedure used by the communications team should promptly follow these five steps:

Figure 6



The initial response stage already requires the organization to pursue a focal point. All attention towards journalists should be centered on the focal point between the counterpart and the government relations team.

Triage refers to the coordination, through the organization’s internal sources, of answers to questions raised by journalists interested in disseminating the story. Based on that coordination, the corporate communications team writes a draft that expresses the organization’s point of view for analysis and approval.

By analyzing the news and discussing the subject with internal sources, ever mindful of the organization’s interests, it is possible to identify the qualitative threats and opportunities with regard to reputation. If the communication indicators are used systematically, it will also be possible to determine the quantitative damage or gain that imminent publication or broadcast will have on other media. Analysis will culminate in the organization drafting a definitive position with regard to the subject.

To obtain internal approval of the organization’s position, its legal department must weigh in to determine whether or not the information involved is sensitive to the organization’s other legal commitments.

Once its positioning has been approved, it is up to the communications

team to decide between trying to discourage journalists from following through with publication of the article, presenting a spokesperson who will speak on behalf of the institution, or simply issuing an official communication outlining the organization's position.

Social networks

Corporate communication is undergoing enormous change as the popularity of the internet-based digital platform continues to grow. This also affects companies on a daily basis. For those who would wish to learn more about the subject, we recommend reading the interview by Paulo Loeb (Brazil-Israel Chamber of Commerce and Industry, 2016), co-founder and director of Negócios da F. biz, given to the Brazil-Israel Chamber of Commerce. Loeb says, "There are new ways of doing what we have always done: talking, recommending, criticizing and sharing experiences. Social media allows communication to be personalized in a way we've never seen before and we are only just beginning. YouTubers are great content influencers, and brands take advantage of this to communicate with their customers. Like everything fashionable, there are a lot of people in this field now, but only the best will survive."

On personalized communication, which we call "hitting the target and nothing else," Loeb says, "Technology allows us to do that with lots of scale and little cost. We're able to know who visited certain sites and sell precisely the product and/or service that was researched, attributing a value to different media outlets according to the conversion into sales. Never before has this been possible."

For the purpose of government relations, it is good to keep in mind that government authorities, leaders and political party supporters, civil society activists, leaders of business associations, academics, students, the military, journalists and other people are very connected on the network.

A world of new possibilities is emerging here. After all, the connection takes place, in most cases, by subscribing to one of the many social networks in existence today. Before we go further, it is helpful to provide a

definition of social network:

Social network is the relationship of people with a group of friends, acquaintances or stakeholders.

The key opportunity offered by social networks is the dissemination of particular information or analysis without having to go through a gatekeeper or a professional that acts as a type of doorman for information at the entrance to a newspaper, magazine, radio or television station, deciding whether or not the subject or focus is of interest to the particular vehicle. In those cases, the government relations communications strategy is free of that mediation and can focus on social media, defined as:

Social media: Communication channels created on digital platforms that enable users to interact with social networks and share texts, photos, audio recordings and videos.

In a continuous process of growth, more than one-third of the world's population is already connected to the worldwide computer network. In Brazil, for example, 60% of the population is connected to the internet and more than 80% of all people connected use data-enabled phones—smartphones—at least once a day.

New technology trends are going to foster the connection of new things to the internet. It is estimated that by 2020, more than one trillion things will be connected, exchanging information with the internet. That trend will cause people to be increasingly connected, spending more of their time interacting through those platforms.

But it is not only individuals who are connected to the internet. More and more, governmental and non-governmental organizations are part of that statistic. The concept of social media comes from the decentralized production of content, in other words, without the control of traditional media, which means having one's own vehicle of communication. That is good news for micro, small, medium and large companies as well as self-employed professionals because of both the reduction in costs and

the ease of access to one's audience. But that facility does not come without enormous challenges.

As we have seen, when an organization uses a social network to communicate and spread ideas, products or services, it is using a social media tool. At the same time, when published content does not depend on acceptance by a gatekeeper, it facilitates the communication but grants less significance, or weight to it.

On the other hand, the internet has become the first place to go to gather information on what interests one's stakeholders and to enhance service, because it is possible to directly interact with those stakeholders.

The big question is knowing how to use this communication channel to make progress in seeking alliances and partners in order to build a new regulatory framework.

Social networks are a means for leveraging engagement with potential partners and allies because they are channels of communication and not simply information channels. Information is a one-way street while communication assumes interaction, talking, being heard, listening and considering another's viewpoint. Just having a presence on social networks is not enough, though. To build partnerships and shape public opinion to support your interests, the organization also has to speak and listen.

And before it interacts, it needs to discover who, essentially, is its audience. Below, we have listed some of the actors who make up organizations' audiences. The exhaustive list matches the organization's stakeholders who are the target public for all communication that is of interest to:

- customers
- consumers
- employees

- suppliers
- governing authorities
- opinion makers
- lawmakers
- unions
- competitors

After defining the audience, the organization should determine the content to guide that dialogue as well as the way it should be handled. Just like with traditional media, the suggestion is that the organization opt to seek an approximation with issues of interest to its stakeholders that has a connection with how the organization describes itself.

It is always good to emphasize that the way an organization describes itself should contain a narrative regarding its four pillars (examined in the preceding chapter), its economic interests, and the actions it usually engages in that generate value to society and the environment; it should also highlight any recognition received from third parties for those actions.

Whenever the audience understands that your corporate and environmental activities make sense with regard to pursuing your financial results—those that generate shareholder value—your credibility and reputation will grow.

With respect to the narrative an organization should have in the digital world, it is important to understand the thinking of Angela Ahrendts, senior vice president of Apple in charge of the company's retail operation that includes the famous Apple Stores. She previously served as CEO of Burberry where she led an effort by the luxury goods company to go on the web and begin to "speak digital." "If we speak English and our customers and consumers speak digital, we're not going to understand each other," Ahrendts says.

She suggests five important points to guide the narrative:

1. **Know thyself** — what is your focus, your passion, your mission.
2. **Dream** — stories are where dreams become reality. Be courageous, bold, take risks.
3. **Be authentic** — share a consistent and coherent vision in line with your values.
4. **Trust** — trust in your instincts and in others makes us believe.
5. **Engage, entertain and delight** — emotion is at the heart of each story, at any age, in any context.

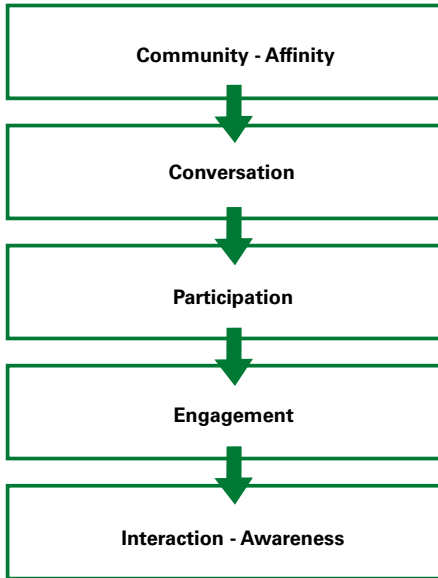
The story of how the Burberry brand entered social networks presents a clear example of the concept of engagement, a determining factor when referring to the digital platform. Engagement is defined as the way a brand and a consumer connect and interact within their relevant networks (Solis, 2011).

Through his studies and writings, Solis has influenced decision-making processes regarding the effects of emerging technology on business and society. We can adapt his definition of engagement by saying that it is the way a brand, an idea, a leader, a consumer or a citizen connects and interacts within their relevant networks. Being in a community is different from conversing, participating, engaging and finally interacting.

Those actions can be categorized.

On his LinkedIn profile, Ricardo Cappra defines himself as a data scientist. He is devoted to finding ways to systematize, measure and analyze. With a notable capacity to explain complex questions simply and intuitively, he has helped many companies, organizations, brands and people

Figure 7

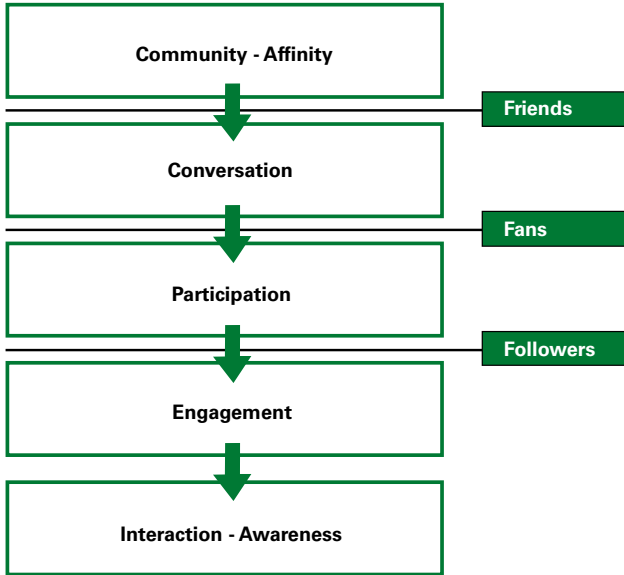


create strategies through analyses and data intelligence.³ One of those who used his expertise was President Barack Obama in his campaigns to take and later keep the White House.

Cappra (n.d.) believes it is possible to participate in a particular community without necessarily being engaged in its cause. For institutions, this means that not all of their counterparts can be considered allies. That is why it is important to consider various categories of engagement. We suggest attributing clear meaning to words currently in use, such as “friends,” “fans,” and “followers.” The categories and way of engaging with them also allow us to establish a process to improve the institution’s engagement with its stakeholders.

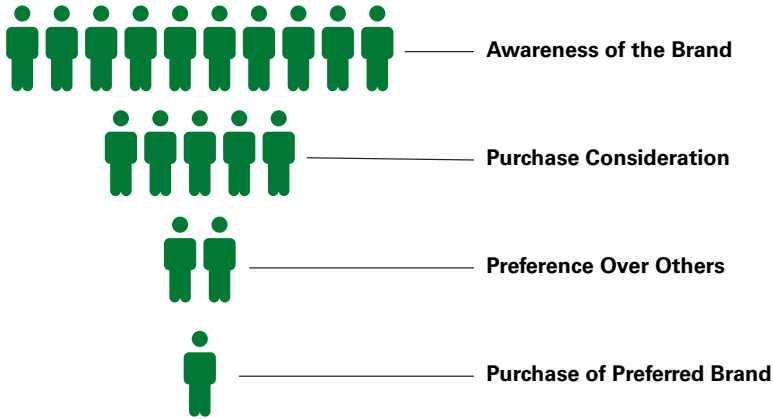
³ It is the capacity to find meaning and relevance for a complex set of data that arises from broad systems and intertwines to generate new information.

Figure 8



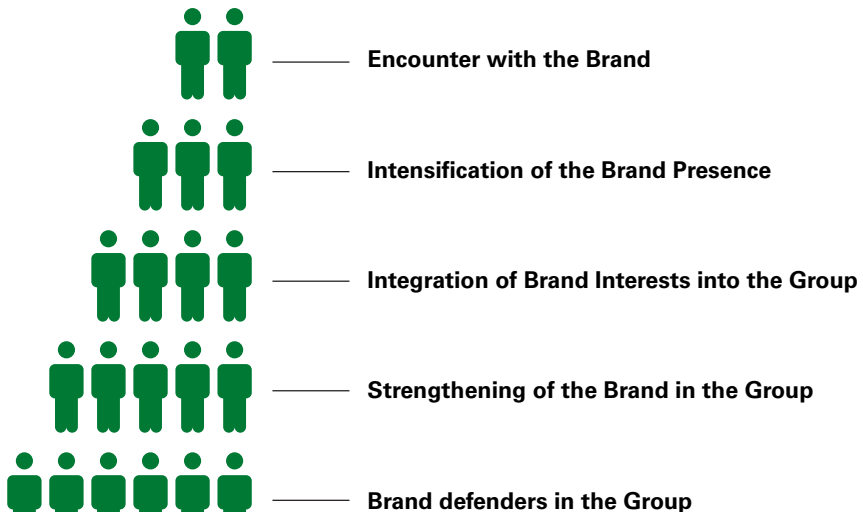
In 2007, the website The C World presented its vision regarding the differences between the traditional marketing funnel and the process of achieving engagement. Creation of brand equity is traditionally presented as a funnel in which value is obtained from deepening the knowledge and options that make up the purchase. It starts by becoming aware that the product exists, then thinking about purchasing it, then selecting the preferred brand, and finally, making the purchase decision.

Figure 9



On social networks, the process is different. Everything begins when the brand is found through a network click. From there, contact intensifies, you enter into a relationship, strengthen your presence and finally find people who support you and fight for your interests and positions.

Figure 10



Charlene Li is a graduate of Harvard Business School and co-founder and current CEO of Altimeter Group. She is one of the foremost experts in social media and technology and is frequently quoted on the topic by leading U.S. media channels. Together with Solis, her colleague at Altimeter, Li proposes a 7-point strategy to achieve success in social network engagement:

- 1.** Know the overall business goals — you will not be able to align your social media strategy with your business objectives if you do not know what your business objectives are.
- 2.** Establish a long-term vision — if you are not focused on a long-term goal, you are likely to veer off the path. If you want your team to be completely aligned with your social strategy (and you need the support of the entire team) you will need to communicate your vision with clarity and passion.
- 3.** Ensure necessary executive support — in the early days of the strategy, you may be able to fly under the radar, but at some point, if you really want to begin to have an impact on the business, you will need the support of the highest executives.
- 4.** Define the strategy and action plan — even if you already know your business objectives and have a clear vision, you will need to know how you are going to get there. So plan out your route, what streets you will take and travel on and more importantly, what roads you will avoid.
- 5.** Establish governance and general guidelines — who is responsible for executing the social media strategy? What is your dialogue process in which you listen and respond to your customers? If you clearly define this process and then not follow it, you will have huge problems that will limit your ability to act in social networks.

6. Secure the team, third party support and financial resources — in the early stages of the institution's presence on social media, you might outsource your campaign to an agency, and that is fine. But you should also monitor all the details so that in the future, you have an internal team prepared to do all the work.
7. Invest in technology platforms that evolve — resist the temptation to always seek out the most recent technology, before even having a long-term strategic plan. Hold off on making significant technology investments until you have a sound vision and strategic plan.

Generally speaking, companies start and maintain their lives in the digital world by using existing social networks. For the purpose of our discussion of government relations, it helps to break down the social networks into various categories:

- **Blogs** — internet pages geared towards disseminating thoughts. Some organizations use the tool to engage with their stakeholders.
- **Social networks** — networking sites (Facebook, Google+, Instagram etc.) are tools for communication and “viralization.” They leverage your strength when used with a blog.
- **Social content networks** — similar to social networks but specialized in the creation and compartmentalization of content, such as YouTube, SlideShare Flickr etc.
- **Microblogs** — social media that share content quickly and concisely (Twitter, Tumblr, Pownce).
- **Online games** — a recent form of social media that has begun to increase its importance in the corporate world due to the forums and communities found there. Two good examples of online games are *League of Legends* and *Overwatch*. The two have professional sports leagues and the first has an extensive presence in Brazil with its Brazilian League of Legends Championship (CBLoL) broadcast by

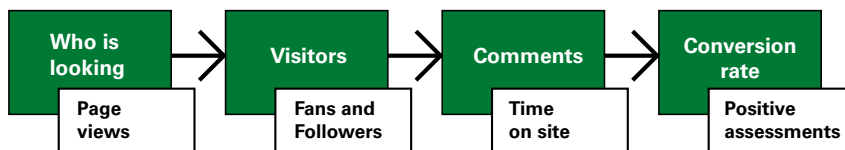
ESPN, even gaining the attention of the Flamengo soccer club.⁴

Considering the details of each network, the characteristics and interests of the organization and especially who its stakeholders are, the choices of social networks are not very complicated. The major challenge, however, is measuring the impact of this activity and, in doing so, finding the means to achieve objectives. Our interest is described in the definition suggested in the article entitled “Mensuração do resultado” [Measuring outcome], published on the blog of the same name (mensuracaodere-sultados.blogspot.com.br) on November 7, 2007, which describes it as: “Measuring means attributing numbers to properties of a determinate object or duly specified event.”

What we want to know are the changes in the characteristics of our counterparts. For the organization, everything can be summed up into two questions: How many of our counterparts are converting from visitors to followers, and finally to defenders of our interests?

Figure 11

Relevant metrics



In the digital world, this refers to measuring passion, engagement, involvement, influence and relevance, all from interactions. By definition it is something quite complex. The advantage is that tools are already available that can monitor, assess and plan brand strategy in digital environments.

4 Tibúrcio (2017).

Statistical assessment tools convert data into information, in other words, market intelligence. The government relations team with its corporate communications associates should be prepared to interpret the information and transform it into digital strategies to build the communication required for the objective of pursuing a new regulatory framework.

Some key tools to measure digital presence including the following:

- **Google Analytics** (<http://www.google.com/analytics>) — the main statistical assessment tool on the market; when you talk about internet-related numbers, you are automatically referring to Google Analytics. Only the arrival of Facebook, with its own analytical tools, is chipping away at this somewhat. It is a very comprehensive tool that allows you to plan according to the results of link performance.
- **Facebook Business** (<http://www.facebook.com/business>) — analyzes the performance of advertising campaigns on Facebook, including instructions for the best way to develop paid campaigns. It offers quite complete reports that should be used frequently because they allow real-time analysis of advertising campaign performance.
- **Facebook Insights** (<http://www.facebook.com/insights>) — analyzes the performance of Facebook pages, with assessment of brand performance and all interactions related to the brand. It is a great tool for directing content strategy to Facebook.
- **Topsy** (<http://www.topsy.com>) — tool that localizes all brand-related content according to your interests. Ideally, it should be used in social network diagnostics to identify the one on which your brand performs best; it is also suitable for monitoring the progress on promotions carried out.
- **Bit.ly** (<http://www.bitly.com>) — this is a URL shortening service that generates statistical data analytics on outcome and performance of each shortened link. It is a simple tool, but allows analyses of specific publications.

- **Hootsuite** (<http://www.hootsuite.com>) — one of the most frequently used tools to manage content on social networks, allowing management of several profiles on different networks. It is simple and intuitive, and also offers some very interesting statistical analyses. One of its most interesting resources is scheduled postings that allows planning of an entire brand content strategy.
- **Klout** (<http://www.klout.com>) — tool that allows you to analyze the level of brand relevance on social networks by profile, including enabling comparison with other profiles. It can be used to monitor the level of engagement of people with a specific profile.
- **Simply Measured** (<http://www.simplymeasured.com>) — a tool that allows data collection and processing from various networks: Twitter, Facebook, Instagram, Pinterest. It measures engagement in brand profiles and also collects brand references and topics of interest in public posts. It generates Excel spreadsheets that facilitate data analysis.
- **Scup** (<http://www.scup.com>) — in addition to allowing data collection from several networks, both from official profiles and from mentions in public posts, it also has extensions for use in digital customer service. The tool organizes files to optimize service via social networks and generates reports for monitoring the performance of a particular area.
- **Sprinklr** (<http://www.sprinklr.com>) — it is one of the most complete tools on the market and enables a range of tasks, from publication and monitoring of advertising campaigns to data collection on multiple networks, from official profiles to public posts. In addition, it can be integrated into digital customer service with sales departments and sectoral analysis. Data can be presented on specific dashboards for every area of the company.
- **Twitter Analytics** (<http://www.analytics.twitter.com>) — gathers together all information on performance from corporate profiles,

including advertising campaign metrics. Access to the data needs to be released by the account administrator.

- **Goo.gl** (<http://www.goo.gl>) — another shortener tool, but this one belongs to Google, and has the same features and advantages as the previous one, along with one additional resource, which is generation of a QR code of the link, besides connecting the shortened links to your Google account.

Public relations: the all-important direct communication

Public relations are designed to establish and maintain balance and proper understanding between two parties and at times, expand or stabilize the image and/or identity of the socially active institution in the eyes of the public. The Brazilian Public Relations Association (ABRP) proposed the following definition of the profession in 1955:

“Public relations are the deliberate, planned and ongoing effort to establish and maintain mutual understanding between public or private institutions and the groups of people who are directly or indirectly related to them.”

In our case, it is the most important part of the engagement between our institution and its counterparts, whether they be from the public sector, partners or future allies. Communication with stakeholders will always reach the point of a personal encounter requiring the use of public relations techniques.

We have no intention of discussing this engagement in an academic manner here. Instead, we would like to take a practical approach, calling attention to the aspects that end up deciding the course of negotiations.

All communication begins with our ability to listen, recognize and consider the reasons and viewpoints of those we are speaking to. There is

no room for indifference or arrogance. Our counterparts are individuals who support other interests, and our objective is to find common ground on which we can collaborate with each other. That should be a clear and heartfelt objective.

It is very important to separate the people from their problems and viewpoints. Discuss the ideas and the interests at stake but never attack people or their points of view. Focus on their interests and not on your principles, and seek to create options in which both sides win. Insist on using objective criteria based on facts and data. And prepare well for this. For any meeting, arm yourself with facts, data and lots of material to confirm the credibility of your sources.

BATNA

Personal relationships can accelerate certain negotiations, especially if the government relations strategy is already at an advanced stage. In that case, it is very important that the counterpart be prepared to negotiate the change in the regulatory framework you are seeking.

It is therefore critical that you know the limits of authority the person has. The technique is to create the best alternative in case it is impossible to achieve the desired scenario. Here is where BATNA comes in, an abbreviation for “*best alternative to a negotiated agreement*.”

The concept of BATNA was developed by negotiation researchers Roger Fisher and William Ury from the Harvard Program on Negotiation (PON), in their series of books that began with *Getting to Yes* (2011). The work follows some of the ideas proposed by Nobel prize winner John Forbes Nash decades before (Myerson, 1999).

What do you do if the other side has a stronger position? What if they have more resources, better networking and more time? Or simply, what if the interests cannot be reconciled under the proposed terms?

There is no method to guarantee success when this happens (and you can

be reasonably assured that no magic will happen.) But even in that case, a BATNA can protect the institution and prevent it from signing an agreement that it should have rejected. It also helps reach the best possible agreement with the resources, partnerships and alliances you have at the time.

How do you determine your BATNA? Courses on negotiation show that the activity is a cross between art and skill. Some empirically tested techniques lead to quite interesting results. Generally speaking, the suggestions for determining the best alternative to an agreement are as follows:

- Develop a list of actions your institution could conceivably take if no agreement is reached.
- Convert the best and most promising alternatives into tangible ideas and jot down a few details.
- Select the alternative that seems best and it will be your BATNA.
- Calculate the least amount of gain you would be ready to accept to make a deal.

BATNA should not be seen as a tool for bluffing on the part of the institution and therefore, some ideas can be laid down beforehand. One of the most commonly used tactics is not showing the other side your BATNA unless doing so brings clear benefits.

An important aspect to keep in mind when negotiations involve different cultures is to learn about and account for the differences, preventing prejudices from interfering in the negotiations. Always distinguish the people from the objective to be accomplished.

The only way to keep prejudices, emotional options and off-topic biases from disrupting pursuit of the expected outcome is through meticulous preparation in seeking to understand all aspects involved in the negotiation.

The discussion of negotiation processes for achieving results is quite germane, even in a world already geared towards achieving results and hitting targets. Joel Brockner, a business professor at Columbia Business

School and author of *The Process Matters*, one of the best business books of 2016, is quite incisive in showing that the right process can lead to the best results. That is precisely why managers have to do more than just meet goals: leaders need to focus more on how they do their jobs, in other words, on the process.

Public relations processes

There are four types of direct communication that occurs through public relations:

- Internal — conducted by organization leaders within the institution itself for the purpose of building ambassadors for the cause.
- Face-to-face — conducted by organization leaders directly with authorities and stakeholder leadership involved in the issue.
- Through influencers — when celebrities and opinion makers are invited to take part in the negotiation for the purpose of creating a socially positive climate so that the authorities or stakeholder leadership decide in favor of the objectives of the institution.
- Comprehensive — concomitant use of face-to-face communication and communication through influencers.

Internal communication

This type of communication is often relegated to the sidelines when it should be considered strategic because it is the simplest and lowest-cost way guaranteed to shape ambassadors who will go out to defend the interests of the institution.

It is essentially direct communication focused on clarity, highlighting the objective through the use of visual communication elements whenever possible and concluding with a call to action.

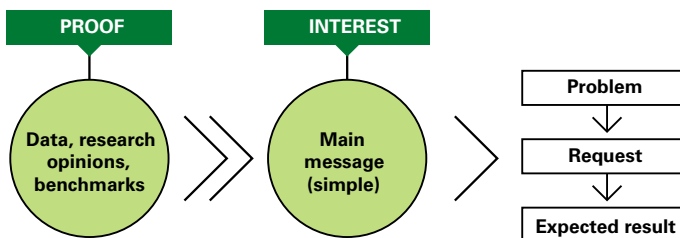
In general, internal communication is done through electronic correspondence (e-mail, WhatsApp, etc.). In an interesting presentation by

emailcharter.org, Chris Anderson (2011) makes some noteworthy suggestions about how this communication should be:

- Brief — use short messages and respect the reader’s time
- Respectful
- Clear — if you have to use more than five sentences, make sure the first sentence is clear about the basic reason for writing
- Do away with open-ended questions
- Avoid copying an excessive number of people, but if it is inevitable, use blind copy
- One subject per e-mail
- Use discretion with attachments, which should be few and not very cumbersome.
- The subject can be used for super-short messages (EOM – end of message).
- When possible, use NNTR: “no need to respond”
- Do not reply when angry
- Unplug!

Figure 12

Proposed action



Source: Athia (2013).

Face-to-face communication

Face-to-face communication should observe three important features. First, it should have an impact. Second, it should add credibility to what you are claiming or supporting. And third, it should always end with a proposed action, normally referred to in negotiation language as a “call to action.”

The meeting should be impactful because it is very hard to predict when you may have another chance to meet the same counterparts. Therefore, the opportunity should be valued and carefully prepared for, taking into account all the details involved. The first step is to be explicit in the request that will be made to the audience, making it clear who is requesting it and what the expected agenda is.

To maximize the opportunity, it is important to carefully prepare all material to be presented, taking into account the audiovisual and print material that will be used. Always remember to display the institution’s logo at the very beginning, and use the four pillars that sustain it.

Anticipate who will take part in the meeting when making the request to meet. Create the opportunity for your counterpart to know who he will be receiving and to be able to prepare himself. Name the people who will attend and identify the institutions they represent and what role they play at each.

When requesting the meeting, choose the level of authority you are interested in meeting. There will be one type of audience if it is a general meeting to show your institution’s interests and determine whether there is a way to initiate negotiations. However, there will be another type of audience if the negotiations have already begun and have reached a technical or legal impasse. Know what you want and never mix levels. An official, when welcoming a company president accompanied by an attorney or a technical expert or even by a celebrity, will select with whom to speak and will certainly seek his comfort zone.

In any case, one of the most important suggestions is to prepare well, practice for the meeting and remember the words of the great writer Mark Twain: “It usually takes me more than three weeks to prepare a good impromptu speech.”

Preparing for a good meeting with an important stakeholder is all in the details. Start by drafting a one-minute summary to be presented at the very beginning of the meeting. The summary should clearly state the interests on the part of the institution and the counterpart, ensuring that the main message is transmitted, regardless of any meeting interruptions that may occur. Remember, when you are meeting with a public authority, she can be interrupted and called out before the meeting ends, and you will end up talking to an assistant.

Generally speaking, start with the problem and why it is relevant to everyone, including the institution, the partners and allies, and of course, society. Show that society can be the great beneficiary if the problem is overcome. Always present numbers, good examples, known benchmarks and a few cases in which solutions similar to the one proposed were implemented. All of this helps in the process of persuasion.

Always make it very clear when there is an important deadline involved in the proposal, or even when there is some urgency in solving the problem.

Always have an agenda establishing what will be addressed first, the sequence of topics, and what the main message is, which should be made very clear to all participants in the meeting. The agenda is important even if it cannot be followed to the letter.

Be sure to define the roles of each meeting participant, making it clear who will lead the meeting and who will discuss each topic more extensively. A well-coordinated group makes a good impression and does not confuse the message being conveyed.

The medium is also the message and because of this, determine ahead of time the tone of the conversation, the attire and the style. Nothing goes unnoticed and all those aspects communicate information to your counterparts. It is important to ask your counterpart's assistants what proper meeting attire is required.

Preparing partners is another activity to be done prior to the meeting and one that should never be underestimated. Talk with your potential allies ahead of time and establish some understandings. Organize a meeting in advance with your partners and practice the role each will play in the meeting.

Thoroughly study the problem and your interest. Do not improvise! Know the technical and political aspects of the subject, learn about similar cases, get pertinent facts and figures, and present opinions, as appropriate. Remember, it takes just one poorly quoted figure to compromise any credibility the meeting is aiming to build in order to move forward to negotiating the interests of the institution.

Practice the messages so that they are easy for the participants to understand. Often, topics as well as explanations are complex. If there is no way to simplify the explanation, the result will be that the counterpart will simply not understand your argument. That is what we want to avoid. What follows is an example of the consequences when counterparts simply do not understand the argument being made.

In mid-2008, the Brazilian Congress began debating amendments to tax legislation pertaining to cold beverages, which include water, soda and beer. At that time, taxes on those products were paid per liter sold, regardless of the price per liter. Manufacturers of lesser-known brands (b-brands) began to call for a change in the regulatory framework, alleging that it was not fair that products priced differently should pay the same amount of tax. They argued that the model benefited the bigger and more expensive brands. Interested in maintaining the tax status quo, the big brands alleged that the process benefited the inspectors, since all they needed to know was how many liters had been sold – and multiply that by the single rate. In Latin, the charge per unit is called

“ad rem,” and the unit price is called “ad valorem.” In the political fight that ensued, the messages were different. Proponents for the changes, associated with the smaller brands, showed a bottle of a well-known sales champion alongside a bottle of an unknown brand that cost one-third the amount, and simply asked: is it fair that they pay the same tax? Proponents for maintaining the tax alleged that in the “ad valorem” system, the inspection methods were limited to audits and monitoring while in the “ad rem” system, systems could be used to automatically measure the flow going into the fillers. That would prevent the extensive tax evasion that had existed in the past. The system was changed in the Congress well before everyone understood what the Latin terms meant. Proponents of the status quo thus understood that it is impossible to change the regulatory framework in a democratic society by fighting in Latin against a simple message.

Besides the simplicity of the message, there needs to be clarity in the form of presenting the claim or the arguments. From the beginning, it is important to make it clear who from the group is the leader and has the final word. The person responsible for the agreement is who should speak and direct the conversation, following the agreed-upon agenda, which will dictate the style used (more technical or more diplomatic, for example). He will also establish the role of each team member in the presentation and in subsequent discussions that should take place. A good idea is to practice the presentation with a group of people from the institution that are not familiar with the topic to make sure the presentation is clear and simple.

The overarching goal of the meeting will be to ensure the proposals presented are credible. That is why it is vital to identify every person in the meeting. The details are always important. Begin by introducing the group, or make sure that the counterpart will know who everyone at the meeting is, mentioning their names and their history of relationship to the institution or the issue. Introduce the institution by using the suggested model, clarifying the foundation, pillars, objectives, and, as appropriate, your alliances. Remember, first impressions are forever.

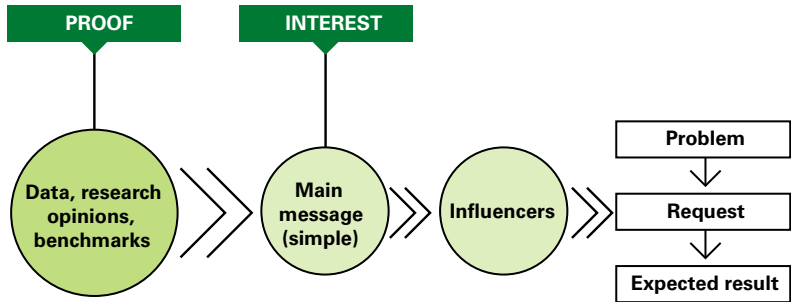
Make your interest explicit. Assess whether resolving the issue will be easy or difficult or will depend on other areas of the government, whether there are internal or external opponents, whether it is an original idea, whether it goes against the general view of political leaders in the ruling party, and whether it has well-established legal and technical support. That assessment will allow the group to strengthen the positive points and defend themselves when the conversation veers into the argument's weaker points.

We should never underestimate the way we defend an interest, and often we tend to focus too much on the content. It is very important that your arguments be based on objective criteria, that you use a suitable tone of voice, and that the emotion invested in advocating for your interests is taken into account so as to avoid any type of exaggeration or appear anodyne or indifferent. Never include other interests in the discussion to take advantage of the opportunity. You will be diminishing both.

Every meeting should end with a call to action. Before starting the meeting, the group should define the alternatives for expected results. Clearly communicate what you expect to obtain from the meeting, but be prepared for alternatives.

Hold a follow-up meeting. The person most interested in the follow-up is whoever requested the meeting. Do not leave the meeting without having an idea of who will do what and when. For that purpose, before going into the meeting, decide who will serve as the point of contact for both technical and political issues on your side and ask that your counterpart do the same. Specify the date for the next meeting, what actions need to be taken, who is responsible, exchange contact information, etc.

Figure 13



Source: Athia (2013).

Communication through influencers

Communication through influencers is very common since third parties traditionally lend a certain credibility and confidence to proposals.

The influencers most often selected to communicate the interests of an institution are its stakeholders, generally one among the following:

- the press
- other people and areas of government
- other governments
- NGOs
- international organizations
- schools and academics
- highly respected offices of attorneys and economists
- professionals and experts with extensive experience on the topic
- technical institutes
- associations and federations
- highly respected companies
- celebrities.

The use of influencers is always a critical decision that requires attention to several details. Bear in mind that communication operates like an “air force” in the fight to defend the institution’s interests in relation to formulating a regulatory framework. As such, communication has to have just the right intensity and hit the target and nothing else. By using third parties, which influencers are, the institution effectively hands over intensity and target, so they should be monitored closely.

Undoubtedly, communication through influencers will reach several audiences in addition to those intended. Is your institution interested in increasing its base of potential participants in that discussion? Why? What benefits can additional members bring? New adversaries will be summoned to the discussion along with new allies.

Aside from that dilemma, you have to ask yourself if it is worthwhile to partially or completely show your hand.

If the influencer is an opinion-leader journalist or columnist, the question is even more complex and you will have to examine in detail whether all the risks have been correctly assessed. How will your counterparts react when they hear a news report broadcast or see an article published? They will certainly know that its origin is directly linked to the interest behind the communication.

There is yet another point to be considered. How will a journalist handle the news that your institution is giving exclusively to him? Will he understand your communication and treat it as intended, or will he work with the editor to seek the opinion of the other side and accept opposing arguments? In what context will the information be released? You will only know when it has been done, but you should always take into account the independence of journalists, especially those who are able to form public opinion.

The temptation to use the press to create a positive climate and gain public opinion is great, but it is important to be careful and focus all the attention on the reaction of your counterparts. Remember that it is not

in your interest to win the battle against your counterparts. Instead, you want to persuade them that fulfilling your interests will in some way be good for society as a whole.

Some questions are important. Have you already tried to negotiate directly and clearly express your interests and arguments? Is it worthwhile to complicate a negotiation by involving other participants?

Because you know that you do not control the press, your responses to questions above may lead to a new line of inquiry, which also needs to be addressed: will what is released by the press please or disturb your partners and allies? There is a chance that your allies and partners could feel betrayed or pressured, thus complicating the ongoing negotiations. The essential question for making a decision to use the press as influencer is knowing with whom you are communicating when news is released. Are you hitting the target?

In the modern world, with its avalanche and abundance of information, all you are seeking are credible sources. Therefore, it is worthwhile to follow some advice regarding how to handle the press, the most important and ultimate influencer.

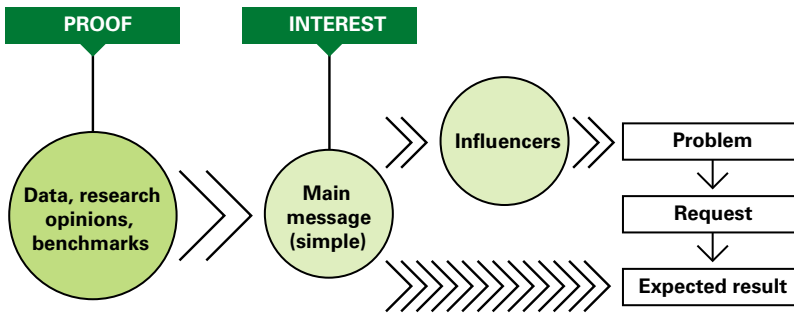
- **Stakeholders map** — establish a relationship before you need to use it; journalists generally talk to their sources, and have cultivated them. So, introduce yourself and establish a trusted and respectful relationship before the need arises.
- **Source** — be very well prepared about your institution's issues and interests. Have at your disposal facts and figures you can share with journalists. You took the initiative; now, show that your points are defensible and that society will be better off if they are considered.
- **News** — journalists have a nose for news, the ability and the training to identify a good story. It will be difficult for you to conduct the narrative solely along your line of argument. Pay attention to different interpretations that may not be in your interest. Always be mindful of what you would and would not like to communicate.

- **Tone** — what is your objective: defending your opinion or creating a perception about something new? Do you want to win fans or protect a bastion that already has admirers? Being clear on that principle will help you strike the right tone in your conversation with journalists.
- **The world is flat** — since digital media has grown enormously popular, it is said that news disseminated through international channels has the same effect as that communicated regionally. This is justified because of the speed with which it circulates and gains audiences all over the world in unexpected ways. If the story is good, no matter what its origins, the world is flat.
- **Spokesperson** — the government relations team leader is often the institution's spokesperson to the press. This offers advantages because he knows the issue inside and out and can give it the most interesting slant. The negative aspect is that he may end up being rejected as a negotiator, especially if he trips up and makes the mistake of directing criticism towards people involved in the negotiation and losing sight of the arguments that support his position. Unfortunately, this can occur because no one has control over what is divulged by the media.
- **The “off the record”** — when you use the press as influencer, you do not have to speak. But sometimes, speaking can be a good way to make the institution's opinion clear. In this case, it could be done by using the option of speaking off the record, but remember that what is concealed is the source, not the news. It is now up to the journalist, who will refine it and communicate it as he sees fit according to the interests of his readers, spectators or listeners. You will have to decide on whose behalf you will speak—the institution, the association or as an informed professional. Make this clear to the journalist.

We have said that influencers add credibility and can positively influence a decision. However, every group of influencers adds different values to the public relations process.

- Other governments and other areas of government: attention and political influence
- International organizations: attention, political influence and regulatory pressure
- Schools and academics: technical influence
- NGOs, highly respected offices of attorneys and economists: credibility.
- Professionals and experts with extensive experience on the topic, technical institutes, other highly respected companies and institutions: credibility
- Associations and federations: political influence
- Celebrities: attention.
- Finally, there is one more question you have to ask yourself: does our institution really need intermediaries?

Figure 14



Comprehensive communication

Comprehensive communication is the concomitant use of face-to-face communication and communication through influencers, and in practice, is what is usually done.

In summary

The public relations process can be summarized as five stages:

- Define your target public
- Develop your key message
- Select the appropriate media
- Use an appropriate style that takes into account formality, humor, resources used, whether it be didactic or playful, whether you base your arguments on solid technical rationale or seek to persuade through diplomatic arguments. The style should be selected as a way to keep the attention of the target public on the key message.
- Using those characteristics, meetings should seek to make an impact, increase the credibility of the institution and its allies, and finally, be a call to an action that will help change the regulatory framework.

Build alliances and partnerships

The first question is: why is building alliances and partnerships important for changing the regulatory framework in the interest of the institution?

Jane Nelson, adjunct lecturer of public policy and director of the Corporate Responsibility Initiative at Harvard Kennedy School, is recognized for her articles and positions with regard to building innovative alliances involving institutions and their stakeholders for the purpose of maximizing an organization's impact within the society in which it operates.

Because we are proposing that strategy for societies that live in democratic regimes, under the rule of law, we should make it clear that in a democracy, the building of a new framework only occurs through the process of building majorities.

That process involves finding strategic allies and seeking tactical part-

nerships. Strategic allies are entities that are also seeking to change the regulatory framework along the same line as the institution we are supporting. Tactical partnerships involve other actors, who are not necessarily affected by the changes sought, but who view the partnership as an opportunity to build alliances and strengthen their positions with a view towards other changes they may be interested in.

It is very unlikely that a regulatory framework is good for only one organization and that it is able to triumph in a democratic scenario with public transparency. The pursuit for partnerships and alliances is necessary for the proposal to gain political weight and have the ability to convince politicians to change the regulatory framework, held accountable by their electorate.

That is why the institution needs to find out who will become its main partners and allies for proposing an alliance with a view towards changing the regulatory framework. They are on your stakeholders map. Because they are the key influencers, it is always good to remember what each of them, according to their group, adds in each case.

The first and simplest idea for partnership and alliance is in the industry association the institution belongs. It is very unlikely that a single organization has the power to change a framework that does not interest its partners. Moreover, an action that has an entire segment or sector of the economy totally aligned around it is very compelling. Let's look at an example:

Through Decree no. 49.487 of May 12, 2008, then-mayor of São Paulo Gilberto Kassab regulated truck traffic in the Zone of Maximum Traffic Restrictions (ZMRC). Manufacturers and suppliers of consumer goods and merchants located in the region were taken by surprise. Even having heard from some associations, the majority of those affected by the measure were not prepared to comply with the measure because they would incur major losses.

The most controversial part of the measure was that the suppliers were

being forced to make their product deliveries to merchants at night. According to the proposal under discussion, the trucks utilized in São Paulo for this purpose, known as urban cargo vehicles (VUCs), would be prevented from circulating in the ZMRC between the hours of 05:00 and 21:00.

VUCs were created by the municipality of São Paulo itself a few years before, and all the suppliers were required to adjust their delivery fleets by using those vehicles. On that occasion, Brazil's powerful automobile industry responded to the government's wish and manufactured the desired truck. Now, the VUCs were prohibited.

There was one type of vehicle allowed to circulate in the ZMRC during the day, but it is imported and has features that are not very appealing in terms of logistics. The new cargo vehicle (NVC) carries 25% of the cargo capacity of a VUC and has the following dimensions: 50% of their length and 90% of their width. It would take four NVCs to replace every VUC retired, and those four would only provide the carrying capacity of two VUCs. In addition, the new vehicle emitted 60% of the pollution emitted by one VUC, which would also aggravate the issue of air pollution in São Paulo.

Initial attempts at negotiation were unsuccessful and the then-Secretary of Transportation, Alexandre de Moraes, stood firm.

The city government was sought out by tavern associations, bakeries and restaurants who showed that they did not have proper security and stated they were not economically able to bear the cost of opening their businesses in the early morning to serve the suppliers.

The large consumer product supply companies alleged that the measure was unfair because they had been forced by the city of São Paulo to invest in the purchase of VUCs and were now being required to sell those now devalued assets in order to import new cargo vehicles in order to comply with the new rule.

Studies conducted by technical professionals and academics were un-

successful in showing that the measure was innocuous, since each VUC would be replaced by four new vehicles, increasing traffic and adding to the pollution of the ZMRC.

Nothing worked in isolation, which caused the parties to seek out an agreement amongst themselves, and they began to talk and align their individual interests. Through that process, they managed to get the automobile industry on board and it contributed with additional studies and data.

In the next round of negotiations, the interested parties tipped the scale against the measure. Negotiations were protracted and some small adjustments were made over time. Finally, Decree no. 53.149 was published on May 16, 2012, again providing for the free transit of VUCs in the ZMRC.

At that time, the press reported that the VUCs would be allowed to circulate in the ZMRC of São Paulo's capital city at any time. The change was scheduled to take effect May 17, 2012, after publication in the Municipal Daily Register.

VUCs measure up to 6.30 meters in length. They are used to ship small volumes of cargo and perishable foods. The restriction had been in place since 2008, between the hours of 10:00 and 16:00. Now they would be able to circulate free of restrictions.

The ZMRC refers to an area measuring 100 km², bounded by the Marginal Pinheiros Highway, Avenida dos Bandeirantes, Complexo Viário Maria Maluf, and Estado, Tiradentes, Mofarrej and Queirós Filho Avenues. Restrictions continue to apply to other types of cargo vehicles.

Despite doing away with restrictions on the circulation of VUCs between the hours of 10:00 and 16:00, the city's vehicle rotation schedule continues to apply, taking into account the ending digits on license plates. In addition, to get around São Paulo, VUCs are required to be registered with the city. At present, 6,500 small-sized trucks have been registered.

São Paulo Mayor Gilberto Kassab said recently that the municipality is not planning to do away with the restriction on large-sized trucks. “Unfortunately, some neighboring cities are allowing slightly larger vehicles. There is absolutely no chance that we will change the size of the VUCs allowed in São Paulo. Under no circumstances will we allow larger trucks,” he declared. According to Kassab, the end of restrictions on VUCs had already been planned. “That was established seven years ago when we decided it was time to allow the circulation of VUCs in São Paulo. This is part of a very well-developed process to improve traffic in the city of São Paulo.”⁵

Engage to shape a new framework

The final phase of the government relations strategy is what we normally associate with stereotypical lobbying. Like in all other phases, the objective is to build a regulatory framework that is best suited to helping the institution improve its competitiveness—one that, by generating synergy, creates value for society.

It is in that phase that representatives of for profit or non-profit non-governmental organizations (NGOs) meet, engaging with public officials to write or modify public policy proposals that will ultimately be debated and approved in the appropriate fora.

To understand the importance of taking the decisions to the appropriate fora, we do well to remember the principles of the rule of law. According to Professor Bruno Seligman de Menezes, “There is no strict definition of the basic principles that make up the Rule of Law, but some are consensually fundamental: the principle of separation of powers, the principle of the dignity of the human person, the principle of due process under the law, the principle of the presumption of innocence, and the principle of access to justice.”⁶

5 G1 (2012).

6 Interview granted for this book.

Another way to summarize these same principles is as follows:

1. principle of supremacy of the law (*rule of law*), with limitation of power through substantive law;
2. principle of legality, through which no one will be obligated to do or not do anything without the law;
3. principle of non-retroactivity of the law, to safeguard acquired rights;
4. principle of equality before the law or isonomy, through which the law applies to everyone and thus, to everyone it should be applied;
5. principle of the functional independence of judges, bound by the guarantees inherent to the judicial branch.

When we talk about public authority we are referring to the set of bodies with authority and power to carry out the work of the State. In Latin America in general, and Brazil in particular, the government comprises the Legislative Branch, the Executive Branch and the Judicial Branch. Those branches are independent and should be engaged in a coherent manner.

When we refer to government, we use the expression to define the managerial core of the State, at any of its levels, periodically subject to change through elections and responsible for management of State interests and for the exercise of political power.

Representatives of private institutions, even in some cases non-profits, are viewed in many ways by the government when they seek to intervene in public policy.

In some cases, they are viewed as important counterparts, deserving of full consideration. Other times, they are viewed as partners in wide-ranging development processes and providers of important high-quality information for guiding political processes. The same professionals may

be perceived as people who inspire confidence or generate extremely negative perceptions.

What is the major difference between these opposite perceptions? It is the knowledge that some have over others. Actually, the worlds of public and private enterprise are different and full of preconceived notions and stereotypes. Who has never heard that everyone in the private sector is individualistic and egocentric and are only interested in the money? How many times have we heard that everyone in the government is a bureaucrat who wants to be guaranteed a stable job, or who increasingly runs around seeking more power? Finally, it is almost cliché to hear the meaningless generalization that on one side, there is a group of corrupt individuals and on the other, a group of corrupt officials.

Generalizations lead to mistakes that can only be undone by mutual understanding. For creating a climate that allows engagement between public and private interests for the purpose of formulating better public policy, understanding public authority may actually be quite simple. What follows is some information we think all government relations professionals should have.

Executive Branch

The Executive Branch is the center of political power. Even when there is harmony among the three branches of government, many of the most important decisions begin or end in that sphere. This is especially true in Brazil, since the Executive holds tremendous power in its hands.

The President of the Republic possesses the legitimate power, i.e., that which is delegated by the public at the ballot box. All other federal authorities are subordinate to the President. At the state level, that power is held by the governors, and at the municipal level by the mayors. The cabinet ministries report to the President of the Republic while the secretariats in the states or council members in the municipalities answer to the governors and mayors, as appropriate.

The Office of the Presidential Chief of Staff (*Casa Civil*) coordinates the handling of all decisions made by the President of the Republic. In the realm of states and municipalities that function is performed by a secretariat located in the State House. The designation of these officials varies —some are called Chief of Staff, others Government Secretary, and so on.

Cabinet ministries are formed of secretariats coordinated by executive secretaries. Normally, the executive secretary is the vice-minister of each portfolio. In the states, the secretariats have a secretary-general as undersecretary and are subdivided into directorates and authorities (*superintendências*)

At the federal level each ministerial secretariat is formed of departments, which in turn are made up of coordination agencies (*coordenações*) and sometimes management offices (*gerências*). Regardless of the type of hierarchy, certain secretariats have more influence than some of the ministries. This is true, for example, of the Federal Revenue Secretariat and the National Treasury Secretariat, both components of the Ministry of Finance. In other cases, it is the departments themselves that assume extraordinary political significance, such as the Federal Police Department of the Ministry of Justice.

Chiefs of staff have enormous *de facto* power even when they do not possess significant spending authority. All decisions by officials must eventually go through their chiefs of staff.

The above information is of key practical importance. The map of the power structure of each ministry, secretariat, or government agency needs to be drawn and periodically updated.

Legislative Branch

The Legislative Branch comprises the Chamber of Representatives (representatives of the Brazilian people), the Federal Senate (composed of representatives of the states and the Federal District), referred to together as the National Congress, as well as the Federal Audit Court (which assists the National Congress in control and external oversight activities).

The principal responsibilities of the National Congress are to draft laws and proceed with oversight of the activities of accounting, finance, budget, operations and property management for the federal government and the entities in the direct and indirect Administration.

A government relations team needs to be fully familiar with the role of the Legislative Branch, the rules that govern the progress of the work of the two houses, and the specific roles assigned to the Chamber of Representatives and the Senate. It is essential to understand the bureaucratic procedures affecting each project in which the institution is interested. It is also useful to understand the specific role of each member of the board of presiding officers of each house. Most of this information can be found on the Chamber and Senate's own websites.⁷

We will now call attention to a few details of the organizational structure of the two legislative houses, inasmuch as familiarity with the way each functions is vital.

The Senate is governed by its presiding officers, namely the President, first and second Vice-Presidents, and four secretaries. Four alternates are appointed to substitute for secretaries who are temporarily unable to serve. The presiding officers are elected at a preparatory meeting held beginning February 1 of a legislature's first session. Voting is by secret ballot and the outcome reflects the decision by a majority of those voting. A quorum requires that most senators be present, and every effort is made to ensure that the attendees include proportional representation of the various parties or blocs that are active in the Senate. (Articles 3 and 46 of the Internal Regulations of the Senate).

7 See "Sobre o Senado Federal e a organização do Estado" [On the Federal Senate and the organizational structure of the State]. Available at: <http://www.senado.leg.br/senado/alosenado/pdf/Sobre_Senado_%20Federal_e_Organiza%C3%A7%C3%A3o_Estado.pdf>. Accessed on 31 Aug. 2017. See also "O papel da Câmara dos Deputados" [The role of the Chamber of Representatives]. Available at: <<http://www2.camara.leg.br/a-camara/conheca/o-papel-da-camara-dos-deputados>>. Accessed on 31 Aug. 2017.

The presiding officers of the Senate serve two-year terms (Article 57, §4 of the Constitution of Brazil, and Article 59 of the Internal Regulations of the Senate). Officers may not be reappointed to the same position in the immediately subsequent election. But it should be emphasized that the currently prevailing opinion is that this prohibition does not apply in the case of a new legislative session

Similarly, the presiding officers of the Chamber have the responsibility to direct legislative activities and handle the administrative tasks of the house. They comprise a collegiate body formed of seven representatives elected from among the representatives at large. The presiding officers have specific powers such as, for example, working with the presiding officers of the Senate to promulgate amendments to the Constitution as well as to propose changes in the Internal Regulations. The term of office for the Chamber's presiding officers is also two years.

The President of the Chamber of Representatives is its representative when the Chamber speaks as a group, and supervises its work and its agenda. Only native-born Brazilians may serve as Chamber President. His primary power is to determine the agenda of proposals to be discussed in plenary session. Among other attributions, the President of the Chamber of Representatives substitutes for the President of the Republic in his/her absence and serves on the Council of the Republic (defined in Article 89 of the Constitution) and the National Defense Council.

The Secretary-General of the presiding officers (SGM) advises those officers on legislation, as well as the Chamber President in the performance of his regulatory and constitutional responsibilities. The SGM also directs, coordinates and guides the legislative activities of the Chamber of Representatives, as well as monitoring and consulting on the progress of the plenary sessions and other events of a technical/political nature related to those activities.

The Plenary is the highest authority in Chamber debates. In those sessions, the entire body of representatives of the people discuss and

vote on the bills that are in progress; their votes are inviolable, thereby fulfilling the constitutional function assigned to the Legislative Branch to develop the legal order and perform financial and budget-related oversight.

The Senate and Chamber of Representatives also have distinct powers. The powers reserved exclusively to the Chamber according to Article 51 of the Constitution include: authorizing the institution of proceedings against the President or the Vice-President of the Republic and the ministers of State; taking possession of the accounts of the President of the Republic, when such accounts are not submitted within the deadline established in the Constitution; drafting the Chamber's internal rules; providing for the organization, functioning, policing, creation, transformation, and abolition of positions, jobs, and functions within its services, and for taking the initiative in establishment of the respective remuneration, with due regard for the parameters established under the Budgetary Guidelines Act, and electing the members of the Council of the Republic.

The powers reserved exclusively to the Senate include: proceeding against and judging the President and Vice-President of the Republic, the ministers of State, justices on the Federal Supreme Court, the Attorney General and General Counsel of the Republic for crimes of the abuse of power; approving, in advance, the nominations by the President of the Republic of magistrates, ministers on the Audit Court, territorial governors, the president and directors of the Central Bank, the Attorney-General of the Republic, as well as diplomatic chiefs of mission and holders of certain other posts as the law may determine; authorizing external operations of a financial nature that are of interest to the entities in the Federation; providing for the regulations governing executive and regulatory agencies; and suspending the execution, in whole or in part, of a law declared unconstitutional by final decision of the Federal Supreme Court. (The Constitution of Brazil, Article 52 as amended).

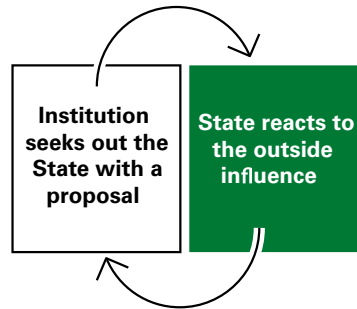
Figure 15

Reactive



Figure 16

Proactive



The meeting

With information in hand about the counterparts, you need to prepare for the meeting. But under what circumstances do representatives of institutions and public officials meet to negotiate?

There are two reasons why an institution would attempt to influence public policy: the difference lies in who takes the initiative. From the standpoint of the institution, any meeting can take place in either a reactive or a proactive manner.

In the first case, the initiative is a matter for the public authorities who, through some body or specific authority, decide to change a public policy or announce the launch of some initiative that takes the institution by surprise.

Normally, that announcement is "bad news." At a minimum, the institution is left feeling as if it were not consulted in advance and that its interests were not taken into consideration. When that occurs, the first idea is to prepare to fight for the purpose of having your interests considered in the new policy. In doing so, you need to show that the

proposed change is a win for society as a whole.

The first step will be to identify the stakeholders who will benefit from the change as well as those who will be harmed by it. That exercise will allow you to assemble a map of the institution's allies and adversaries.

As we saw earlier, the process of government relations begins with preparation of a narrative about the institution and its allies, remembering to show the four pillars, establishing the communication strategy to hit the targets with proper aim and intensity, and choosing the BATNA, which will guide the negotiations.

In this case, the initiative is taken by the institution or a group it belongs to. Generally speaking, those initiatives occur when a public policy prevents institutions from being as competitive as they could be in the market. The initiatives have the purpose of anticipating changes in public policy to seek a new and better regulatory framework. The main challenge is to identify the issues that benefit society within the proposal taken to the officials.

Preparing for that initiative is smoother because the meetings will only be requested when all of the studies and support material are ready and revised with artwork. Preparatory meetings and trial runs will have been done.

The materials and studies will have already identified the stakeholders who will be allies and part of the process and those who are expected to oppose it, and you will have already planned how to act with regard to them.

To recap, just as in the reactive scenario, the process of government relations begins with preparation of a narrative about the institution and its allies, remembering to show the four pillars, establishing the communication strategy to hit the targets with proper aim and intensity, and choosing the BATNA, which will guide the negotiations.

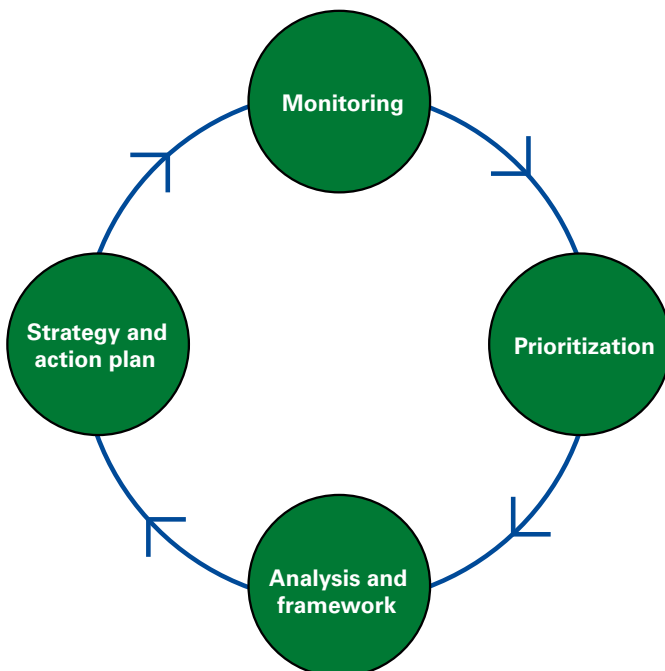
Over the course of its life, the institution will face reactive and proactive scenarios. To avoid surprises, the government relations team should have as its primary responsibility, the commitment to anticipating the facts. To do that, it will have to follow a process of engagement that allows the institution to most often act proactively.

Process of engagement

The *Dicionário de gestão* [Dictionary of Management] (Silva, 2017) defines process as follows: “Process is derived from the Latin *procedere*, a verb that indicates the act of advancing, going forward, and is a particular sequential set of actions toward a common objective.” In our case, the process of engagement has the purpose of organizing the institution’s resources with a view towards acting to achieve the purpose of building a new regulatory framework.

The process consists of four stages:

Figure 17



Monitoring

In practical terms, changing the regulatory framework means approving one or more rules that may be constitutional, legal, administrative or a combination of those. At the end of the process, we will have a new regulatory framework, described as the set of rules that were approved by public officials for the pertinent issue in question.

It happens that many of those rules are examined periodically by numerous public authorities at the three levels of government. Many proposals are presented, evaluated, discussed and approved each day, either in the National Congress, the Executive Branch or at local levels of government.

That is why the first step in the process of engagement is to monitor what is being done in the Legislative and Executive Branches with respect to the topics of interest to the institution. It means tracking the agendas of key political players, obtaining information on a daily basis about legislative initiatives, speeches and interviews given by each of the public players that have the power or authority to influence regulatory frameworks.

The number of politicians to be tracked is not insignificant. There are literally thousands of politicians all over Brazil. For example, the total number of state legislative representatives is defined by the number of federal representatives. Article 27 of the Constitution offers two cumulative rules. The first establishes that each state will have a Legislative Assembly composed of triple the number of representatives in the Chamber of Representatives. The second says that when the number of representatives reaches 36, the body will be increased by as many federal representatives there are over 12. In 2013, the Superior Electoral Tribunal (TSE) altered the composition of the benches of federal and state representatives, but the resolution was deemed unconstitutional by the Federal Supreme Court (STF). The most recent number of federal and state senators and representatives is as follows:

State	Federal Representatives	State Representatives	Senators
Acre	8	24	3
Alagoas	9	27	3
Amapá	8	24	3
Amazonas	8	24	3
Bahia	39	63	3
Ceará	22	46	3
Distrito Federal	8	24	3
Espírito Santo	10	30	3
Goiás	17	41	3
Maranhão	18	42	3
Mato Grosso	8	24	3
Mato Grosso do Sul	8	24	3
Minas Gerais	53	77	3
Pará	17	41	3
Paraíba	12	36	3
Paraná	30	54	3
Pernambuco	25	49	3
Piauí	10	24	3
Rio de Janeiro	46	70	3
Rio Grande do Norte	8	24	3
Rio Grande do Sul	31	55	3
Rondônia	8	24	3
Roraima	8	24	3

State	Federal Representatives	State Representatives	Senators
Santa Catarina	16	40	3
São Paulo	70	94	3
Sergipe	8	24	3
Tocantins	8	24	3
Total	513	1,053	81

Source: Chamber of Representatives, Senate, 2014 election results (TSE).

The figure is even larger in the municipalities. According to the TSE, in 2016, 5,568 mayoral offices and 57,931 city council seats were contested. The number of city council members is related to the number of inhabitants, as defined by the statutes of each municipality, preserving that specified in article 29 of the Brazilian Constitution. It only defines the maximum number of council members according to the number of inhabitants in the municipality. But what actually establishes the number of council members is the statutes of each municipality. A hypothetical municipality with 25,000 inhabitants may have up to 11 council members but statutes may specify that it will have just nine, based on the revenues of that municipality. The maximum number of council members per number of inhabitants is as follows:

Number of council members	Number of inhabitants of the municipality
9	Up to 15,000
11	Over 15,000, up to 30,000
13	Over 30,000, up to 50,000
15	Over 50,000, up to 80,000

Number of council members	Number of inhabitants of the municipality
17	Over 80,000 ,up to 120,000
19	Over 120,000, up to 160,000
21	Over 160,000, up to 300,000
23	Over 300,000, up to 450,000
25	Over 450,000, up to 600,000
27	Over 600,000 up to 750,000
29	Over 750,000, up to 900,000
31	Over 900,000, up to 1.050 million
33	Over 1.050 million, up to 1.2 million
35	Over 1.2 million, up to 1.35 million
37	Over 1.35 million, up to 1.5 million
39	Over 1.5 million, up to 1.8 million
41	Over 1.8 million, up to 2.4 million
43	Over 2.4 million, up to 3 million
45	Over 3 million, up to 4 million
47	Over 4 million, up to 5 million
49	Over 5 million, up to 6 million
51	Over 6 million, up to 7 million
53	Over 7 million, up to 8 million
55	Over 8 million

Source: Senate News Agency.

In practical terms, tracking the actions of so many politicians is an activity that presents technical complexity and requires a large team trained to carry it out. Each body has its own internal rules that regulate proceedings and need to be understood so that the monitoring is done appropriately and there are no surprises. In addition, the bodies act concomitantly, which requires people to be alert at various points of the process, in each body, at the same time.

What could be a deterrent for small and medium-sized institutions is in fact an opportunity. They can outsource those services, focusing on what is most essential.

The work of monitoring the actions of the Executive and Legislative Branches, particularly at the federal level, may be outsourced to several companies that specialize in tracking the day-to-day activities of public officials in Brasília. It is possible to hire any of those companies and order tracking on a specific topic in all of the public bodies, or track the action by certain bodies on all the subjects they are responsible for.

To minimize the costs involved in that activity, some institutions do the tracking through the use of robots that follow the publications of government acts and events on their own websites. Those robots issue alerts regarding the proceedings they are tracking. However, not all the bodies update their websites in real time, and this could cause tracking delays.

Unfortunately, that is not yet the reality experienced by one who needs to track the proceedings of initiatives in states and municipalities. There are still few companies that engage in that work.

Which topics and bodies should be tracked for the purpose of monitoring?

In Brazil and many other countries, the federal government needs to be tracked because it is the key lawmaker. More than 60% of the laws approved in the country originate in the Executive Branch. The president of the Republic and his Cabinet, particularly the deputy leaders of Legal Matters and Legislative Affairs, are places where all government legislative initiatives circulate.

Industry bodies take part in and coordinate some of the initiatives. However, ministries, independent and other agencies need to be tracked. All actions by the State are public and published, and skilled people will know where to find the records that allow recognition of an activity in progress. In those bodies, the secretariats, departments and offices of coordination fill roles in assessing and carrying out studies about the topic in question. Even when they are not making decisions, important heads of cabinet offices should be followed whenever possible.

To monitor the Legislative Branch, the work carried out in both the Chamber of Representatives and the Senate should be tracked. In each case, the activities and publications of presiding officers and secretary-generals should be tracked.

In addition, in both houses, it is the presiding officer who sets the agenda, but generally, they try to comply with the wishes of the majority of the party leaders or party advocates that gather in the important College of Leaders. The blog *Legis-Ativo*, published on the website of the newspaper *Estadão*, describes this body: “The leaders are grouped together in the collegiate body composed of leaders of the majority, the minority, the parties, parliamentary blocs and the government, whose prerogatives are to: petition the president of the house to convene extraordinary sessions and secret sessions in addition to playing an active role in setting the calendar and scheduling votes within the House. The College of Leaders has duties that ensure leaders an essential role in coordinating legislative life, as a strong instrument capable of shaping the behavior of congressmen.”⁸

The task of following the actions of each individual lawmaker can be exhausting. We do well to remember that senators and congressmen divide their time between Brasília and their home base. The employees who work in their offices in Brasília often track the member’s agenda and legislative topics, but are generally not authorized to debate the merits

8 Available at: <politica.estadao.com.br/blogs/legis-ativo/o-poder-dos-lideres>.

of the topics addressed by the politician. There are, however, personal advisors and even employees of Congress itself who understand the merit and interests that the member is supporting in each case. Even so, it is perfectly within reason to ask the lawmaker himself to suggest which of his advisors is most suitable for discussing each of the topics of interest.

To track proposed laws that are in Congress, it is important to be aware of the role of standing and temporary committees, and the particular types of proceedings.

The type of proceeding, according to the Chamber of Representatives itself: "Is the type of channeling of propositions, determined by the time it takes to process them through the various committees. They may be urgent, have priority or proceed in ordinary fashion.

To receive priority processing, the proposition must be made by the Executive Branch, the Judiciary Branch, the Office of the Public Prosecutor, the board of presiding officers, standing or special committees, the Senate or citizens. Priority treatment is also given to the supplemental proposed laws that regulate constitutional provisions, to laws with specific deadlines, election regulations and alterations of internal regulations.

The system for urgent consideration dispenses with some procedural formalities. To be processed in this way, the proposition has to deal with matters that involve such things as the defense of democratic society and defense of fundamental freedoms; refer to provisions to assist in public disaster; declaration of war, state of emergency, state of siege or federal intervention in the states; international treaties and the deployment of military personnel. A proposition may also be processed on an emergency basis when a request to do so is made. If the emergency nature is approved, the proposition will be placed on the agenda of the next deliberative session, even if it is on the same day.

Another processing category is that of extreme urgency. This requires the submission of a request signed by the absolute majority of represen-

tatives or leaders that represent that number (257). The request must be approved by absolute majority vote. If approved, the proposition is included on the agenda of that same session” (Chamber of Representatives, [n.d.] c.).

Similarly, all the ordinary parliamentary activities proceed through standing committees that need to be tracked. Thematic or standing committees have a board of presiding officers with a chairperson who decides the agenda for debate. Secretaries of the standing committees have a lot of information about the debate and voting that has occurred and is scheduled to take place. The Constitution and Justice Committee (CCJ), of each of the legislative bodies is very important since it is the only one to examine all initiatives processed through the Chamber of Representatives and the Senate.

In addition to the standing committees, Brazil’s Congress decided to allow temporary committees, which are established and installed to examine specific types of proceedings. Provisional measures (MPs) sent by the office of the President of the Republic are very common. The deadline for MP proceedings is limited. In addition, they enter into force upon promulgation and have the power to lock out the proceedings for other proposed laws.

Proposals for constitutional amendments (PECs) also require the installation of special temporary committees to handle the material. Likewise, proceedings under special regime or matters of great interest may also elicit the installation of temporary committees.

Finally, the most well-known of the temporary committees are the Congressional Investigation Committees (CPI), which investigate topics of interest to lawmakers. The bodies can also install up to five of these commissions concomitantly.

The temporary committees elect a chairperson who is responsible for conducting the work, and a rapporteur who will draft the proposal from the amendments received.

Prioritization

The number of draft laws that are processed through the legislative bodies, accounting for all of the origins, is enormous and will only tend to increase because the number of initiatives is always larger than Congress' capacity to decide on topics, whether they are approving or shelving the matter. Overall, more than 7,000 proposed bills are presented in each legislative session.

In addition to the draft laws, there are initiatives that arise in the midst of discussions of other topics, inserted into a different proposal. They are the famous *jabuti* amendments as they are called in political jargon. A rapporteur appointed to submit an opinion on a particular matter decides to include another subject that has nothing to do with the first. This should not happen, and is much more common than advisable. The fact is that that situation is real and it introduces an additional difficulty in monitoring and tracking the activities of the Legislative Branch.

In summary, there are countless types of congressional initiatives that need to be tracked such as:

- **PEC** — proposed constitutional amendment
- **PLP** — proposed supplementary law
- **PLC** — draft law proposed by the Chamber of Representatives
- **PLS** — draft law proposed by the Senate
- **MPV**— provisional measure
- **PLV** — interim measure
- **PDC** — proposed legislative decree
- **PRC** — proposed resolution by the Chamber of Representatives
- **PRS** — proposed resolution by the Senate

- **REQ** — formal petition
- **RIC** — formal petition for information
- **RCP** — petition to establish a CPI
- **MSC** — message
- **INC** — appointment
- **VET** — veto.

The only way to track the interests of the institution in this maze of initiatives, countless types of procedures that move forward in different houses of Congress and different areas within them, is by using a method that allows prioritization of what deserves our attention.

Once again, we will have to measure and assign numbers to each of these initiatives so that we can rank them in order of importance, which should change for each institution. You need to calculate the risk or opportunity that each congressional initiative represents to the institution. With clear and precise data, we will be able to allocate our resources, following the teachings of William E. Demming, according to whom organizations should only make resource allocation decisions on the basis of facts and data. “In God we trust; all others bring data,” he said.

Calculation of values for risk and opportunity should be done “at home,” from the analysis of each of the draft laws underway. The process may be more or less simplified, but one suggestion is to divide analysis of each draft law into two parts. In the first part, examine the extent of the impact that approval of the draft law is expected to have on the institution. In the second part, examine the likelihood of the draft law being approved.

Assessment of the expected economic and financial impact on the institution should be done on the basis of internal consultations at the institution, seeking the opinion of all departments. Often, a draft law conceals objectives that only people very connected to the topic are able

to identify. The main questions to ask the other departments refer to the impacts of a possible change in the draft law proposed:

- does it change the market?
- does it create barriers to communication with the market?
- does it have an impact on fixed costs?
- does it have an impact on variable costs?
- does it change taxes and duties?
- does it create or change important licensing procedures?
- is it able to be implemented by the government?

Once you have the interviews, the government relations team assesses the data and grades the economic impact on a scale of 0 to 100. That process can be performed annually, when planning activities for the next year.

Examination of the likelihood of a draft law being approved also has a significant degree of subjectivity, but it is scored by using more objective indicators. Generally, we know that draft laws are handled according to various political factors such as:

- Origin
- Sponsor
- Type of proceeding
- Opinions from technical committees
- Interested political party
- Has leadership of the government already weighed in?
- *Gap* until approval — how many steps are left?
- How long has it been stalled?

With these responses in hand, the government relations team can, at the same time, assess the data and assign the likelihood of approval a score ranging from 0 to 100. That process can also be carried out annually, when planning activities for the next year.

Using the indicators for expected economic impact (EIE) and likelihood of approval (PA), it is possible to establish the rate of criticality (IC) by simply multiplying the previous scores:

$$IC = \pm EIE \times PA$$

In calculating the IC, the plus (+) refers to opportunities and the minus (-) refers to threats.

Once the IC has been calculated, we suggest creating a database organized as a table that contains the following information, for each draft law:

- Draft law – amendment
- Type of law
- Topic addressed
- Author
- Party or party bloc
- Expected economic impact (EIE)
- Likelihood of approval (PA)
- Rate of criticality (IC)
- Description of its significance to the institution
- Gap until approval — how many steps are left

- Time stalled
- Policy/political analysis
- Feedback from the action plan

Using that database, it is possible to track the proceedings by rate of criticality, showing the status by subject, type, party, region, etc., in various tables.

Analysis and scenario

To analyze the international, national, regional and local political scenarios, above all, one has to be informed about the facts regarding the day-to-day wrangling over State control in each of these spheres. That analysis should take into account different types of power. In Brazilian society, the type of domination that one given group is able to exercise over another may be economic, ideological or political.

Economic domination suggests that the dominant group possesses such assets and wealth that it is able to establish some sort of influence over the behavior of those who do not possess the assets.

Ideological power is that in which the influence exercised by the dominant group is based on knowledge and doctrine.

Political power, which is most interesting to us, is that which utilizes force to exercise influence over a group of people. The State is authorized to be the exclusive holder of that power; it in fact has monopoly over that force. It is important to bear in mind that the political power that emanates from the State has the characteristics to suppress the formation, in its territory, of armed groups that could threaten its monopoly over the use of force, to issue decisions that should be followed by the rest of society, and the possibility and imperative to intervene so that its objectives are accomplished (Acquaviva, 2010).

To track political activity, it is important to know the profile of the key

actors involved in the struggles for power at every level. It is particularly important to remember the position of each political group and party in relation to the regulatory topic at stake.

It is always a good option to have access to good political scientists and consultants who can periodically analyze the political climate and scenarios. Those analyses give added weight to the opinion of the government relations team.

A good file with data on the main actors on the political scene helps a lot, as do periodic visits and conversations with relevant people in the political world with no set agenda.

It is important to bear in mind that political science is not exact and that it therefore demands a healthy dose of empiricism. Knowledge will be strengthened by the experiences and sentiments obtained through the numerous conversations and experiences with the actors on the political scene. Once you have a certain body of knowledge, you can begin to trust your intuition.

Thus, it is important to listen to the different sides and not confuse a possible personal stance on a topic with the interests that are being defended on behalf of the institution.

It is very important to have counterparts in all ideological quadrants and parties so that it is possible to quickly assess whether a news story is gossip or an important development.

Because the political scenario is very volatile, stay current. Magalhães Pinto, who was governor of the state of Minas Gerais, senator and minister of foreign affairs during the military regime, coined a phrase that is still very much in use: "Politics is like a cloud. You look at it and it is one way. You look at it again and it has already changed."

Strategy and action plan

How do you allocate resources to achieve the expected results? Where

do you begin? Those are the questions most frequently asked when it comes to putting together a strategy to change the regulatory framework.

Experience shows that your institution is able to open doors, more than any other person unfamiliar with your interests. Ask the audiences clearly on behalf of the institution or of the associations that are conducting the process. In some cases, consulting firms that specialize in government relations can help, providing instructions as to the best route, or even asking the audiences on behalf of your institution.

Lawmakers are privileged counterparts in their scope of influence because their activity is to represent the interests of their voters. Be sure to seek them out whenever possible. Generally speaking, lawmakers are quite accessible.

In the Executive Branch, the temptation is always to look first for the highest counterpart, whether that be the President of the Republic, the governor or the mayor, depending on the body you would like to reach. However, Ichak Adizes teaches us his concept of *coalesced authority, power and influence* (CAPI), as a pre-requisite to the decision-making process in large organizations, such as those in the government.

CAPI is a decision-making process that, at the same time, requests meetings with people who have authority, power and influence, or information about the issue. That way, the highest authority is only one of the search criteria, and certainly a necessary one, but not enough, although many are tempted to simplify. The best way to begin is by knowing all the bodies that need to weigh in on an issue. Then make a list, a chart with the names of all the people who should be contacted, including the key stakeholders.

Begin at the beginning: request a meeting with the people on the list who you do not yet know, to introduce YOUR institution and raise awareness of a topic of mutual interest.

Because we are working in the realm of political power, remember that the first reaction of politicians is to maintain or gain power, depending on whether we are talking to those in the ruling party or those in opposition parties. A famous definition in American political science holds that lawmakers have but one goal: to gain re-election (Mayhew, 1974). That explains why it is necessary to make clear that our proposal is capable of generating value for society, improving the competitiveness of our institution and bringing recognition to the politicians that make it possible.

In those conditions, it is absolutely critical that you identify who your expected allies and likely adversaries will be. Include them on the relationship map, noting expectations of action, whether for or against the initiative.

Remember, too, that politics is always local. Therefore, know the political base of the members of Congress and politicians who are important for your institution. Always be prepared to show the social, environmental and economic impacts of each legislative initiative that affects your institution. Never lose sight of the four pillars that explain your organization, and always think about all of them.

Because politicians fight for power, it is important to remember that your main adversary is most often in your own party and in your own state. That is where they fight for political power vote by vote.

In the dilemma between choosing allies without creating adversaries, the question arises as to who will start the discussion that interests your institution. That choice is tricky, and serious mistakes can prove fatal to your plans.

An interesting period for expanding engagement is at the start of each legislative session when the bodies have been replenished with the entry of new members. In practice, you should always have an updated list of addresses, in addition to a simple and efficient system for tracking your engagement.

As in all relationships, good manners, politeness and courtesy are important for building long-lasting contacts. Be formal, because we are focusing on institutional relations, but do not overdo it.

Be honest with yourself: say what you think about the topics under discussion, but create no controversy and respect differing positions. Be moderate and humble. You should never be arrogant or pedantic.

Remember, too, that time is the scarcest asset for an official or congressman. Value the time they give you and thank them for it.

Keep in mind that the topics addressed in that meeting may be about to be communicated by the press in a few hours. Take that into consideration and think about what you will say as well as how you will react.

Do not engage in the most common rude behavior, such as forgetting to silence your cell phone or speaking ill of third parties. The world of politics is public and any secrets will be shared with other people. Always remember that you are representing the interests of your institution in that meeting.

The action plan that emerges from that strategy results in a simple table in which the predicted actions are aligned and respond to the classic 5W + 2H questions—abbreviations for: what, when, who, why, where, how, and how much. A simple action plan appears in the table below:

Action plan

Topic	Action	Who to contact	In charge	Notes	Deadline	Status
Technical	Meet with Ministry experts and position industry situation	Executive Secretary and Advisor to the Minister	João e Antônio	Meeting held with positive message	16/Sept.	Yes
Political	Meet with leadership to find out if position is locked in	Chamber leader and Senate leader	Laura e Carla	Meeting held and issue still open	07/Oct.	Yes
Stakeholder	Align sector	All organizations in the sector	João	Meet weekly until position is sealed	11/Nov.	On-going
Book	Prepare material for the technical group	Organizations' technical departments	Antônio	Bring up all the information	05/Nov.	No
Communication	Assemble communication strategy	PR agency	Laura	Focused strategy aligned with stakeholders	07/Nov.	Yes
Book	Format and prepare the book	Advertising agency	Carla	Material with illustrations	25/Nov.	On Going
Communication	Assess results of survey made available by the Ministry	Ministry Secretary	João	Assessment of impacts on each organization completed	30/Oct.	On Going
Political	Meeting with the Ministry to deliver the proposal	Minister and Executive Secretary	Everyone	Take the book, meet before with sector and assemble BATNA	02/Dec.	No

5w + 2h

In conclusion, the engagement process involves a delicate web of conversations, dialogues and exchange of information that needs to be generated, tracked and monitored. An efficient stakeholders map is very important because it will identify the people you should meet with so that you can formulate the CAPI needed to obtain approval.

Stakeholders map	Visit	Scheduled	Held	%
President of the Republic	3	0	0	0.00%
Minister of Finance	3	1	0	0.00%
Minister of the Environment	5	2	2	40.00%
Minister and Chief of Staff to the President	5	2	1	20.00%
Minister of Justice	5	5	5	100.00%
Minister of Planning	7	5	3	42.86%
President of the Chamber of Representatives	5	3	1	20.00%
President of the Federal Senate	5	3	3	60.00%
Senator, Leader of the ruling party	7	7	7	100.00%
Senator, Leader of the opposition party	7	5	2	28.57%
Deputy, Leader of the ruling party	7	6	4	57.14%
Deputy, Leader of the opposition party	7	5	0	0.00%
Senator, Leader of the PT	7	4	2	28.57%
Senator, Leader of the PSDB	7	2	0	0.00%
Senator, Leader of the PMDB	7	7	7	100.00%
Deputy, Leader of the PT	5	1	0	0.00%
Deputy, Leader of the PSDB	6	0	0	0.00%
Deputy, Leader of the PMDB	7	3	3	42.86%
Governor of SP	5	3	3	60.00%
Governor of RJ	3	3	3	100.00%
Total	113	67	46	40.71%

Using a scorecard that lets you know importance, prioritizing the meetings and tracking your progress is also very helpful. Because the stakeholders map tends to be quite extensive, one suggestion would be to attribute a weight to each name in order to establish priorities for the meetings to be scheduled.

Another suggestion is to create categories such as political weight of the position, public identity with regard to the given issue, difficulty in scheduling a meeting, and finally, the importance of a particular person for approving the initiative. Each of the categories can be given grades from 1 to 3. Finally, we can weigh the significance of each of these categories to the success of our strategy.

The table below shows the suggested scorecard:

Scorecard	%	Weight	Id	Dif	Key	Score
		20	15	15	50	
President of the Republic	0.00%	3	1	3	1	170
Minister of Finance	0.00%	3	1	2	1	155
Minister of the Environment	40.00%	1	3	1	0	80
Minister and Chief of Staff to the President	20.00%	2	3	2	1	165
Minister of Justice	100.00%	1	1	2	0	65
Minister of Planning	42.86%	2	1	2	0	85
President of the Chamber of Representatives	20.00%	3	2	3	0	135
President of the Federal Senate	60.00%	3	2	3	0	135
Senator, Leader of the ruling party	100.00%	2	3	3	0	130
Senator, Leader of the opposition party	28.57%	1	1	1	1	100
Deputy, Leader of the ruling party	57.14%	2	2	1	1	135
Deputy, Leader of the opposition party	0.00%	1	2	3	0	95
Senator, Leader of the PT	28.57%	3	3	2	0	135
Senator, Leader of the PSDB	0.00%	1	3	2	0	95
Senator, Leader of the PMDB	100.00%	2	3	3	0	130
Deputy, Leader of the PT	0.00%	3	2	2	0	120
Deputy, Leader of the PSDB	0.00%	1	1	1	0	50

Scorecard	%	Weight	Id	Dif	Key	Score
Deputy, Leader of the PMDB	42.86%	2	2	2	0	100
Governor of SP	60.00%	2	3	1	0	100
Governor of RJ	100.00%	2	2	1	0	85
Total	40.71%					

What we learned in this chapter

The government relations strategy has four major components:

- a. determine who we are and what we want to do
- b. communicate with focus
- c. build alliances and partnerships
- d. engage to shape a new regulatory framework.

The engagement process has four stages:

- a. monitoring
- b. prioritization
- c. analysis and framework
- d. strategy and action plan



6

Managing the routine of a government relations team:

A practical approach

As we have seen in the previous chapters, the work objective of a government relations team is to change the regulatory framework under which an organization operates. That change has to find benefits for three interests: those of society; those of public officials who need to be recognized as public managers capable of fostering conditions for social, economic and environmental development; and of course, those of the organization itself.

In attempting to achieve that variety of benefits, the government relations team focuses on problems to be resolved, gaps to be filled and goals to be accomplished. Here, a slight digression is needed in order to understand the philosophical meaning of “problem.” According to the definition by American philosopher and educator John Dewey, founder of the School of Pragmatism at the University of Chicago, and cited by Araújo (2010, p. 200): “It is the situation that constitutes the starting point of any inquiry; in other words, the situation is indeterminate. It becomes problematic by merely being subjected to inquiry.”

In popular terms, the word “problem” carries a negative connotation of something bad. It is not surprising to hear someone say that a problem is a problem: a situation that has gotten out of control, trouble, an obstacle. That view is not incorrect. But there are problems that are not “problems.” Problems can be understood as someone’s decision to take a system out of its comfort zone, turn a tidy arrangement into a mediocre situation, or reorganize resources and overcome an obstacle. It is possible to use that definition for problems as long as we understand

that problems are gaps, or distances between reality and the ideal situation.

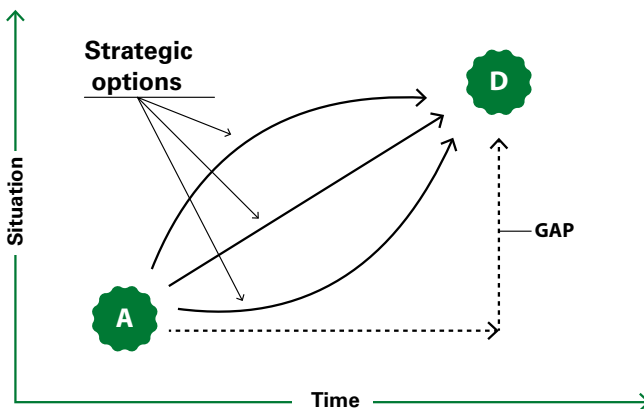
Luiz Fernando Edmond, former CEO of Anheuser-Busch, said in an interview for this book that “the leader’s role is to create good problems and open new gaps.” He is right because at the moment a leader creates the gap by imposing a new and greater challenge on his organization or team, he forces the group to think and find better ways to do things, seek innovation and have better people on the team.

Since the business of the government relations team is to close the gaps between existing and desired regulatory frameworks, achieve expected results from a new set of rules, and resolve engagement problems between the institution and the government, the team should use some kind of method to solve problems systematically.

The question then becomes one of how to reach its goal. An institution has several strategic options that it can use to modify the current framework (A) and achieve the desired framework (B). That distance, or gap, is the problem the government relations team needs to solve.

Figure 1

Strategies

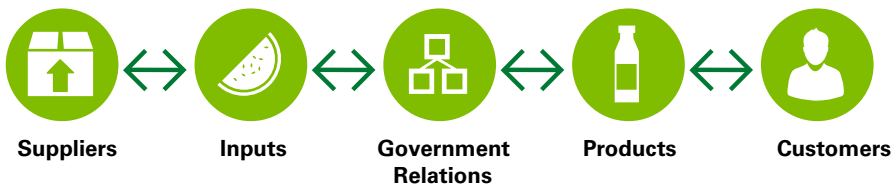


Peter Ferdinand Drucker was an American consultant, professor and author whose work has contributed to our understanding of the philosophical and practical bases of the modern theory of business management, and he is known as the “founder of modern management.”¹

Halfway through the last century, Drucker realized what today is now common sense: “The traditional factors of production—land, labor and even money, because it is so mobile—no longer assure a particular nation competitive advantage. Rather, management has become the decisive factor of production” (Drucker, 1992). While that statement applies to one nation in particular, it can be adapted to any company or institution.

In the previous chapter, we focused mainly on the external connections used by the government relations team in attempting to resolve those gaps. Now, we will turn our focus to the inside by taking a detailed look at the government relations function within an institution. Using practical examples, we will apply part of what we have learned up to now as we focus on how to manage the government relations team. To better organize the routine and successfully manage it, we can look at the government relations function as another business unit in the organization.

Figure 2



1 See Denning (2014).

The leader of the government relations team is the “owner” of that business unit and as such is in charge of the means at his disposal and responsible for the results of “his” business. The “owner” of the business has the duty to lead his team to achieve the goals established for it. But who establishes those goals?

An organization’s goals are expressed in the wording or strategic planning laid down by the C-Level (chief executives: CEO, CIO, CFO, COO, and other Cs). Those goals are set on the basis of the respective gaps. Each business “owner,” including the leader of the government relations team, is responsible for negotiating his goals with his team on the basis of the gaps and in that way establishing an attainable challenge. That challenge, however, should always lead the team to continuous improvement and almost always to building new knowledge.

The goals that the government relations team should achieve are the products that meet the needs of their customers. Those goals should be tracked by appropriately established control items.

Figure 3



To achieve its goals, the team’s strategic plan is set up on the basis of its customers’ needs. Those are the organization’s internal needs that dictate the regulatory framework pursued by the government relations team.

As we saw in Chapter 5, the term “strategy” is a military concept and refers to the mobilization of resources to achieve objectives, defining

a plan for the future. The objective of a strategic plan is to achieve the pre-defined aim, and the team is successful when it reaches its intended outcome.

There are many different strategies and they depend on the existing resources and the creativity of the team. Strategy will always be generated with a view towards closing the gap between current reality and the desired regulatory framework.

To analyze the internal management of the government relations team, we are going to assemble our strategy by looking at an actual case, whose objective will be to change the set of rules affecting our institution.

We are going to use the case of the São Paulo City Government analyzed in the previous chapter, altering some of the variables for instructional purposes. Let's suppose that our organization:

- is a medium-sized manufacturing company
- is slightly leveraged
- has limited working capital
- is suffering the effects of Brazil's economic crisis and has cut back on its operations
- leads a very competitive market
- is a member of the trade association and the employer organization
- has customers that are small and medium-sized, as well as microenterprises
- has numerous suppliers
- has a small government relations team with some experience in dealing with the surrounding interest groups
- has environmental commitments around the factory

- invests considerably in social media advertising
- is a company known to the public
- has an average reputation compared to that of our competitors.

One fine day, the organization is informed by the media that the city government is obtaining studies for the purpose of changing the rules regarding the circulation of cargo vehicles. What changes are being studied?

- The city government would like to change the legal standards regulating the circulation of vehicles in the Zone of Maximum Traffic Restrictions (ZMRC).
- According to the proposal under discussion, urban cargo vehicles (VUCs) will not be allowed to circulate in the ZMRC between the hours of 07:00 and 19:00 hours.
- Our organization uses VUCs to distribute products among customers located in the ZMRC.
- The new rule will impose heavy losses on our organization because we will have to sell our VUCs and purchase the new vehicles specified in the rule whose prices are high because of increased demand.

Our first action is to prepare or revise the organization's SWOT to identify its strengths, weaknesses, opportunities and threats. If you are still unclear about SWOT, we suggest you review the previous chapter. That method allows an organization and its government relations team to be prepared to meet the challenges and needs of their internal customers.

It is now time to do a SWOT. Remember that SWOT stands for strengths, weaknesses, opportunities and threats.

By using SWOT, we can understand where our challenges are so we can work on our weaknesses and use our strengths to pursue opportunities and

defend ourselves from threats.

One way to do that exercise is to match our strengths and weaknesses to our threats and opportunities in an exercise known as TOWS or SO WHAT.

This exercise helps us identify the consequences of matching the institution’s information about strengths and weakness to the opportunities and threats in the external environment. It is something like assembling a defense strategy by using our strengths to minimize threats and minimize our weaknesses to avoid those same threats. We could also define the strategy of attack by selecting the best internal qualities—the institution’s strengths—to take advantage of the opportunities we have identified. Similarly, we could minimize our weaknesses so that the team could take advantage of the opportunities identified.

Thus, we first match the strengths and weaknesses to the opportunities. In the middle of the new table, we have also included possible actions and concerns. The exercise embodies the mathematical notion of strengths minus weaknesses multiplied by opportunities.

The second exercise uses the same the formula but replaces opportunities with threats.

SWOT	
S	W
Medium-sized industry	Limited working capital
Slightly leveraged	Government relations team is small
Market leader	We don't engage with the government
Belongs to trade associations	We have no social commitments
Diverse customers	Web advertising
Diverse suppliers	Industry reputation is low
Government relations team	We don't know council members
Environmental commitments	
We're known to the public	
We have good studies	
O	T
Problem affects the entire industry	Crisis is affecting earnings
Economic area could become an ally (US\$)	Market is very competitive
Environmentalists could become allies	Most councilmen are in the ruling party
Workers could be allies	Importers may organize
VUC manufacturers are united	VUCs are noisy
More vehicles will circulate in the ZMRC	Night deliveries are unsafe
Noise in the region will increase	Robberies will increase
Public safety will have to be strengthened	

SO WHAT (S - W x O)

O	Problem affects the entire industry	Economic area could become an ally (US\$)	Environ-mentalists could become allies	Workers could become allies	VUC manufac-turers are allies	More vehicles will circulate in the ZMRC	Noise in the region will increase	Public safety should be enhanced
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- S**
- Medium-sized industry
 - Slightly leveraged
 - Market leader
 - Belongs to trade associations
 - Diverse customers
 - Diverse suppliers
 - Government relations team
 - Environmental commitments
 - We're known to the public
 - We have good studies

- W**
- Limited working capital
 - Government relations team is small
 - We don't engage with the government
 - We have no social commitments
 - Web advertising
 - Industry reputation is low
 - We don't know council members

Prepare the material to communicate to the organization and present the problem that will be submitted if the measure is approved

Include the economic consequences for the company and industry if the measure is implemented

Hold meeting with the economic area to show how this would impact exchange rates

Involve the industry association, union, federation and confederation to demonstrate the severity of the problem

Prepare stakeholders map and highlight customers in the ZMRC, showing how they will be impacted

Prepare stakeholders map and highlight customers in the ZMRC, showing how they will be impacted, especially the suppliers of VUCs

Ask the government relations team to develop a strategy for reversing the problem

Prepare stakeholders map, highlighting environmentalists, union members and homeowners' associations in the ZMRC region

Highlight environmental commitments in communication material, showing the impacts of increasing pollution and the number of vehicles in the ZMRC

Turn technical studies into communication material aimed at stakeholders

Prepare the material to communicate to the organization and present the problem that will be submitted if the measure is approved

Strengthen the government relations team

Involve the industry association, union, federation and confederation to demonstrate the severity of the problem

Look for social commitments that have already been met among the organization's industry activities

Take care that subjects unrelated to the issue, the result of low reputation, do not take up space

Make the web the primary communication medium and redouble **efforts involving traditional media**

Involve the industry association, union, federation and confederation to demonstrate the severity of the problem

SO WHAT (S - W x T)

T

Crisis is affecting earnings	Market is very competitive	Government has the majority of council members	Importers can be arranged	VUC manufacturers are allies	VUCs are noisy	Night deliveries are unsafe	Thefts will increase
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S

Medium-sized industry
Slightly leveraged
Market leader
Belongs to trade associations
Diverse customers
Diverse suppliers
Government relations team
Environmental commitments
We're known to the public
We have good studies

W

Limited working capital
Government relations team is small
We don't engage with the government
We have no social commitments
Web advertising
Industry reputation is low
We don't know council members

Prepare the material to communicate to the organization and present the problem that will be submitted if the measure is approved

Include the economic consequences for the company and industry if the measure is implemented

Hold meeting with the economic area to show how this would impact exchange rates

Involve the industry association, union, federation and confederation to demonstrate the severity of the problem

Prepare stakeholders map and highlight customers in the ZMRC, showing how they will be impacted

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Ask the government relations team to develop a strategy for reversing the problem

Prepare stakeholders map, highlighting environmentalists, union members and homeowners' associations in the ZMRC region

Highlight environmental commitments in communication material, showing the impacts of increasing pollution and the number of vehicles in the ZMRC

Turn technical studies into communication material aimed at stakeholders

Show government the economic, social and tax impacts

Strengthen the government relations team

Involve the industry association, union, federation and confederation to demonstrate the severity of the problem, taking advantage to establish a relationship

Identify commitments already assumed and not recognized, and commit to new ones

Handle traditional media response very carefully

Pay attention to vulnerable points and make a list of those points

Involve the industry association, union, federation and confederation to demonstrate the severity of the problem, taking advantage to establish a relationship

That information will be key to establishing a strategic plan, the most important task of the business “owner.” Management of the plan is designed to turn the organization’s strategies into reality. We could say that it is the transition from the SO WHAT into an action plan.

Note that this management requires a method, and one of the most simple and efficient methods is the PDCA Cycle (plan, do, check and act). Also known as the Shewhart or Deming cycle, its underlying principle is making management processes clearer and more responsive, and it can be divided into four key steps:

- Plan the actions to be carried out;
- Do the actions planned;
- Check what was done and the degree of progress achieved on the measures; and

- Consider and analyze (act) the difference between the
The PDCA Cycle was perfected and expanded in Brazil due to the work of Professor Vicente Falconi (2013), who usually presents it in a more comprehensive form by analyzing each of its four steps:

Figure 4

PDCA METHOD – Vicente Falconi

PDCA	FLOWCHART	PHASE	OBJECTIVE
P	1	Identification of the problem	Clearly define the problem and recognize its importance
	2	Observation	Investigate the specific characteristics of the problem with a broad view from several perspectives
	3	Analysis	Discover the underlying causes
	4	Action plan	Devise a plan to stop the underlying causes
D	5	Action	Stop the underlying causes
C	6	Check	Verify that the barrier was effective
	?	Was the barrier effective?	
A	7	Standardization	Prevent the reappearance of the problem
	8	Conclusion	Repeat the entire problem-solving process for future work

Plan

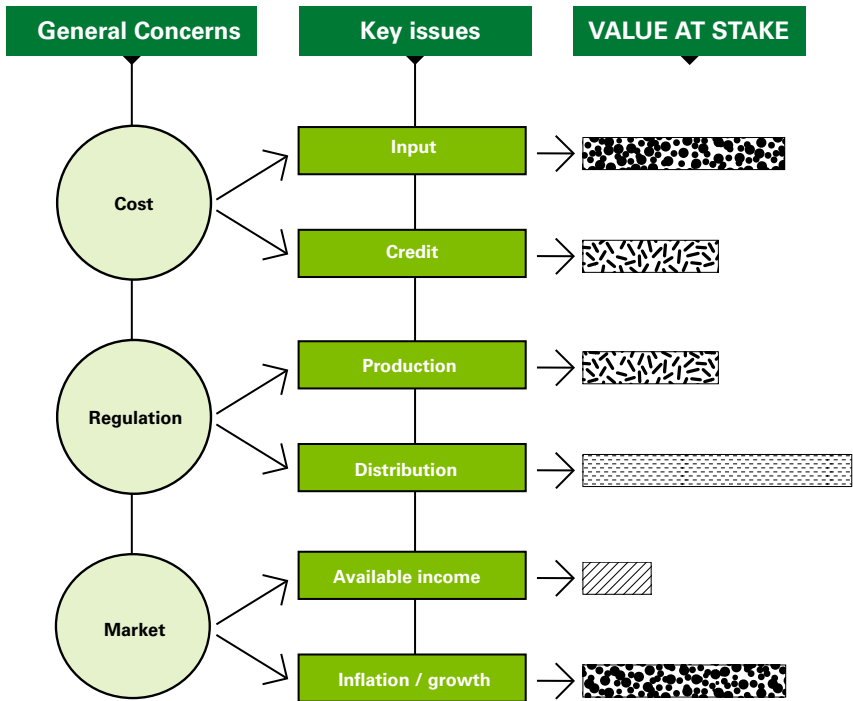
The first thing to do is identify the problem, which means clearly defining the gap you are looking to close and recognizing its importance to the institution.

Generally speaking, this means doing the following: identify the key regulatory issues that affect your institution, create a map of the main topics, identify how much each is worth to the institution and the likeli-

hood of occurrence of each, the current status, the desired status and the limits, and finally, what value is at stake.

Figure 5

Value at stake

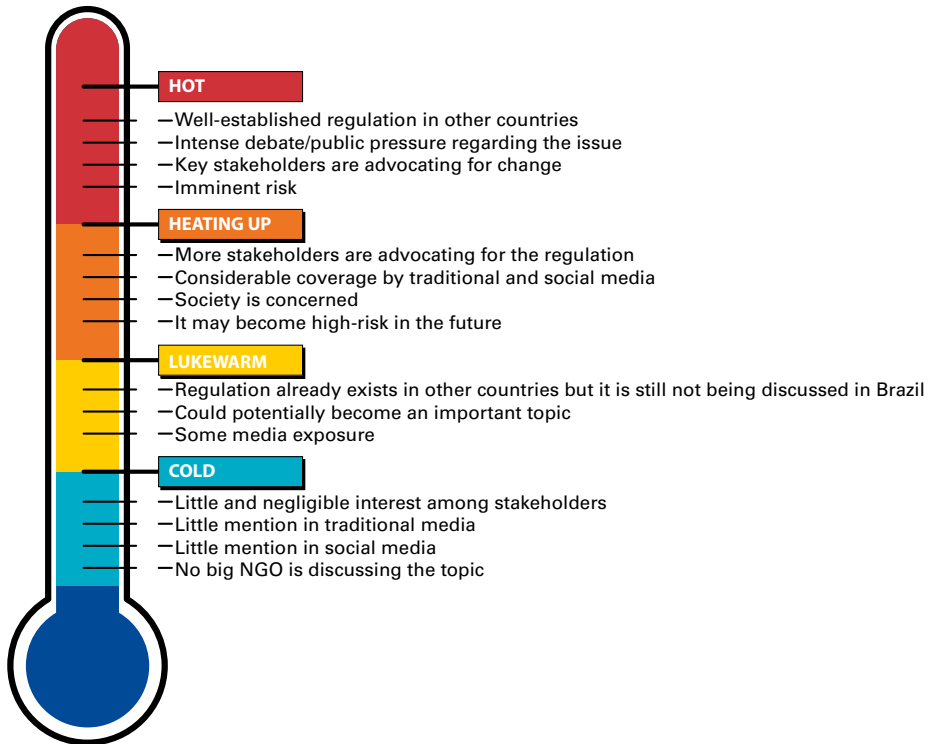


The second stage of planning is observing the problem in an effort to identify its characteristics with a broad view from several perspectives. In that stage, priorities should be defined on the basis of the value at stake, the likelihood of occurrence, the resources available and “the goal to be achieved.”

One of the most important assessments to be done pertains to the actual likelihood of occurrence of the change under discussion.

Figure 6

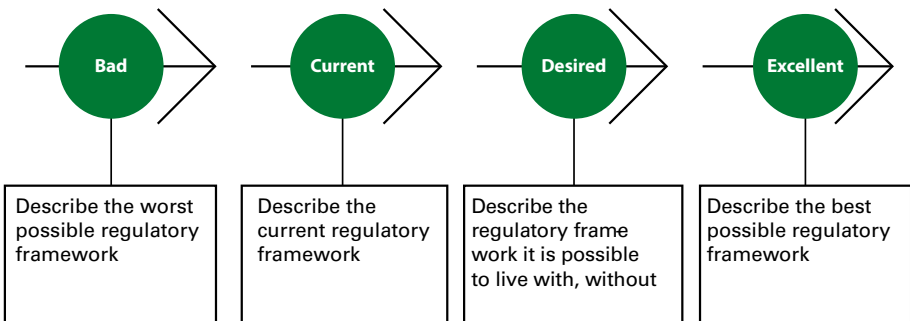
Likely to Occur



Next comes selecting scenarios based on the data available in four typical scenarios: worst case, current, best case and desirable in terms of cost/benefit.

Figure 7

Current situation, desired situation and limits



The third stage of the plan is the analysis, in other words, investigating how the problem occurs, and what its underlying causes are. To better understand the problem, it needs to be stratified, meaning separated into groups and sub-groups, in order to allow the development of an efficient and effective strategy.

At that point, the problem of the government relations team can be summed up as execution of the following steps:

- getting out of the current situation
- looking for the best possible regulatory framework
- avoiding the worst possible regulatory framework
- negotiating a regulatory framework you could live with
- minimizing political cost.

Turning back to our problem, the studies carried out show us that:

- the new cargo vehicle (NVC) identified by the city government is not manufactured in Brazil
- one NVC has 25% of the carrying capacity of one VUC
- NVCs have the following dimensions compared to VUCs: 50% of their length and 90% of their width
- according to the same technical standards, one NVC emits 60% of the pollution emitted by one VUC.

Causes and effects of the problems

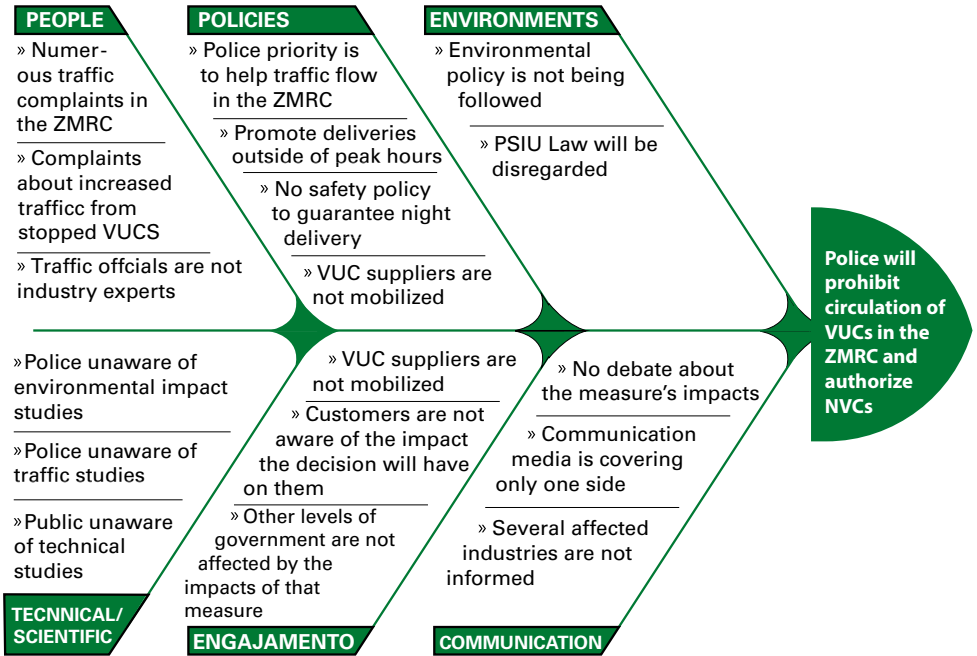
Because problems are differences (gaps) between the current situation and the desired situation, the first thing we notice is the effects (symptoms) of the problem on the institution. However, to assemble a strategy capable of closing the gap, we will have to get to the root causes of the problem.

There are several methods available to identify root causes, and one of the most well-known is the Ishikawa Diagram, also known as a Fishbone Diagram or simply, the Cause and Effect Diagram.

That tool allows us to organize the causes and sources of the problem by group of topics or clusters. The team's work begins with a brainstorming exercise, designed as a way to propose a number of causes and divide up the suggestions among the groups. A suggestion is to keep the first idea in mind from one day to the next and get back together with the team to review what was done.

The diagram shows a set of causes, but are these really the root causes of the problem?

Figure 8



Searching for the root of the problems

A good empirical method for identifying the root cause of problems is 5-Whys technique, in other words, repeating the question “why” five times. The objective is to enable further analysis to peel away the layers of symptoms which can lead to the root cause of the problem. The problems are related to the ends and their causes are related to the malfunctioning of one or some of its means. That is the simple iterative technique of problem-solving developed Taiichi Ohno, in the context of the Toyota Manufacturing System, and it consists of formulating the question “why” five times in order to understand what happened (the root cause.)²

In a practical way, the premise of this technique is that after asking why a problem is happening five times, always related to the immediately

preceding cause, you get to the root of the problem. The tool is widely used in quality control assurance departments of companies, but in practice, it can be implemented in any area. According to Taiichi Ohno, a pioneer of the Toyota manufacturing system in the 1950s, “having no problems is the biggest problem of all.” Ohno saw a problem not as something negative, but rather as an opportunity for “continuous improvement in disguise.” His advice to the executives of the Japanese brand was: “Observe the production floor without preconceptions [...]. Ask ‘why’ five times about every matter.”³

Before we use the method in the actual case under analysis, it is worthwhile to take a closer look at the example used by Ohno. He uses the case of a welding robot that stops in the middle of operations to demonstrate the usefulness of his method, finally getting to the root cause of the problem through persistent inquiry:

1. *“Why did the robot stop?”*

The circuit has overloaded, causing a fuse to blow.

2. *“Why is the circuit overloaded?”*

There was insufficient lubrication on the bearings, so they locked up.

3. *“Why was there insufficient lubrication on the bearings?”*

The oil pump on the robot is not circulating sufficient oil.

4. *“Why is the pump not circulating sufficient oil?”*

The pump intake is clogged with metal shavings.

5. *“Why is the pump intake clogged with metal shavings?”*

Because there is no filter on the pump.⁴

2 “Os 5 Porquês (5-Why) – Análise da causa raiz.” Total Quality [The 5 Whys – Analysis of root cause]. Available at: <<http://apostilasdaqualidade.com.br/os-5-porques-5-why-analise-da-causa-raiz/>>.

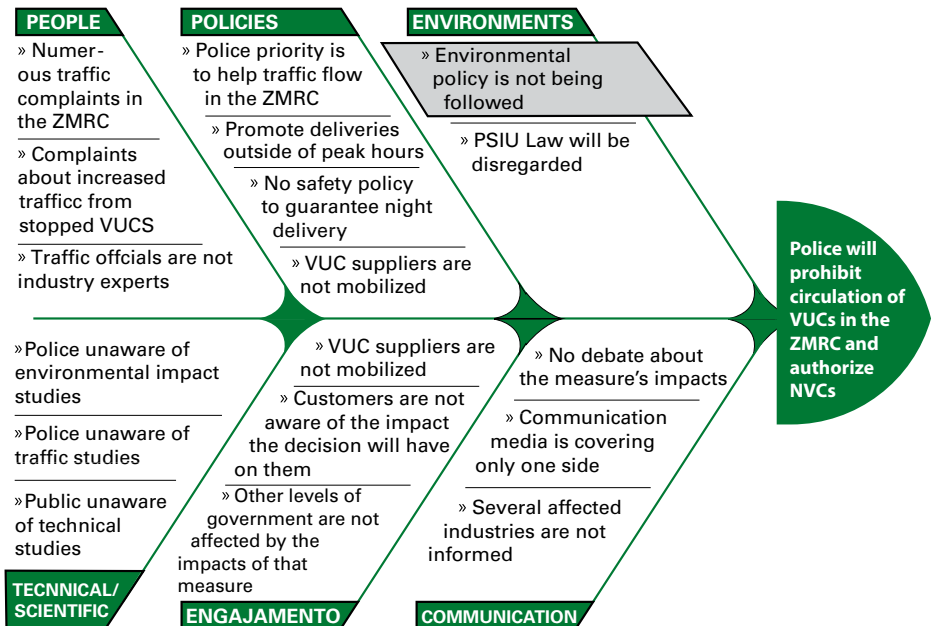
3 Ohno, Taiichi. “Ask ‘why’ five times about every matter.” Toyota, March 2006. Available at: <http://www.toyota-global.com/company/toyota_traditions/quality/mar_apr_2006.html>. See Denning (2014).

The case illustrates the empirical reason for the five whys. Different adaptations of the method indicate that the first why helps describe the symptom. The second presents an excuse. The third presents a culprit. In the fourth, a cause appears, and in the fifth, the root cause appears.

Going back to our actual case, it is possible to go from the previous fishbone diagram to the 5 whys analysis to get to the root cause of the problem.

Once all the root causes of the problem have been identified, the next step in the PDCA Cycle is to act, executing an action plan to eliminate the cause of the problem.

Figure 9

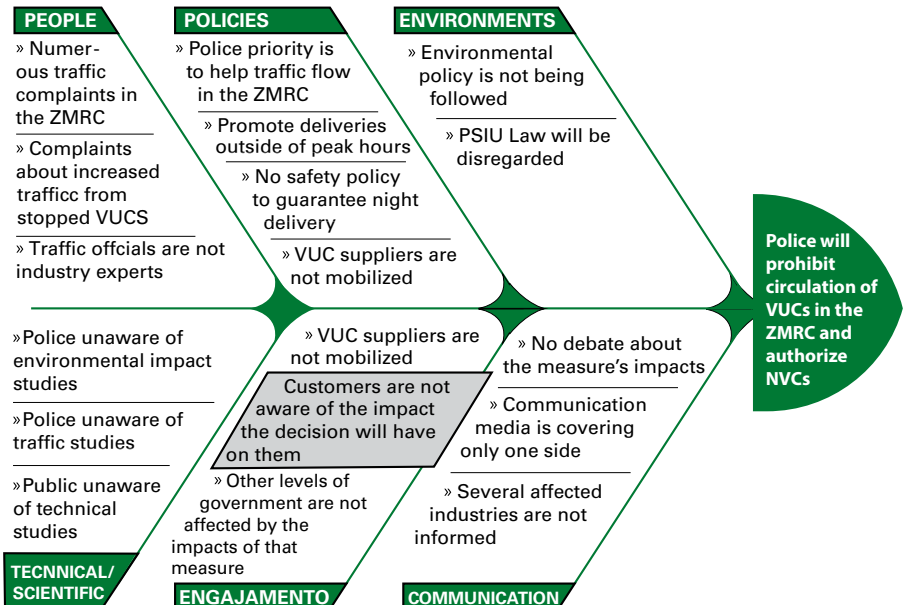


5 WHYS?

	CAUSE	WHY
1	Environmental policy is not being followed	Proposed solution pollutes more
2	Proposed solution pollutes more	NVC pollutes 60% as much as a VUC, but there need to be more NVCs per load
3	NVC pollutes 60% as much as a VUC, but there need to be more NVCs per load	Per load, the NVC fleet pollutes 2.4 times as much as the VUC fleet
4	Per load, the NVC fleet pollutes 2.4 times as much as the VUC fleet	You need 4 NVCs to carry the same load as one VUC
5	You need 4 NVCs to carry the same load as one VUC	PM proposal has a design flaw

Another example:

Figure 10



The leader and his team should plan how to carry out the proposed

5 WHYS?

	CAUSE	WHY
1	Customers do not know what impacts the decision will have on them	They were not informed of all the impacts
2	They were not informed of all the impacts	Police are unaware or have no interest in informing them
3	Police are unaware or have no interest in informing them	Police want to avoid an increase in the number of people dissatisfied with the measure
4	Police want to avoid an increase in the number of people dissatisfied with the measure	The measure is very negative for the small points of sale
5	The measure is very negative for the small points of sale	Night deliveries increase safety risks

Execution (Do)

After discovering the root causes, it is time to implement an action plan in which each task responds to the following questions of the 5W + 2H tool:

- **What?** (What do we do?)
- **When?** (When will it be done?)
- **Who?** (Who will do it?)
- **Where?** (Where will it be done?)
- **Why?** (Why will it be done?)
- **How?** (How will it be done?) and
- **How Much?** (How much will it cost to get done?)

action, establishing deadlines and activities within a timetable of actions. The action must be carried out with great discipline. According to Jim Collins, winning teams have three characteristics: disciplined people, disciplined thought and disciplined action.

Those ideas demonstrate the importance of discipline in carrying out the PDCA activities, which implies not only facing hard realities, but also keeping sight of the objectives. Consistency is a key concept that should be encouraged in the team.

Exame magazine journalist Cristiane Mano interviewed Professor Vicente Falconi in October of 2010 regarding the PDCA Cycle.⁵ When asked about where companies err in implementing the Deming cycle, or where people who work in companies err in relation to its implementation, Falconi was emphatic: it is in the lack of discipline in executing the work plan. The professor points out that it is critical to have a detailed plan based on solid analysis, but it is all for naught if the plan is not implemented in a well-disciplined manner using the same rigor. Thus, execution of the action plan is the materialization of the team's actions towards achieving its objectives.

Verification (Check)

Two important types of indicators are used to track progress on the action plan.

The first are the control items (CIs) that refer to the outcome. They are numerical indices established on expected results. In other words, the indicators measure whether or not the desired outcome was achieved.

The control items of a process should be defined with the customer. They are also known as key performance indicators (KPIs), the measurement of goal achievement.

5 See Canal EXAME.com. "Vicente Falconi — Onde erram as empresas" [Vicente Falconi – Where companies err]. 27 Oct. 2010. Available at: <<http://www.youtube.com/watch?v=O1yWx74vNI8>>. Accessed on: 31 Oct. 2017.

Action plan

Root cause	What	Who	How	Plan	When	Signal	Results/problems
Night deliveries increase safety risks	Technical document for people to understand the problem	João	Prepare detailed document with times and movements for night deliveries	16/Mar	16/Mar	Yes	Document ok
		João	Prepare an alternative to meet requirement to use NVC	18/Mar	26/Mar	Yes	Document ok
	Impact on each customer	João	Prepare a list of likely hours of operation for each customer	5/April	7/April	Yes	Ok
	Visit each customer	Lia	Organize meeting with customers in the ZMRC	25/May	8/Jun	Yes	OK
	Involve customers in dialogue with officials	Lia	Maintain dialogue with safety officials, demonstrating concern for everyone and the costs involved	27/May	25/Jun	On going	Difficulties setting up meetings
	Communication plan	Ana	Create a communication strategy that includes traditional and web media to raise awareness of the problem	15/Jun		No	Safety difficulties have hampered the strategy
	Maintain dialogue with the police, reporting steps	João	Maintain dialogue with the police, reporting steps	25/Ju		On going	Already begun
	Dialogue with city government	João	Begin dialogue with council members, take customers along	1/Aug		No	

The second type of indicators are verification items (VIs). They refer to the causes, process and activities. They are also numerical indices established on root causes and activities, and should be defined by the government relations team to track its own activities.

Simply put, the VIs should ensure achievement of CIs.

As another interesting method to verify whether we are using appropriate measures, we can study similar cases and engage in benchmarking to define goals or compare strategies. The goal or strategy may be established by comparing it with standards previously set. The appropriate choice of benchmark is essential to delivering on the institution's overall objectives.

Visible management

While the range of activities and techniques utilized may be cumbersome, what is key is tracking the CIs and VIs. It is recommended that PDCA management be visible to the entire team so that all members can participate.

It is therefore helpful to develop a dashboard that contains the most important indicators to be tracked. A dashboard helps improve an area's processes because it naturally creates historical series. The team can thus use the dashboard to monitor progress and add to corporate information systems. In addition, the information helps encourage and educate the institution about the government relations area.

There are several ways to develop a good dashboard, but it should include at least the following:

- description of the objective
- who is in charge
- quantification of the objective
- results from the previous year

- results up to the present
- results during the same period in the previous year
- assessment of what has been achieved by the end of the year
- tracking signal (green when it is up to date, yellow when attention is needed and red to signify delays).

Adjustment (Act)

In the event that the goal has not been reached, the government relations team will have to conduct a new round of analysis to identify the causes that were not correctly addressed and propose countermeasures.

Because the method strives for continuous improvements in quality, the adjustment may also be perceived as opening a new gap to be closed later.

It therefore begins a new round of PDCA to close the gap that required the adjustment. In principle and conceptually, though, a countermeasure or adjustment is designed to accomplish the goal previously established, and only after accomplishing that goal should a new gap be opened, introducing a new PDCA Cycle.

For the government relations team, the PDCA Cycle ends when a new and better regulatory framework has been established. Once that new framework has been found, a new gap then opens, representing the pursuit of an even better regulatory environment.

Aside from actions towards improving the regulatory environment, in some instances, the objective may be to prevent changes to a framework that already benefits the company. In that case, part of the government relations team should be engaged in preventing undesirable changes from occurring and maintaining the regulatory environment as is. That routine can be described using the SDCA Cycle, which takes the

same systematic approach as the PDCA. However, the method is used to maintain standardization of the processes (the S means standardize).

One very important idea for leading your team: have you reached your objectives? Established a new benchmark? Then celebrate the great results obtained by the team!

The government relations team

One question heard quite frequently concerns the ideal profile of the people who should be part of the government relations team.

Aside from personal integrity, key characteristics include:

- Ability to communicate coupled with persuasive skills
- Empathy and the ability to listen to the arguments of the other side
- From the technical standpoint, it is very important to have an extensive understanding of formal and informal legislative procedures and be aware of the sophistication and customs of politics
- It is very important to have an inquiring mind to rise to the challenge of lively discussions with well-defined interests on all sides, in addition to being current and have strategic skills.

The leader of the government relations team is the person who guides the group towards accomplishing its goals by doing things the right way. The leader is much more a coach than a boss.

In order to be a winning team, the leader's team needs to share information and have team spirit, seeking synergy and valuing mutual support. The team needs to have a clear understanding of the overall objective and know the objectives of each individual member.

For that purpose, the team has to meet periodically and jointly monitor its dashboard, which should be effective and unique in design.

Two types of periodic meetings are suggested: one for weekly monitoring, to track activities for that particular week, and another for monthly monitoring, to assess the status of the overall objectives and specific goals.

The method presented in this book is not intended to be the only one nor is it intended to be the final and definitive methodological form that works for all government relations teams. Nor is it the most sophisticated or even the ideal method in every case. What it is, is the fruit of interviews, practical experiences and studies carried out at Insper. We believe its use will promote professionalization, institutionalization and improvement of the government relations activities in Brazilian companies. As mentioned in the introduction to this book, many people continue to view the field of government relations as populated by folkloric figures like the American Artie Samish who believed himself to be president of the California legislature. The purpose of this manual is to steer us in the opposite direction from Mr. Samish. We believe that by proposing a method, government relations activity can take its proper place in an institution, alongside the other business areas, each with their own challenges and more importantly, their own limitations. The selected method presents what the authors believe to be best practices.

7

Looking at the world through artificial intelligence

FERNANDO MELLO

There is a famous aphorism attributed to British statistician George Edward Box: “Remember that all models are wrong; the practical question is how wrong do they have to be to not be useful.” The idea is that statistical models, artificial intelligence, and big data—or even formal models for data analysis—are always a simplification of reality: an analyst’s attempt to understand the world. Even so, some simplifications are more useful than others when it comes to understanding reality.

This book also presents a model for approaching reality to support the relationships between public and private actors. Additionally, each chapter presents a series of practices that helps those relationships become more ethical, efficient, and able to provide better outcomes for organizations, the government, and the society.

One of the arguments put forward is that gaining an understanding of the aforementioned relationships requires the collection and organization of data. The purpose of this chapter is to show how using large amounts of data and statistical models can benefit organizations.

Machine learning

Over the past decade, machine learning models have become fashionable. Data scientists are becoming increasingly valued in the job market and use of these techniques helps hospitals and health plans calculate the likelihood of patients becoming sick, gives e-commerce companies

the ability to predict consumer behavior, and even allows the promise of predicting voter behavior in choosing presidents.

The large amount of data available throughout the world along with the global popularity of these methods is forcing organizations to invest in data science. Even so, there is still a lot of confusion about how to use these tools and how they can help reveal the true nature of Brazilian institutions, for example.

Using this type of model compels analysts to always keep in mind the teachings of Box. Deep down, we are always looking for mathematical functions that best explain the relationship between Y, the variable we are trying to explain/predict, and one or more X variables, the model's inputs.

The challenge *a priori* is that it is always impossible to know what that relationship is. Is it linear? Is it polynomial? What is the precise formula? When we only observe data and do not actively manipulate it (like in experiments, for example), we do not know which function explains the relationship between variables in the real world. Breakthroughs in computer science are helping with this. Starting with pre-established models, a considerable number of potential combinations can be tested in order to understand the relationship between these variables.

Traditional models versus more scientific models

Using data science to understand complicated Brazilian institutions is already happening. There are a growing number of companies in the market that capture and analyze data with respect to Brazil's judiciary, executive, and legislative branches.

The use of artificial intelligence differs from "traditional" analytical models when it comes to analyzing institutions and the relationship between branches, however. Since they are based on large amounts of information, analyses rooted in data seek to distance themselves from

institutional relationships based on telephone numbers in an address book, exchanges of favors, or friendships. Of course, qualitative analysis of institutions continues to be invaluable, but whether in academia or the professional sphere, efficiency gains come from using multiple approaches that combine quantitative and qualitative methods.

In 2019, JOTA, a Brazilian news and information company, launched some of these tools that can help private organizations and public actors make decisions. One of them is called *Aprovômetro* (“Approvometer”), designed to simplify Brazil’s legislative reality by constantly generating the likelihood that bills would be passed.

With frequent updates, the tool currently contains more than 65,000 proposals that have been submitted to Congress since 2001. Every week, the *Aprovômetro* presents each proposal’s likelihood of being approved by Brazil’s Chamber of Deputies and Senate, as well as the president. In other words, the tool generates predictions as to whether or not bills will be passed into law.

Our objective has always been to provide organizations with a precise and easy-to-understand assessment. The tool’s database now consists of more than five million lines, with all available developments and information on each and every bill. One of the biggest complaints on the part of institutional relations professionals, for example, has long been the lack of time they have had to track actions on bills that are making their way through every step in Congress.

That complaint makes sense. By looking at *Aprovômetro*’s complete database, JOTA data scientists discovered that only 0.9 percent of the bills submitted to Congress end up becoming law. For purposes of comparison, in the United States, that rate is close to 5 percent.

Often, organizations are interested in tracking proposals because they do not want them approved. In other words, many draft laws/bills harm more than help industries and organizations, and part of the game of

politics involves applying pressure to prevent something from being approved.

But why spend time and energy on proposals that, in the end, have little or no chance of being approved? The opportunity cost is high. The idea behind the Aprovômetro is to convert all the complications involving the proposals into one easy-to-understand number: the probability (from 0 to 100 percent) that a particular bill will become law.

How the tool works

The Aprovômetro is a big data and artificial intelligence tool that uses machine learning models to help decision makers. The model is divided into several stages.

The first stage is data collection. JOTA data scientists and engineers have created an automated sequence of data gathered from Brazil's Congress. Every hour, bots go to Congress' website in search of updates on all bills. That database currently includes proposals that have been submitted since 2001. Once armed with updated information, codes are used to organize the databases according to bills, members of Congress, political party, etc.

Machine learning comes in during the next stage. First, the tool uses what is called the unsupervised model. In this stage, the machine is not trying to predict anything. It is just identifying patterns in the entire database and from that, it identifies potential variables that could be used as inputs in the predictive model.

Every week on average, the tool identifies close to 3,000 variables, such as the size of the proposal, keywords, the combination of issues sorted for the proposal, the urgency or lack thereof, progress to date, total actions taken, actions taken in the last 30-90 days, etc. There are important variables like the mix of states and parties among bill authors and rapporteur. All of these millions of possible combinations are impos-

sible to see with the naked eye. And that is why machine learning is so important.

From identification of these potential explanatory variables, the model moves into the next phase, which is known as the supervised model. At that point, computers are used to predict the likelihood that a bill will become law. If we refer back a few pages, we see that this is predicting the Y (converting bills into law).

For this, we first need to look to the past. Normally, JOTA data scientists train the model using data from the previous 6-12 months. At that point, the database is randomly divided into two parts: one for training and the other for testing. In the training part, the model is “seeing” the outcome of voting and thus identifying which combination of variables account for approval or no approval.

From that determination, it is then possible to see whether the degree of accuracy continues to be high in the model’s test database. After all, there is always the risk that the model could be effective in the learning portion but fail to repeat that performance in the future. Once the model is well-trained—in other words, after the machine has learned through testing—the time comes to make predictions regarding the bills progressing through the channels.

That entire process is repeated for each update, generating a clear value for each bill every week. Other major advantages for using artificial intelligence are that clients are able control the outcome and there is transparency on the part of the supplier. Every month, subscribers to the service are able to track the Aprovômetro’s hit ratio.

Curves and hits

In all of 2019, JOTA’s tool correctly predicted the outcome of 97.5 percent of proposals that were shelved and 72 percent of bills that passed into law. In 2020, even during the COVID-19 pandemic, the tool has maintained its good track record.

Given all the proposals submitted, accuracy was 72.2 percent on proposals that became law. It turns out that because of COVID-19, several proposals were adopted without going through any channels; in other words, without generating any information that could be available to use in a machine learning model. When proposals that were impossible to generate predictions for were discarded—in other words, considering only the bills for which there was information in Congress’ system—the degree of accuracy was 86.6 percent.

More than just overall accuracy, the Aprovômetro system provides information for real-time tracking. In other words, in addition to the week’s numbers, the tool provides insights by generating growth curves that show each bill’s likelihood for approval.

Here are some examples. During the 2019 pension reform, the Aprovômetro always indicated that the year’s most significant bill in Congress was likely to pass. On February 23, 2019, three days after the executive branch sent the bill to Congress, the Aprovômetro gave the proposed constitutional amendment (PEC 6/2019) a 13.37 percent likelihood of approval—an auspicious beginning given that only one out of every 100 proposals are approved.

One month later, the likelihood of the reform’s approval had already risen to 40.81 percent. The wording at that point still included items such as continuous cash benefit (BPC in Portuguese), capitalization, and rural welfare, which were major sticking points—those items were removed from the bill’s wording by the Chamber rapporteur, Deputy Samuel Moreira (PSDB-SP).

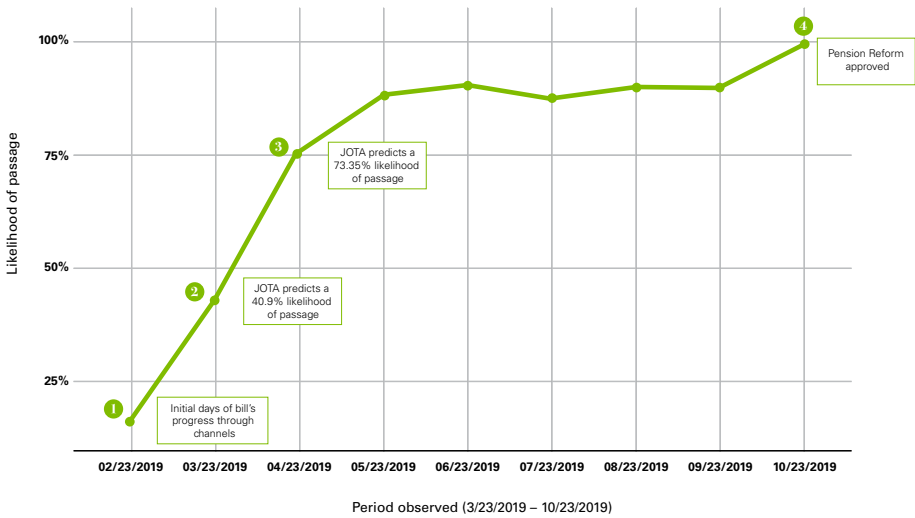
Artificial intelligence revealed itself to be capable of capturing insights that had escaped traditional analysts. For instance, an analytical report circulating among foreign and Brazilian investors on April 24, 2019 pointed to “uncertainties about the progress of pension reform and the government’s ability to make the case for it.”

According to the report: “The widespread optimism among investors was put to the test throughout the month of March, given the uncertainties about the progress of pension reform and the government’s ability to make the case for it, with a negative impact on the mood of the market.”¹ But on the preceding day, April 23, the Aprovômetro had already indicated that the reform measure had a 73.25 percent chance of passing. In May, that number rose to 86.31 percent.

Pension Reform

JOTA tool predicts reform outcome months in advance

Approval expectations on pension reform bill



The prediction curve for pension reform shows that at no time in the process did the Aprovômetro see a drop in the likelihood of the bill’s passage. The continuous path of growth was information that was intended more for decision makers. But a “clean” curve like that displayed above

1 “Relatório Mensal – Fundos e Previdência – Abril/2019,” XP Investimentos, <https://con-teudos.xpi.com.br/fundos-de-investimento/relatorios/relatorio-mensal-abril-2019/>

is not all that common. Several examples using the tool show that it can be used to capture not only increases in likelihood but also any challenges facing bills.

Take the example of the bill that altered Brazil's basic sanitation framework. The Aprovômetro predicted the outcome of voting on the Basic Sanitation Bill (PL 3261/2019), the sector's new framework, approved by the Chamber of Deputies in late 2019.

But that example also shows how the tool is able to capture a bill's difficulties. The weekly curve first indicated a sharp increase in the likelihood of approval, but several weeks later, it showed a decrease in likelihood. The curve is very different than the pension reform case. More than just indicating percentages, the trend curve helps in decision making.

In the case of the Basic Sanitation Bill, the tool identified how the bill's wording faced major hurdles in the Chamber of Deputies just as it was about to be put to a vote. The sector's framework was approved in a full session of the Chamber after a last-minute maneuver when rapporteur Geninho Zuliani (DEM-SP) replaced the wording originally sent by the executive branch.

PL 3261/2019, with Zuliani as rapporteur, appeared to have a 71.52 percent chance of approval in June 2019, before increasing to 89.76 percent in July, 92.25 percent in August and then decreasing in the succeeding months. It went from 86.57 percent in September to 86.59 percent in October before dropping to 81.36 percent in November. In other words, artificial intelligence captured the difficulties faced in the wording, which was changed just before the plenary vote.

All the last-minute wrangling was captured by artificial intelligence as well as by JOTA's team of experts out in the field, offering real-time updates to JOTA Pro subscribers interested in the issue.

PL 4162/2019, however, which ended up replacing PL 3261/2019, was completely stalled until being revived on the floor through an agreement for passage. On the day of the vote, the Aprovômetro generated a single prediction that the draft law/bill had a 97.17 percent likelihood of being passed, which it in fact was.

When the bill reached the Senate, JOTA's tool gave it an over 90 percent likelihood of being passed into law. At that point, for example, shares in Sabesp, the Brazilian waste management company owned by São Paulo State, were selling at R\$ 30. Months later, the Aprovômetro still showed the bill as having an over 75 percent chance of approval when it was put to a vote. After confirmation of passage, Sabesp shares were trading at over R\$ 60.

Conclusion

The preceding examples are just that: examples. Quality control over prediction tools like the Aprovômetro is performed by those who subscribe to the service and are constantly monitoring the model's degree of hits and misses.

As Box said, models are always wrong, but some of them are more useful than others. JOTA's team of data scientists believes in combining methods found in tools like the Aprovômetro with views from experts in the field who are qualitatively capturing the political winds. By using methods like those presented in this book, it is possible to reduce the degree of uncertainty inherent in Brazil's public institutions.

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About the Organizers

Milton Seligman

An electrical engineer, Milton Seligman is a graduate of the Federal University of Santa Maria, in Rio Grande do Sul State, in 1974. In the public sector he held positions in the administrations of presidents José Sarney and Fernando Henrique Cardoso. During the Sarney administration, he was legislative affairs advisor at the Ministry of Agriculture and chief of staff for the minister of science and technology. In the Fernando Henrique Cardoso administration, he served, in succession, as executive secretary and minister of Justice, president of INCRA (National Institute for Settlement and Agrarian Reform), executive secretary of the Community Solidarity Program and executive secretary of the Ministry of Development, Industry, and Foreign Trade. He was project director for the NGO Inter Press Service, an international news agency based in Rome, Italy. His private sector positions included vice president for corporate relations at the multinational beverage firm Ambev and director of beverage industry trade associations. Seligman is now a professor at the Insper business school, where he coordinates the Management and Public Policy Curriculum Program. He is a Global Fellow of the Brazil Institute at the Woodrow Wilson International Center for Scholars, in Washington D.C.

Fernando Mello

A partner of the JOTA legal news portal, Mello has previously written for Brazilian weekly news magazine *Veja*, and newspapers *Folha de S.Paulo* and *El País América*, among other publications. As journalist, he has received the Excellence in Journalism Award given by the InterAmerican Press Society, the Latin American Investigative Journalism Award, and the Esso Journalism Award. Holder of a master's degree from the Georgetown University School of Foreign Service and a doctoral candidate in political science at the University of California, he is interested in causal inference and methodology. Substantively he is focused on studies of corruption, accountability, and public policy.



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