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Introduction

Anti-corruption Crusades

INTRODUCTION

News of multinational companies bribing foreign public officials to secure market access sometimes breaks out and leads to scandal. In the mid-2000s, Siemens was forced to overhaul its management board and pay millions in fines in the United States and Germany after prosecutors discovered it had engaged in corrupt practices for years (Berghoff 2018). In 2012, a series of *New York Times* articles revealed that Walmart executives had similarly bribed officials in Mexico, Brazil, China, and India. Following a long investigation, the company settled the case with a US\$282 million fine.¹ When it comes to the judicial and political repercussions of this kind of revelations, however, no scandal comes close to the one that engulfed Brazilian construction giant Odebrecht starting in 2014. This book analyses how a relatively minor inquiry that began in Curitiba, a city in the south of Brazil, evolved into an investigation of continental proportions known as Operation *Lava Jato*, and upended politics throughout Latin America. The pages to come explain why prosecutors successfully criminalised Odebrecht's corruption in some countries but not others. We also explore what voters make of these zealous corruption probes, documenting their emotional reactions and prognoses about the future of politics. In so doing, we identify the obstacles that resolute prosecutorial campaigns face when it comes to building broad, engaged, and hopeful coalitions in support of unprecedented anti-corruption efforts. The book thus contributes to debates about the determinants of strong law enforcement institutions, the (de)merits of accountability through criminalisation, and the complicated relationship between corruption, anti-corruption, and public opinion in contemporary democracies.

¹ Nandita Rose, "Walmart to Pay \$282 Million to Settle Seven-year Global Corruption Probe," *Reuters* (20 June 2019).

A group of Brazilian prosecutors and police officers launched Operation *Lava Jato* in March 2014. Within months they were able to map the contours of a prolific corruption scheme at the heart of Petrobras, the state-owned oil company. Petrobras executives allegedly received bribes in exchange for contracts and relied on intermediaries to launder the money so that it could reach their political bosses, who in turn used the cash to finance elections. By November 2014 it was clear that at least eleven of the country's largest companies, including Odebrecht, were involved in Petrobras's fraudulent bidding practices. Between 2014 and 2020, prosecutors and judges in the cities of Curitiba, Rio de Janeiro, and São Paulo signed 278 leniency and plea bargain agreements with individuals and corporations; arrested at least 546 suspects; conducted 1,864 searches throughout the country; issued 195 indictments; imposed millions of dollars in fines; and convicted 219 defendants. Among those implicated in the scandal was former president Luiz Inácio "Lula" Da Silva of the Workers' Party (hereafter, PT), and congressional leaders, former ministers, and advisors belonging to twenty-eight political parties. *Lava Jato* thus helped catalyse a political crisis that had been brewing since the protests of June 2013, when citizens took to the streets to repudiate corruption and demand better public services (Alonso and Mische 2017). The investigation complicated, but did not thwart, President Dilma Rousseff's (PT) re-election bid in the second half of 2014. As the case snowballed, it did however contribute to her downfall two years later. Most dramatically, Lula's arrest and conviction transformed the 2018 race and facilitated the rise to power of far-right populist Jair Bolsonaro, whose party went from obtaining a single congressional seat in 2014 to winning fifty-two seats and the presidency (Hunter and Power 2019).

Lava Jato is not only unique in terms of its scope within Brazil; its regional implications are equally unprecedented. In fact, according to the BBC, it amounts to "the largest foreign bribery case in history."² The turning point for the internationalisation of *Lava Jato* came in December 2016, when Odebrecht struck a deal with authorities in the United States. It emerged that the company had offered kickbacks to public officials all over the world in exchange for preferential treatment in the allocation of large infrastructure projects. US Department of Justice documentation indicates that between 2001 and 2016, Odebrecht "paid approximately \$788 million in bribes in association with more than 100 projects in 12 countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela" (United States Department of Justice 2016: 7). The company "funded an elaborate, secret financial structure that operated to account for and disburse corrupt bribe payments to, and for the benefit of foreign officials, foreign political parties, foreign political party officials and foreign political candidates" (ibid.: 7–8). At the heart of the scheme was the Division

² Linda Pressly, "The Largest Foreign Bribery Case in History," *BBC* (20 April 2018).

TABLE 1.1 *Estimated cost of Odebrecht’s bribes per country and returns on investment*

Country	Total bribes (millions of US\$)	Return to the company (millions of US\$)	Return per 1 US\$ in bribes
Argentina	35	278	7.94
Colombia	11	50	4.54
Dominican Republic	92	163	1.77
Ecuador	33.5	116	3.46
Mexico	10.5	39	3.71
Panama	59	175	2.97
Peru	29	143	4.93
Venezuela	98	N/A	N/A

Source: United States Department of Justice, DOCKET NO. 16-CR-643 (2016), www.justice.gov/criminal-fraud/fcpa/cases/odebrecht-sa (accessed 1 November 2018).

of Structured Operations, a clandestine unit within Odebrecht responsible for bribe payments and money laundering. US authorities estimate the company spent approximately \$439 million outside Brazil, securing a return of around \$1.4 billion (ibid.: 16; Table 1.1).

Given the source of the allegations, judges and prosecutors outside Brazil were immediately forced to open local chapters of *Lava Jato*. This event therefore worked as an exogenous shock. In countries like Argentina and Mexico, investigators made little or no progress, while in others, such as Ecuador and Peru, the legal and political repercussions have been far-reaching. In Peru, for example, the investigation started with a narrow focus on bribes paid to secure three public works projects, but quickly expanded its remit and wreaked havoc on the political class. Five former presidents, as well as leading opposition figures, capital city mayors, and regional governors, have been investigated and ordered to spend time in detention. Most tragically, former president Alan García committed suicide the morning the police arrived in his house to arrest him. If one looks carefully, it is not hard to see how *Lava Jato* also contributed to a presidential resignation in 2018, the shutdown of Congress in 2019, the repudiation of the establishment in the legislative elections of January 2020, and the impeachment of yet another president a few months later.

That corruption around large infrastructure projects is rampant in Latin America is little surprising. If we take Transparency International’s Corruption Perception Index for 2015, the year before the internationalisation of *Lava Jato*, only three countries, Uruguay, Chile, and Costa Rica, scored above 50 per cent.³

³ The CPI uses a standardised scale of 0–100 where 0 equals the highest level of perceived corruption and 100 equals the lowest level of perceived corruption.

TABLE 1.2 *Ranking of Latin American countries in Transparency International’s 2015 Corruption Perceptions Index*

Country	Ranking (out of 167 countries)	Country	Ranking (out of 167 countries)
Uruguay	21	Dominican Republic	102
Chile	23	Argentina	106
Costa Rica	40	Ecuador	106
Cuba	56	Honduras	111
El Salvador	72	Mexico	111
Panama	72	Guatemala	123
Brazil	76	Nicaragua	130
Colombia	83	Paraguay	130
Peru	88	Haiti	158
Bolivia	98	Venezuela	158

Source: Transparency International, www.transparency.org/en/cpi/2015/index/ven (accessed 19 February 2021)

The rest ranked rather poorly in a list of 167 nations (Table 1.2). What is indeed surprising is that prosecutors in some of these countries were able to launch ambitious investigative efforts with unprecedented zeal. This is even more remarkable if we consider that the kind of corruption at the heart of the Odebrecht scandal is incredibly hard to prove, even for the most politically independent and professional prosecution services (Hilti 2021). Crimes orchestrated at the highest levels of government leave behind opaque evidence trails. Moreover, criminals exploit their institutional prerogatives to lash back against investigators and mount sophisticated cover-ups, deploying intricate mechanisms to camouflage the proceeds of corruption (Della Porta 2001; Bertossa 2003; Joly 2003; Klinkhammer 2013; Martini 2015).

What are the origins of this newfound prosecutorial zeal? And what explains why *Lava Jato* gained momentum in some countries, becoming a full-blown anti-corruption crusade, but stalled in others? Our answer looks at the legacy of the reforms to criminal justice institutions that swept Latin America during the 1990s and 2000s. These reforms, however, were not adopted to the same degree across the board, leading to important cross-country differences in the autonomy and organisational structure of the prosecution services, as well as in the legal frameworks governing corruption investigations. In addition to long-term processes of institutional change, our explanation emphasises prosecutorial agency. We argue that tactical decisions associated with the design of investigative efforts, most crucially the creation of specialised task forces, ultimately determined whether the initial allegations snowballed into a much bigger affair. Prosecutorial teamwork in small groups nurtured legal innovation, aggressive fact-finding, and the shrewdness needed to plough through hostile political landscapes.

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For many observers, *Lava Jato* anticipates a new era of accountability and may serve as a strong deterrent for those who would otherwise not think twice before engaging in corruption. Critics, by contrast, think that the criminalisation of politics at this scale is a devil in disguise. By casting doubt on the integrity of politicians and putting some of them in jail, courts distort the normal course of democratic processes. Moreover, even when inquiries gain momentum like in Brazil or Peru, success on the criminal legal front always remains uncertain and precarious. Generalised disappointment in accountability institutions, as well as establishment backlash against them are latent possibilities throughout. Finally, and perhaps more importantly, prosecutorial zeal usually comes at the expense of strict respect for the due process rights of defendants. As we shall discuss at length in this book, investigators sometimes deploy aggressive and unorthodox strategies relentlessly. Without this approach, it is hard to imagine how transnational corruption networks could ever be uncovered or punished. The problem is that this same toolkit provides the perfect ammunition for corrupt actors to cry foul. Denouncing “lawfare”⁴ while experiencing the wrath of daring prosecutors is obviously an attractive proposition. But this conflict over the legality of the inquiry between prosecutors and defendants can also make less impassioned observers question the merits of the enterprise. As a result, what in principle is a noble cause can in practice backfire.

Such debates consume the political agenda and capture voters’ imaginations. To be sure, very few citizens approve of corruption. In fact, Latin Americans are quite concerned about this issue (Table 1.3). For example, in Transparency International’s 2019 Global Corruption Barometer, 86 per cent of respondents in the region considered that corruption was “quite a big” or “a very big” problem. But because of the tense relationship between aggressive anti-corruption probes, due process, and open democratic competition, positive public reactions to these shocks are by no means guaranteed. Prosecutors, who often feel the need to “go public” to protect their work from backlash, can therefore struggle to build support and thus ensure the legitimacy and sustainability of anti-corruption efforts. With this in mind, the book also explores how crusades impact mass opinions, in particular, how the criminalisation of corruption by zealous prosecutors affects voters’ relationship with institutions and their representatives. Do prosecutions trigger system satisfaction and hope, conveying a message of possible political regeneration? Or do they signal further decay, exacerbating cynical and defeatist views about the nature and future of politics? Are these investigations capable of galvanising

⁴ “Lawfare” is the strategic use of courts and the law to delegitimise, weaken, or neutralise political opponents. According to Comaroff and Comaroff (2006: 30) it refers to “the resort to legal instruments, to the violence inherent in the law, to commit acts of political coercion, even erasure.” The term has been invoked by leftist leaders in Latin American since 2016 to accuse the “right” of resorting to questionable judicial proceedings to thwart progressive agendas (Smulovitz 2022).

TABLE 1.3 *How serious is the problem of corruption for Latin Americans? (2019)*

Country	No problem at all (%)	Fairly small (%)	Quite big (%)	A very big problem (%)	Don't know (%)
Argentina	1	5	41	52	1
Brazil	1	2	32	58	7
Chile	2	12	48	37	1
Colombia	1	4	43	51	1
Costa Rica	12	5	34	48	0
Dominican Rep	1	6	54	39	1
El Salvador	1	5	46	47	0
Guatemala	3	7	49	41	0
Honduras	3	5	44	46	1
Jamaica	5	13	28	50	4
Mexico	3	5	49	41	1
Panama	5	4	48	42	0
Peru	0	3	40	56	1
Trinidad & Tobago	2	10	24	62	3
Venezuela	2	4	26	68	2
Guyana	8	28	21	38	5
Barbados	11	27	28	25	9
Bahamas	5	12	23	57	3
Average	4	9	38	48	2

Source: Transparency International, www.transparency.org/en/gcb/latin-america/latin-america-and-the-caribbean-x-edition-2019 (accessed 9 March 2021)

the public against corruption, or do they turn anti-corruption from a valence issue into a one that is deeply divisive? Our original public opinion data suggests that the sui generis prosecutorial tactics that propel ambitious anti-corruption efforts interact with voter preferences, including partisanship, in ways that make it difficult for hope to take root. When it does, hope tends to be short-lived because investigations quickly accumulate controversies that polarise and disappoint. As a result, political cynicism usually wins the day.

ANTI-CORRUPTION CRUSADES

If you spend some time among corruption experts, you will not be surprised to find that one key question drives their advocacy and research: what is the best way to curb the misuse of public office for personal or political gain?⁵ Or to paraphrase Alina Mungiu-Pippidi (2015), how does a society get to Denmark?

⁵ This is the definition of corruption initially proposed by the World Bank (1997) and later adopted in most academic work on the topic. For a discussion of the difference between grand and petty corruption, see Uslander (2008).

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Not everyone, however, agrees on what the central focus of anti-corruption efforts should be. There are two competing paradigms, one that emphasises prevention and gradual norm-building, and another that highlights the need for eradication via targeted law enforcement (Rothstein 2011; Mungiu-Pippidi 2015; Fisman and Golden 2017; Rotberg 2017; Taylor 2018). These paradigms are, of course, not mutually exclusive, but the differences in emphasis are important. While the former camp puts a premium on long-term processes of holistic institutional and cultural overhaul that make both society and state “self-restraining” (Schedler et al. 1999), the latter prioritises the strengthening of *ex post* punishment mechanisms, usually those associated with criminal justice systems. In this book we intervene in the normative and policy debate about the merits and complementarities of prevention and enforcement approaches. We do so by studying what one might think of as enforcement “on steroids”: *anti-corruption crusades*.

Anti-corruption crusades consist of widespread efforts by judges and prosecutors to investigate, prosecute, and punish corruption through the courts. We borrow the term “crusades” from Matthew Taylor (2018: 65). It is used here in its more general acceptance to refer to a big push or offensive against corruption, in the form of an “organized campaign concerning a political, social, or religious issue, typically motivated by a fervent desire for change.”⁶ The focus is on white-collar crimes involving high-level public officials and businessmen.⁷ These crimes are often listed in penal codes as crimes “against the public administration,” and include graft, the supply and receipt of bribes, influence-peddling, embezzlement, illicit enrichment, and money laundering, among others.

Four characteristics set these crusades apart from routine judicial anti-corruption cases. The first and most important of these is the sheer *zeal* with which judges and prosecutors approach the investigation. The courts and prosecution services cease to behave in a reactive fashion. No longer do they merely respond to the odd media exposé or accusation against a member of the political class. Instead, judges and prosecutors become much more proactive anti-corruption agents. This zeal is on display on a variety of fronts. One is the frenzy of investigative and punitive measures adopted during the inquiry. Judicial actors engage in waves of evidence-gathering activities, often in a spectacular fashion. For example, they execute search warrants in party headquarters or politicians’ homes, and stage televised depositions and plea bargain negotiations with high-profile informants. Crusades also consist of waves of pretrial detentions, indictments, and convictions targeting a variety

⁶ This definition comes from the *New Oxford American Dictionary*, available at www.oxfordreference.com/view/10.1093/acref/9780195392883.001.0001/acref-9780195392883

⁷ The term “white-collar crime” was coined by Sutherland in the 1930s. He defined it as a “crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland 1983: 7).

of establishment figures, many previously considered “untouchable,” such as powerful businessmen, officials in prominent executive and legislative posts, and high-ranking ministers, advisors, and civil servants. A second manifestation of zeal is the creative interpretation of the legal framework with the goal of easing procedural and evidentiary constraints. This includes the unorthodox use of criminal definitions; the redefinition (critics say relaxation or breach) of evidentiary standards via unconventional theories of criminal liability; and heavy reliance on plea bargains. Finally, zeal is on display in the rhetoric of moral certainty and virtue often used to justify aggressive and unorthodox tactics. Judges and prosecutors present themselves as custodians of integrity who have been called upon to fight against a class of “evil” public officials. They argue for the need to go above and beyond their formal terms of reference because the crimes in question are simply too elusive and hard to prove, rendering traditional uses of the law ineffective. In so doing, crusaders declare no room for compromise in pursuit of this mandate.

Second, is the high level of *coordination* between and within various law enforcement agencies, including the courts, the police, and prosecution services (Da Ros 2014). Most notably, anti-corruption crusades tend to be driven by teams of prosecutors, sometimes even special ad hoc prosecutorial task forces set up to investigate specific allegations. Team members pool resources to gather troves of information, connect the evidence to attribute individual criminal responsibility in complex networks, recover stolen assets, force a large number of witnesses and defendants to parade through the courts, campaign to amass public support, and jealously guard the case from political intrusions. As we will argue extensively in Part I of the book, task forces are uniquely suited to catalyse the legal innovations, sense of purpose, and political dexterity that help crusades gain and maintain momentum.

Third, crusades consist of a bundle of sequenced prosecutorial and judicial decisions that trigger a *snowball effect*. Cases usually start with a narrow focus on minor or highly targeted allegations, but quickly grow in scope, producing multiple spin-offs. In this regard, they are rather different from other instances of judicialisation of interest to political scientists, which tend to be more discrete phenomena (e.g., rulings on the constitutionality of a law). As a result, we are challenged to think differently about the determinants of judicial and prosecutorial decision-making. In addition to antecedent conditions external to the judicial process – the relative power of defendants, formal institutional arrangements, or the ideational make-up of the courts – we ought to take seriously more endogenous factors, especially the internal dynamics of the investigation. For this is crucial to understand what enables or thwarts the snowballing process (Bakiner 2020). A related implication is that the protracted nature of these affairs means there is ample room for contingency and error. And as the stakes rise, those who are threatened by criminalisation have incentives to deploy resources to orchestrate backlash against the investigators and the entire justice system. The process therefore looks more like a battle, and

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its resolution is invariably uncertain. This high level of uncertainty underscores a key puzzle. Why would investigators embark in such an ambitious and risky enterprise? And when they do so, how do they deal with obstruction? It also raises normative questions. If at the end of the day effectiveness is so elusive and the courts and prosecutors can be compromised, is this the best way to fight corruption?

Finally, the zeal, scope, visibility, and subject matter of anti-corruption crusades give them *eventful* qualities (Meierhenrich and Pendas 2017). William Sewell conceptualises “events” as historical occurrences that are “remarkable in some way” and “have momentous consequences” (Sewell 1996: 841–842). Events can be deeply disruptive and transformative of political processes, social structures, and mass attitudes. Some national chapters of *Lava Jato* are interesting precisely because of this kind of impact beyond the courtroom. The political implications are the most obvious: political careers destroyed, presidential races rebooted, governments collapsed, publics polarised. In some contexts, investigations also had economic ramifications. For instance, they produced a complete paralysis of the construction sector, a key engine of growth in Latin America. This was because major infrastructure projects were put on hold, and banks became wary of lending to local companies for fear they could also end up implicated in the scandal. Finally, in line with the aforementioned rhetoric of virtue, judges and prosecutors sometimes launched campaigns with the explicit goal of mobilising citizens and transforming institutions. These campaigns galvanised the attention of multiple actors, including the media. For example, *Lava Jato* prosecutors in Brazil collected over two million signatures in support of a legislative package designed to tackle the problem of corruption.

Until recently, the canonical example of anti-corruption crusades was the “Clean Hands” operation, which overhauled Italian politics in the 1990s. A handful of magistrates had investigated a non-trivial percentage of parliamentarians since the 1940s. The number of corruption investigations and prison sentences, however, soared between 1992 and 1994 (Della Porta 2001; Fisman and Golden 2017: 217). As a result, the issue salience of corruption skyrocketed, re-election rates plummeted, and old political parties collapsed. This debacle subsequently led to the rise of anti-establishment sentiments and outsider politicians. Today there are more examples of anti-corruption crusades. One is the work of Nigeria’s Economic and Financial Crimes Commission (EFCC) during the 2000s. Created to appease the international demand for greater transparency, the commission quickly became a nightmare for the establishment. Between 2003 and 2008, under its first and most autonomous chief prosecutor, the EFCC convicted over 250 individuals and recovered billions of dollars (Adebanwi and Obadare 2011). Also established in response to international pressures, and sponsored by the UN, the Commission Against Impunity in Guatemala (CICIG) worked closely with a handful of local prosecutors to punish systemic corruption. Until it was dismantled in 2019, the

CICIG identified seventy criminal organisations and judicialised dozens of cases. This resulted in more than 400 convictions, including some against extremely high-profile defendants.⁸ A fourth example is the work of Colombia's Supreme Court in the so-called parapolitics case. While involving a different kind of corruption – illegal connections between legislators and paramilitary groups rather than big business – it followed a similar snowballing trajectory and had a seismic effect on local politics. According to Bakiner (2020: 620, ft. 1), “37 of the 102 senators who were elected for the term 2006–2010 were under investigation [...] As of March 2014, there were 41 sentences, 18 ongoing trials, 126 preliminary investigations, and 5 acquittals.”

This book deepens our understanding of this kind of phenomena in developing democracies, integrating in one study an analysis of the drivers, public reactions to, and merits of anti-corruption enforcement “on steroids.” We focus on a spectacular crusade that transcended national borders to upend the politics of an entire region: Operation *Lava Jato*.

Part I: The Causes of Anti-corruption Crusades

Why do some anti-corruption investigations gain momentum, expanding beyond their original remit to become crusades, but others stall? Part I of the book tackles this question. In Chapter 2 we introduce a framework that helps us think systematically about the nature and dynamics of these inquiries. Chapters 3 and 4 use the framework to explain why *Lava Jato* snowballed into a much bigger affair in some Latin American countries but not in others.

Some scholars and many politicians (especially those subject to exacting corruption probes) endorse the view that the criminalisation of corruption is nothing but “politics by other means.” In other words, the criminal legal process is not autonomous from the political dynamics that unfold outside the courtroom. At best, judges and prosecutors cautiously respond to indirect political signals to know when they can act and against which groups. At worst, those in power directly weaponise prosecutions to attack their rivals. Chapter 2 discusses why we consider that this perspective is not entirely satisfactory when it comes to explaining anti-corruption crusades like *Lava Jato*, and why we need an account that puts investigators centre stage. Three reasons stand out.

First, seeing judicial actors as purely reactive or mere puppets does not square well with reality. Crusades are full of twists and turns that result from the decisions of those immediately in charge, sometimes to the benefit and sometimes to the detriment of the overall effort. This defies the notion of a perfect principal/agent relationship, or of top-down planning from behind the scenes, with prosecutors serving as pawns in someone else's political play.

⁸ For the CICG's Final Report, visit: www.cicig.org/cicig/informes_cicig/informe-de-labores/informe-final-de-labores/ (accessed 25 February 2021).