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*A CRITICAL ANALYSIS OF FIGHTING CORRUPTION IN THE
BRAZILIAN TAX AND CUSTOMS ADMINISTRATION*

by João Maurício Vital
(Advisor: Christopher R. Yukins)

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Abstract

This study proposes to research possible causes of the phenomenon known as administrative corruption and to critically analyze the fight against corruption in the Brazilian Tax and Custom Administration agency (*Receita Federal do Brasil*).

The methodology includes identifying the key elements of the phenomenon and analyzing, from the standpoint of the principal-agent theory, what measures are useful to establish an effective anti-corruption strategy. This paper will then assay the current situation of *Receita Federal do Brasil* in regards to this matter and propose measures to improve its anti-corruption strategy in prevention, controlling, and repression fields.

Findings suggest that, in addition to the current strategy and in order to improve it, *Receita Federal do Brasil* should implement the integrity program that had been already planned but never put in place; be more efficient on identifying risky activities; improve the exchange of information and procedures between anti-corruption unit (*Coger*) and the internal audit unit (*Audit*); make the leaders more committed to the internal control in order to perform adequately their duty of supervision, and properly separate the functions on investigation, prosecutions, and judge the staff's conducts.

This paper proposes concrete strategies and policy changes for fight corruption in *Receita Federal do Brasil*. In addition, it may be adopted as a template for other public or private organizations.

The settlement of an efficient anti-corruption strategy evokes that public organizations take social responsibility to preserve the society's moral values. It is even more important in tax administration because it can influence the business environment.

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Introduction

The efficiency of the State depends on the integrity of public agents. Misconduct and corruption can significantly affect the performance of the State and compromise the credibility and legitimacy of public power.

For the purpose of this work, corruption is defined as deliberate misconduct of public agents while performing their duties or activities in connection with those duties. It concerns, specifically, unethical behavior and goes beyond the legal definition.

Political corruption is related to the use of State apparatus and its power to attend to group interests that are contrary to public interest. It happens, for example, when politicians use their powers to legislate bad laws or institute rules that force citizens to behave in certain ways that benefit specific groups or individuals. This work is not about political corruption.

Administrative corruption involves the behavior of public agents when, in performing their duties, they ignore laws or rules in order to receive some advantages. Generally, this occurs in state bureaucracies wherein officials and staff work closely with the public, such as public schools, hospitals, or any other government agency.

Corruption is a human phenomenon that must be treated as a multidisciplinary matter. Fighting administrative corruption requires a strategy that encompasses prevention, controlling, and repression. To effectively define a strategy to combat administrative corruption, it is important to understand the causes that lead public agents astray.

Many times, public agents find themselves in circumstances that foment misconduct. In some cases, these circumstances can be avoided by implementing proper preventive measures. Lack of control over staff behavior is also an important factor that precipitates undesirable acts in public administration. Finally, investigation

and appropriate corrective action, including punishment when necessary, are essential to deter administrative corruption.

This study proposes to research possible causes of the phenomenon known as administrative corruption and to make a critical analysis of the fight against corruption in the Brazilian Tax and Custom Administration agency (*Receita Federal do Brasil*).

This study has three parts. The first part will discuss key concepts, such as morals, ethics, corruption, administrative corruption, and integrity, that are important for understanding the scope of the study. That part will also analyze why people engage in administrative corruption, and will present a pragmatic approach to administrative corruption.

The second part will explore the application of the Principal-Agent theory on public administration - more specifically, on the control of the public agents' acts. The theory, when placed into the context of *Receita Federal do Brasil*, helps define and explain the roles of public managers, leaders, and public officials in fighting corruption.

The last part will analyze the following aspects of *Receita Federal do Brasil's* strategy on fighting corruption: prevention, controlling, and repression. Each aspect will be presented with a critical analysis, pointed weaknesses, and submitted suggestions for improvement.

This study is the result of research and observations of the author, who has been working at *Receita Federal do Brasil* over 18 years, of which more than seven years were with an anti-corruption unit (*Coger*). This paper reflects the author's opinions and conclusions and should not be taken as an institutional stance.

General aspects of corruption

Corruption is a human-nature-related phenomenon. In Classical Greece, corruption was deemed a social disease that, if not properly treated, could lead societies to chaos. Machiavelli also advocated this interpretation. During the Middle Ages and in the Modern Age, it came to be seen as an individual's evil. In the Age of Discoveries, some colonizing nations countenanced corruption as a necessary evil for the State to secure colonial wealth.

Despite the fact that humankind has always lived with corruption, it has only recently become a contentious issue. Corruption has thrived amidst the spread of democracy and economic globalization. Aware of this, international organizations, governments, and civil society have sought mechanisms to protect society and the links among their various individuals.

Studies have shown that corruption exists in almost all cultures. However, it is more frequently found in changing or developing societies because environmental and circumstantial conditions favor the occurrence of this phenomenon.

The most common political causes for the appearance and development of corruption are related to the role of the elites, to government efficiency, and to the existence of strong independent institutions (e.g., the press, political parties, and social organizations). Less corruption is found in well established democracies where there is greater transparency in the processes and government decisions, as well as less tolerance by the public regarding misconduct.

Corruption has also been linked to economic causes, such as high prices and taxes, blurry fiscal policies and legislation, red tape, and the existence of subsidies and fiscal incentives. From an economic point of view, corruption can be positive as long as it can insert some elements of efficiency into the relationship between parties. However, corruption also may add inefficiency to economic affairs, increasing waste and transaction costs. It favors environments of uncertainty, and this directly affects investment decisions, producing consequences such as business losses and

unemployment. There is a close relationship between poverty, corruption, and income inequality. One factor leads to the other in a perpetual cycle.

From a political point of view, corruption produces apathy and lack of interest on the part of the individuals, impairs political legitimacy, and perpetuates the influence of unethical elite groups. In countries that are highly affected by corruption, fewer public resources are used to meet the interests of society, and this generates some misunderstanding about democracy, open markets, and State reforms, producing anti-democratic political opinions.

From a social perspective, corruption leads to chaos and confusion, which may lead to intolerance, ethnic violence, and terrorism. Corrupt practices erode the core of society, and inure individuals to accept it as inevitable. This prevents the development of modern and fair commercial and production systems, as well as mechanisms of social evolution based on merit and personal effort. Individuals with stronger educational background seek environments that are free of this to exercise their creativity, causing decreases in human capital.

In the case of public organizations, corruption degrades operations and impairs the actions of control, causing them to become more expensive yet less efficient. The services provided become cost-prohibitive as the resources that should be collected to improve them are embezzled. In corruption-prone environments, organizations tend not to evolve.

Therefore, from the organizational perspective, corruption is always bad; it compromises institutional performance and erodes public confidence. Corruption fighting, consequently, should be an essential goal of the organizations.

The Key Concepts

There is no clear and sufficiently comprehensive definition for corruption, the concept of which varies according to the moment, the environment, the circumstances, and the observers' perspective. However, it is always related to the

degeneration of social values.

To establish a strategy to fight this phenomenon given the various classifications and philosophical definitions, this researcher chose to pragmatically translate the main concepts related to this theme. Therefore, the terms used in this study meet the definitions in the following paragraphs.

Morality

This is the set of values and beliefs accepted by a group in a certain time and space. Morality is responsible for establishing the attributes of things, persons, and actions (good v. bad; right v. wrong; beautiful v. ugly).

Ethics

This is the part of Philosophy that studies human behavior within the context of a given morality. For example, a certain social group may hold that differential treatment of individuals based on the color of their skin is immoral (i.e., contrary to their values and beliefs). Ethics appraises the behavior of individuals who might violate this aspect of morality. Hence, Ethics is always bound to a conduct.

Ethical Behavior

This is conduct that reflects the group's concept of morality; it is behavior in keeping with the values and beliefs of a social group in a certain time and space.

Corruption

Within the study of Ethics, corruption is not considered within the context of the law but within the context of morality. Therefore, corruption represents or leads to a degradation of ethical behavior and moral values. It may refer to something that is socially repugnant yet not illegal. For instance, in some societies, sexual intercourse between unmarried persons is morally censurable, but not necessarily an offense subject to any legal reprimand.

Many scholars argue that corruption is a broader phenomenon, or rather, a

complicated, hardly definable set of phenomena that could include everything from achieving several advances as a result of personal networking or paying gratitude money or giving gifts in exchange for services that are already reimbursed through customers' or state resources. Viewed most broadly, corruption is the misuse of office for unofficial ends (Klitgaard, 1998, pp. 3-6).

According to Joseph Nye, corruption is the "behavior which deviates from the formal duties of a public role because of private-regarding (close family, personal, private clique) pecuniary or status gains; or [that which] violates rules against the exercise of certain types of private-regarding influence" (Nye, 1967).

Corruption can be defined from many different perspectives: philosophical, theological, economic, political, sociological, and anthropological. To analyze administrative corruption, a simple and practical approach will be enough to show the phenomenon and its consequences in the Public Administration field. From a Public Administration point of view, administrative corruption can be defined as any deliberate, exploitative misconduct by a public officer that goes against the rules and the final purpose of the public institution.

Of course the institution's purposes have to be according to the law and the rules. If public agents were to break the rules to achieve an objective they believed fair and right, irrespective of legality, from the perspective of the Public Administration such acts must be considered administrative corruption. In other words, it is not allowed to public servant to judge if the rules are according to the law or if the law expresses the fairer and righter thing to do. Even if agents do not agree with those statutes, they must follow them.¹

This definition assumes that the misconduct has to be deliberate, performed by a public agent in connection with his or her duties, exploitative, and contrary to

¹ In such a case, as citizens agents can use the regular measures to complain, and even challenge the statutes in court, by they are bound to obey any laws in force.

the rules and its goals.

Integrity

According to (Kolthoff, Coxx III, & Jhonson, 2009, p. 198), “[...] integrity is a quality or characteristic of individual or organization behavior that denotes the quality of acting in accordance with moral values, standards, and rules accepted by the organization’s members and society.”

Integrity is an upright behavior that takes moral values into account, and reflects an ethical conduct. It is unlikely that someone will act upright in all circumstances; the human being tends to fail sometimes. Integrity, therefore, is not the total absence of failure and corruption but the propensity to behave in an ethical way. Thus, an honest person might make an occasional misstep, but someone with no integrity will view ethics as irrelevant altogether.

Administrative Corruption

Administrative corruption occurs when public service officers deliberately violate rules while performing official duties in order to benefit themselves or others rather than the organization or the State. The phenomenon of corruption can be likened to the physical phenomenon of fire. Fire requires three elements: fuel, heat, and oxygen. Acting on any of these elements can control the fire. Administrative corruption has also three distinctive elements: the public official (fuel), the private agent interested in the public service (source of heat), and the elements that lead the relation between them (oxygen). Public Administration can act preventively on two of these three elements of administrative corruption through the anti-corruption system: the public official and the elements that define the relationship between government and individuals (such as rules, procedures, environment, and technology).

Let’s analyze the example of an import customs clearance. There is a State official who holds delegated authority to perform the clearance (fuel), an importer interested in transporting the goods into the country (source of heat), and a set of

laws, regulations, and circumstances that act on the relation between the two (oxygen). Public Administration may reduce the possibility of corruption by acting on two of these factors: (1) the “fuel,” by recruiting and designating only officers loyal to the institution and prepared to act ethically to render the tasks required, and (2) on the “oxygen,” by modifying norms, applying technology solutions, segmenting tasks, or increasing supervision over such transactions. These are examples of prevention strategies that can be adopted.

In another model, developed by Klitgaard (1988, p. 75), administrative corruption may be explained using a mathematic equation metaphor: $C = M + D - A$, where C is the likelihood of corruption occurrence, M is the monopoly, understood as the absence of possibility that the private sector secure the same service somewhere else, D is the public official's discretionary power, and A is the official's accountability. Obviously there are no actual mathematic measurements for each one of the factors; the formula only points out that monopoly and discretion may increase the possibility of corruption, while accountability has the opposite effect.

Why People Succumb to Corruption?

Corruption results when people believe that their needs cannot be satisfied within the standards of ethical behavior. This assumes that rules and law reflect the moral values of society, and that ethical behavior is acting according to those values. An example might be someone who wants to buy a Ferrari or pay for his son's health treatment but who cannot accumulate enough funds to do so on a public servant's salary, and who accepts bribes in exchange for preferential treatment. That behavior is administration corruption.

Understanding the distinction between a *need* and a *possibility* is essential to understand corruption and try to map out its causes. Corruption is not necessarily related to a superfluous desire. A legitimate need may exist (such as saving a son's life), the meeting of which may look unachievable through good conduct.

In such situations, individuals have to choose between both acting in

disagreement with the moral values (unethical behavior) to achieve the desired benefits, and acting within the ethical standards but failing to achieve the desired benefits. For example, let's say that a customs agent who has a severe health problem that requires a very expensive treatment is offered a bribe to facilitate clearance, the agent will have to choose between acting correctly - that is, according to the rules and the law - or succumbing before the appeal of corruption to pay his medical bills.

From the dilemma between adopting an upright behavior or meeting one's needs emerges the so-called ethical conflict. The ethical conflict represents a conflict between the wish to achieve a particular benefit and the need to follow the rules and to perform the duties properly. Ethical conflict is a type of conflict of interest.²

A Practical Approach

The anti-corruption strategy is not intended for those who have a strong sense of duty and sound moral judgment. Returning to the metaphor of fire, anti-corruption strategy needs to target people lower flashpoints, that is, those who are most vulnerable to corruption. Practically speaking, Public Administration has to presume that there will always be agents who try to take advantage of the official position.

Individuals engage in corruption because they earn on it. When weighing the risk of being caught and punished against the immediate benefit that the misconduct provides, agent without integrity will tend toward corruption if the benefit is greater. Unfortunately, moral sense and integrity are difficult to teach once someone is an adult.

To establish an effective control of corruption, it is essential to treat it in a pragmatic approach. Organizations should expect people to commit misconduct and prepare for that eventuality. Organizations cannot rely on the moral strength or

² Not all conflicts of interest are ethical conflicts (for example, conflicts offering more than one legal and right option), but all ethical conflict is a type of conflict of interest.

firmness of principles of individuals; on the contrary, it must be assumed all people are at least capable of succumbing to the temptations of corruption.

This study does not, therefore, attempt to analyze the phenomenon from a moral perspective. Of course, the moral formation and the establishment of an organizational culture focused on best practices is a significant deterrent to corruption and should be considered within a broad strategy. However, the main focus is to reduce the cost-benefit of corruption, increasing the cost, making misconduct more difficult, and increasing the risk to be caught.

Administrative corruption can be reduced to a very small level when public officers have more to lose than to gain from it.

Principal – Agent Theory Applicable to Control Administrative Corruption

According to Mitnick (2006), the Principal-Agent theory was first defined in the early 70s by Stephen Ross using an economic approach, and by Barry Mitnick using an institutional approach. Since then, the theory has been used to explain a broad assortment of relationships. It was described by Charles Perrow thus:

In its simplest form, agency theory assumes that social life is a series of contracts. Conventionally, one member, the 'buyer' of goods or services is designated the 'principal,' and the other, who provides the goods or service is the 'agent' - hence the term 'agency theory.' The principal-agent relationship is governed by a contract specifying what the agent should do and what the principal must do in return. (1986, p. 224)

The theory is based in a balance between both the buyer (the principal) and the seller (the agent) in a contract (formal or not) that guarantees the accomplishment of both interests by an upright transaction. It presumes that the agent knows who the principal is, what the principal's expectations are, and acts accordingly.

However, agents have their own interests, which frequently stray from the

principal's interests. To keep agents on track or bring them back into line, the principal may use the reward and sanction mechanism. Meier and Waterman faced this question:

First, the principal control is possible because elected officials create bureaucracies and can design them with various incentive structures to facilitate control (McCubbins, Noll, & Weingast, 1989). Second, political principals monitor the activities of their bureaucratic agents (Waterman & Wood, 1993). When bureaucratic activities stray from the principal's preferences, policy makers can apply sanctions or rewards to bring agents back into line (Mitnick, 1980). (Meier & Waterman, 1998, p. 177)

To establish a strategy to control corruption necessarily involves the clear identification of the "principal" party, that is, who defines what conduct applies in each case and what mechanism of control is needed to ensure the expected conduct. Scholars are still analyzing the limits of adopting the principal-agent model to fully explain all relationships in complex organizations like public agencies. According to Mitnick (1991), "certainly the agency approach is adaptable to organizations, but we need to face up to the fact that we are dealing with organizations, not superior-subordinate dyads."

Moreover, Yukins (2008) defends that principal may shift from one political culture to another; in the United States, "taxpayers" or Congress may be viewed as the principal, while in a monarchy the king may be considered the principal.

Nevertheless, it is useful to explain a range of relationships among public managers and public officials. Wood and Waterman had this to say:

The principal-agent models underlying most of these studies originated among economists who studied relations between business managers and their employees or contractors (...). These formal models were intended to evaluate the conditions under which managerial efficiency could be obtained through increased employee tendencies to work but not shirk.

However, they also soon came to be viewed as applicable to relations between public managers, who are often elected, and their employees in the bureaucracy, who are often tenured. (Wood & Waterman, 1994, p. 22)

When applying the theory on the Public Administration field, however, who is the principal? According to the classical concept, the principal is the public manager, one who is elected and has hierarchical precedence over the bureaucrats. Wood and Waterman wrote this:

[...] agency theory posits that the relationship between elected leaders (principals) and nonelective bureaucracies (agents) is hierarchical. Bureaucracies are bound by contract to serve the law and elected institutions. (Wood & Waterman, 1994, p. 22)

Looking at the issue from the political point of view, in a state where the power of government comes from elected representatives with a mandate to represent the citizenry, the elected official represents the principal. The *political power* given to the representatives allows them to perform actions using a set of tools, including the so-called red tape. Public managers elected by the people and wielding political power are responsible for applying the bureaucracy in the best way to attend the public interest.

Society may also give to a parliamentary body some political power to settle laws to regulate, among many others things, the limits and the framework of public managers' actions. Thus, public managers have political powers limited by laws.

It is the citizens' job to watch public managers' actions and to judge whether they are according to the public interests. If the acts are against the law, there are mechanisms to make corrections and, if necessary, punish the public managers. Public managers who act according to the law but contrary to the citizens' interests will probably not be re-elected and may even be removed from office. In other words, society gives a mandate to public managers to act according to the law and the public interest.

From the standpoint of Public Administration, the idea of multiple "principals," as congress, taxpayers, society, and so on, would only make sense if the "agents" (i.e., civil servants), could use their discretion to assess the sometimes-conflicting goals of each "principals" and decide what conduct to adopt. This could lead to different judgments from different civil servants, which would not be consistent with a hierarchical structure and would make it difficult for the fulfillment of institutional goals.

Moreover, assuming that elected public managers have been delegated by the people the power to perform actions (limited by law) on behalf of society, they have the legitimacy to create the bureaucracy and apply it in the best way to achieve the government's goals. The authority and the responsibility to establish the public officers' standards of conduct on the gaps of the law come from this delegation of power.

In Brazil, the law³ regulates the relationship between the federal government and its agents throughout the hierarchy, but it also holds individual public officials directly accountable under the law when a higher order is manifestly illegal:

Article 116. The duties of the public servant:

III - to observe the laws and regulations;

IV - carry out orders from above, except where clearly illegal;

It concludes that a public official in Brazil is always subordinate to the public manager when the public manager acts within the limits of the law. This is consistent with the definition by Wood and Waterman (1994) wherein the public official, as an agent, has to answer both the principals (the public manager, generally represented by a president, a governor, a major, or any other representative to whom the people give the power to manage the public resources) and the law (an expression of the

³ Bylaws of the civil servants union Act, Publ. L. N^o 8.112, article 116, items III and IV (Lei n^o 8.112, de 11 de dezembro de 1990, artigo 116, incisos II e IV).

people's will). This is the best definition, therefore, for the purpose of establishing a strategy to combat administrative corruption in public service.

Applying the Theory on Fighting Administrative Corruption in the *Receita Federal do Brasil*

The *Receita Federal do Brasil* is a federal agency within the Brazilian Ministry of Finance. According to principal-agent theory, this agency exists to implement the agency's mission as dictated by both the law and the president of Brazil, an elected public manager. Of course, the president of Brazil does not act directly in the administration of the agency, but does instead appointing administrators, thus distributing the power received from the society.

In the case of *Receita Federal do Brasil*, the Minister of Finance, the Secretary of Federal Revenue, and the administrators appointed by them for specific functions in the agency are the direct representatives of the elected public manager (the president of Brazil, in this case). Each link of the chain receives a portion of the power delegated by society to the elected public manager.

The power of the *Receita Federal do Brasil*, and, in turn, the power of the agents who work for the agency, derives primarily from the law, which is one of the forms through which society grants power. What the law does not specifically cover falls under the purview of the public manager to whom the society has delegated powers by voting; the public manager uses the agency's portion of that power to act in compliance with regulations, instructions, and direct orders emanating from the chain of command.

According to principal-agent theory, there is a tacit contract between the public officer, as an agent, and the public manager and the law, as principals. This contract is always broken when administrative corruption takes place.

Applying principal-agent theory on the federal agency as *Receita Federal do Brasil*, it is possible to settle a model based on State – official – private relationship, according to which the official is hired to perform a service for the private, submit to

certain rules, and be rewarded with a payment; the private, on the other hand, uses the services rendered by the official and pays the State in taxes.

The official has a duty of loyalty to the State. Public corruption takes place when the official breaks this pact and transfers loyalty to the private party. According to this model, the most effective way to avoid this pact breaking is to supervise the official's actions. However, it then becomes necessary to assure the *supervisor's* loyalty as well.

Analyzing the Fight against Corruption in *Receita Federal do Brasil*

Defining a strategy to fight corruption on *Receita Federal do Brasil* must consider two premises:

1. If the public manager, as principal, does nothing, administrative corruption will jeopardize the success of the agency and the capacity of agency to achieve its goals.
2. Every officer and every sector or activity is subject to and capable of administrative corruption.

The first premise is important because some people believe that if the agency has no significant problems with corruption, there is no need to create and maintain a structure to fight corruption. But, if the agency doesn't show concern about the issue, the problem can quickly increase and then become very difficult to solve.

The second premise concerns the mistaken belief among public officials that while corruption may exist elsewhere, their sector or their colleagues are somehow immune. That is a naive assumption. Everybody can be corrupted under some circumstances; this should be the underlying thought for an agency to establish an effective strategy. Of course there are sectors, activities, and people who at greater risk of corruption, and some special actions must be settled to control those risk factors.

How the *Receita Federal do Brasil* Fights Corruption Currently

The *Receita Federal do Brasil* is the Brazilian Government agency in charge of the administration of federal taxes, social security charges, and customs control. A traditional institution and one of the arms of the Ministry of Finance, it has rendered services to Brazilian society for more than 40 years. It is one of the biggest federal agencies in Brazil, comprising roughly 30,000 staff and 579 units throughout the country. Its 2008 budget was approximately R\$6 billion (US\$3 billion), which was 0.9% of all tax collected by the agency.

The mission of the *Receita Federal do Brasil* is to perform its duties under the principles of fiscal fairness and respect for the citizens, to the benefit of the society as a whole by upholding these values.

- Respect for the citizens
- Integrity
- Loyalty to the institution
- Legality
- Professionalism

In the scope of its vision for the future, it intends to be an institution of excellence in terms of tax and customs administration, and a reference both nationally and internationally.

Most of the *Receita Federal do Brasil* officials are linked to specific careers. They are professionals who have succeeded in a very hard public examination and who must have mastered specific knowledge in various areas, especially in the fields of law, accounting and exact sciences.

In comparison with other Brazilian public institutions, the *Receita Federal do Brasil* stands out for holding a high level of IT expertise, technologically advanced equipment, clear and streamlined rules, and an excellent staff, as well as a modern

management process based on strategic planning. This apparently minimizes the impact of corruption in the fulfillment of the institutional objectives. However, there is permanent concern in terms of keeping high levels of integrity since the State's treasuries and optimum customs control are strategic and critical for the country.

This concern is reflected in the organization chart. Linked to the top-most level of the institution is the Internal Affairs Department, called *Corregedoria-Geral (Coger)*. Established by Presidential Decree⁴ in 1997, *Coger* is in charge of promoting preventive and repressive actions related to ethics and public servants' functions in the institution, among other things. The decree gave the unit some features and prerogatives in order to afford it with relative independence.

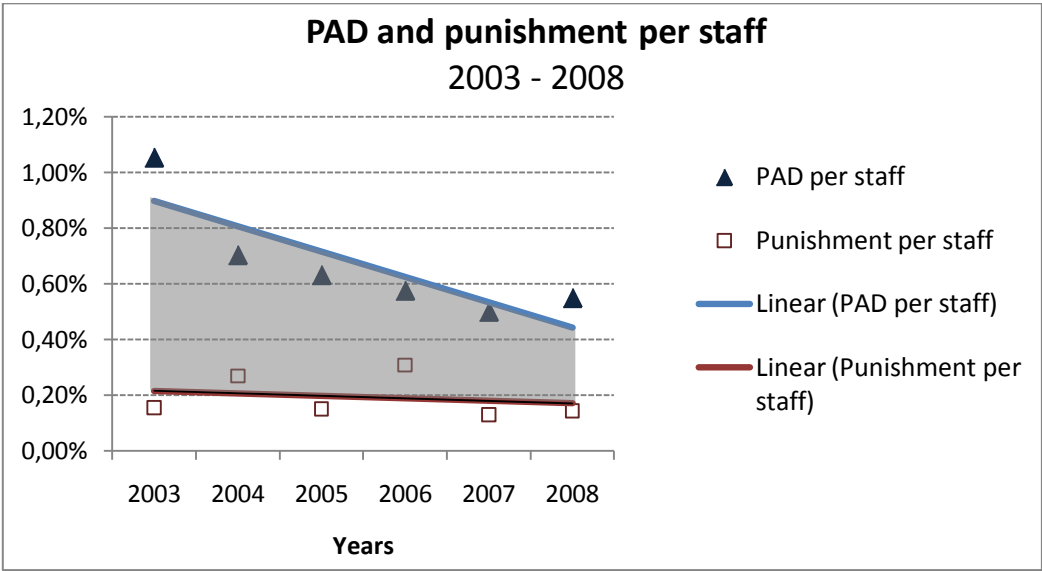
The head of the unit, the Corregedor-Geral, is approved by the head of the agency, the *Secretário da Receita Federal do Brasil*, and appointed by the Minister of Finance for a three-year term. The *Coger's* agents can't be removed from the unit during their two first years in unit after three years they can choose any other unit of the agency to work if they decide to leave the unit. This enables *Coger's* staff to do their jobs without fearing that they will be transferred. Thus, they do not need to worry about countering some interest as they perform their work.

The current structure of the unit is composed of a headquarters with three divisions; separate sections for control and planning, legal advice, and support; and ten local offices scattered over the country.

Since the advent of the unit, the agency has experienced a significant improvement in the indicators referring to the conduct of its employees. The most important indicator is the PAD per staff index, which is the relationship between the quantity of disciplinary procedures, called *Processo Administrativo Disciplinar (PAD)*, and the total number of staff. Although the PAD is not a perfect way to measure integrity, the relationship between the number of disciplinary prosecutions and the

⁴Presidential Decree nº 2.331, issued in October 1th, 1997.

number of staff gives an insight into the evolution of people's behavior.



Source: Coger

Coger only starts the PAD process when it has enough evidence of misconduct. In Brazil, the PAD is governed by the law and guarantees the accused full rights of defense. Moreover, the agency must prove the legal misconduct. This is a time-consuming and costly procedure that often leads to cases being thrown out due to legal and procedural issues. In those cases, the unit is not able to confirm the previous evidences that supported the decision to start a PAD. Because of that inefficiency, it is better to use *PAD per staff* as a measure than *punishment per staff*. In order to settle anti-corruption policy, it is more effective to base policies on the number of alleged incidences of corruption than on the number of cases that ultimately in official sanctions.

Both indices, *PAD per staff* and *punishment per staff*, are currently decreasing trend, which suggests that the level of integrity is increasing. It's important to note that the number of PADs and the number of penalties per year cannot be compared because of a time issue. The punishment of a year often refers to the PAD initiated in previous years (in some cases two or three years before). In this case, it is better to use the tendency for comparison.

The gray area represents the efficiency in investigating and punishing

misconduct. In 2003, for instance, *Coger* started PAD against 1.06% of total staff, but in the same year only 0.16% of the staff had been punished. In 2008, 0.55% of staffs had been prosecuted and 0.14% punished. Even if we consider that PAD and punishment are not comparable because of the time gap, the figures indicate a trend toward improvement. The numbers indicate that *Coger* has been doing a good job fighting corruption in the *Receita Federal do Brasil*. This is also the general consensus within the agency, but, the fight against corruption is an ongoing effort, and the agency can always find ways to improve and renew the anti-corruption strategies and policies.

Despite of the *Receita Federal do Brasil's* relative success in fighting corruption, it's important to highlight some imperfections and problems in order to improve the system.

The known strategies to fight corruption include actions that can be classified as follows:

1. Prevention
2. Controlling
3. Repression.

Prevention is concerned with identifying circumstances that can lead to misconduct and propose appropriate measures to reduce the risks. These circumstances may be related to policies, rules, procedures, environment, technology, and people.

Controlling aims to proactively follow up the activities performed by an agent to monitor compliance with the rules and guidelines. In this aspect, it has a preventive character as well. Controlling also serves to identify the occurrence of corruption cases. Institutions with efficient internal control systems are less prone to corruption, as their agents feel watched and know that their chances of being caught if they commit some misconduct are higher than if there were fewer internal controls.

Repression occurs after the phenomenon is detected. This is an action intended to adopt the sanctions prescribed for misconduct. When correcting an individual who has committed misconduct, repression is also used for preventive purposes, as it exposes the risks incurred by the agents who commit violations and shows the efficacy of the repression system, discouraging other agents to act similarly.

Prevention

Prevention can be divided in two sets of actions: *identifying vulnerabilities* and *integrity policy*. The first set encompasses measures that focus how tasks are performed. The other set concerns those who perform the tasks. Identifying vulnerabilities means determining which activities present *performance risks*, which ones can affect the outcome of the agency, and considering the *public trust risk*, which is gauging how misconduct might jeopardizing the confidence that government and society have on the agency and its officials.

Integrity policies focus on ways to recruit honest individuals who will be less prone to corruption, and provide conditions for them to remain upright, mainly through continuing ethical education. One factor contributing heavily to the corruption of public agents is the lack of appropriate training and information on dealing with ethical issues. Generally, agents start out performing their duties correctly and honestly. For those who succumb to corruption, their performance generally erodes in stages: first, they start practicing acts of omission (e.g., skipping a specific rule); then they start practicing administrative misconduct (e.g., private use of public property); and finally, they start committing serious or even criminal actions (e.g., drug dealing or smuggling.)

The process of conversion from a good into a corrupt servant goes through an essential stage: victimization. At some point, agents start to question their personal status and start to see themselves as victims. This helps them justify their misconduct. For example, agents might see friends or relatives living in mansions,

possessing beautiful cars, frequently going on expensive trips, and start asking themselves why they do not have such things, too. They blame the agency, criticize their salary, and feel entitled to more, taking the first step down the “moral pathway” to corruption.

Many times we hear phrases attempting to justify misconduct: “Everybody does it”; “If they at the top may have their Scotch, then I can also have my little beer”; “If I don’t do it, somebody else will.” These are examples of victimization functioning as rationale for agents to practice corruption.

Almeida (2007, p. 55) has presented a very interesting situation. Questioned about whether they have ever convinced a traffic cop not to issue a fine, 4% of car owners consider this conduct as “asking for a favor,” 48% consider it “to give a slip,” and the same percentage (48%) considered the attitude as being corruption. Among the interviewees who didn’t own a car, the percentage of those who considered it to be an issue of corruption raised to 56%. For those, the situation was far from their daily lives. Having a car seemed to “bend” the corruption concept: people who owned a car tended to be more tolerant with the conduct that affected them.

In the spirit of the example above, imagine that to have a car was to hold a public job. People outside that universe would tend to have a stiffer concept about the public agents’ conduct, but if they then became public agents themselves, they would become more flexible. The average citizen might believe that a public agent should never be late for work or use public office material for private purposes because these possibilities were out of their reach. Once they are holding office, though, the same citizen may have a different opinion.

This effect behavior and belief leads officials to stray from the general public opinion about what is right and what is wrong. This can damage the image of the institution and undermine the trust of society. Integrity is one of the pillars of the institution, and one of its most important institutional values. The institution will be upright only if its agents are also upright. The challenge of the public institutions is,

therefore, to be able to preserve public agents' integrity throughout their functional lives. In order to achieve this, the institution should strive to recruit people of high level of integrity and, no less important, take steps to keep them honest.

The human element is the key piece on fighting corruption. Therefore, investing in people is crucial to the outcome of fighting corruption. The agency must develop and put in place an effective and structured program of ethical education that encompasses all departments and units.

Coger has already prepared an *integrity program* that focuses on prevention of functional misconduct and dissemination of organizational value, although the program has yet to be put in place. This should be a priority effort led by *Coger* and Human Resources unit (called *Cogep*).

Coger's integrity program is based on the substantial hypothesis that developing a clear policy of personal integrity preservation, narrowly linked to the institutional objectives and values, will bring about less corruption and better control.

The central idea is to promote a prevention action for corruption fighting based on the following premises:

- To learn about the servant
- To minimize the risks of ethical conflict
- To provide the instruments for the solution of ethical conflicts
- To establish a permanent system to maintain servants' integrity.

The following objectives are pursued:

1. To design a code of conduct that comprises the institutional values and clarifies the servants' duties and responsibilities
2. To learn about the servant in order to identify situations that might lead to ethical conflict and propose measures to avoid or detect it

3. To establish an integrity program that includes recruitment, evaluation, and the adoption of instruments to recognize ethical conducts
4. To create a strong image of an upright institution to dissuade those servants who have bad intentions from working with the institution and to enhance servants' self-esteem, underlining their sense of pride for being part of an honest institution
5. To seek excellence in the prevention and corruption fighting through exchange with other institutions, transparency and dissemination of actions
6. To establish internal corruption perception indicators so as to manage the implementation of the program and provide managers with information that might help them in their activities

It is difficult to change the ethical behavior of adults. However, the work of guidance and education must be ongoing and relentless, as the time goes to compose the organizational culture. The institution has to show that it is important to act right not because acting otherwise leads to punishment, but because acting right is the best course for the individual, as it strengthens the institution where the individual works.

Critical Analysis of Prevention in *Receita Federal do Brasil*

On prevention, *Coger* has to improve its capacity to analyze all the complex workflows in *Receita Federal do Brasil* in order to identify vulnerabilities that can lead misconduct. Additionally, it has to put in place its already prepared integrity program.

To identify vulnerabilities, *Coger* should know which activities have a higher risk, understood as those that could compromise both the institutional performance and the government and society's confidence in the institution. To do that, *Coger* has to do the following:

- Analyze the rules and procedures to identify gaps that can lead to

misconduct

- Analyze if the level of an officer's discretion is appropriate in each important and decisive task that has to be performed
- Check for proper supervision
- Check if decision power is concentrated in one officer or if it is shared according to level of responsibilities
- Make sure that the technological and environmental requirements for the implementation of the activity are appropriate
- Make sure that all officers receive proper technical and ethical training to perform their duties

Coger's actions should be responsible and take into account that public services provided by the agency must be efficient, fast, transparent, and as cost-effective as possible. Once the activities are reviewed, if failures are detected *Coger* should forward the report to the head of agency proposing the necessary corrective measures, pointing to the impact on public service delivery and cost changes in the activity.

Controlling

People do not like being controlled. This is particularly true in public organizations. Public authorities who hold a significant portion of the State power are even more averse to control, because they believe, mistakenly, that it undermines and diminishes their authority. Without controls, however, people tend to work less, to put their own interests ahead of the institutional interests, and, sometimes, to stray from proper conduct. That was the observation by Soldry on about the procurement officials:

In absence of effective control mechanism, procurement officials are likely to involve some personal preferences, derived from their private interests,

career prospects, social contacts, monetary reward or merely an aversion to effort, when making procurement decisions. In the terms of the principal-agent terminology used above, a lack of accountability means that the (procurement) agent is more likely to engage in a low level rather than a high level of effort when performing his task. The challenge faced by public procurement regulators therefore, is to ensure that the agency costs which rise when procurement agents carry out tasks for the benefit of their principal, do not exceed the benefit derived from such a delegation of decision-making authority. (Yukins, 1998)

Public servants tend to forget that their public function exists only for the institution where they work to achieve the goal that society expects. Without the people there would be no need; without the need there would be no institution; without the institution they public servant would have no job. Controlling the public officers' actions is therefore critical to ensure that every effort and action is moving toward the institution's goals. This role has to be played mainly by the hierarchical chain, and all staff should be aware whether their own behavior and that of their colleagues is according to the rules.

To keep staff on track it is important that officers feel they are being controlled. If they believe that the control is inefficient or completely ineffective, they will be more vulnerable to the temptations of corruption.

A controlling strategy has to encompass the following actions: systems for monitoring, periodic internal inspections, and supervision. The two first actions are better performed by a central structure in the agency. Supervision, otherwise, is a diffuse function that should be performed mainly by the local managers.

Receita Federal do Brasil has good systems for monitoring the main activities. In some cases, those systems can alert others if an unusual event occurs. There were many frauds in tax payments before more effective technology was put in place that made it more difficult for people who work in payments management to

misdirect funds; they know that they are being watched by the system, and this is an important deterrent for corruption. However, it is also necessary to expand the systems for monitoring other critical activities in the agency as well.

Receita Federal do Brasil created its internal audit unit, called *Audit*, only in 2006. *Audit* is in charge of ensuring that everything is going well - that is, according to the planning, the budget, the rules, and so on. Before *Audit* was created, internal inspections were performed by each area itself. This sort of self-appraisal and self-policing is an affront to the very basic principle of control that is the separation of duties. However, the new unit does not yet have enough expertise, equipment, technology, or staff to perform its duties as it would be necessary.

Coger and *Audit* are the highest-level units in charge of internal control in *Receita Federal do Brasil*. The role of both units is complementary. *Audit* performs internal inspections and checks if everything is going according to the planning and rules; when they find irregularities that may have been caused by misconduct, they report it to *Coger*.

Supervision is an activity that has to be performed by all the leaders in an institution. People in leadership positions should know that their duties include overlooking their subordinates. Leaders are important parts of an internal control structure. Officials who receive some specific charge to do a specific task must be able to ensure that the work gets done right. Supervision is not only the duty of the boss but is linked anyone who coordinates groups of people.

Critical Analysis of Controlling in *Receita Federal do Brasil*

There have been a few successful cases performed by both units *Coger* and *Audit*, but these are exceptions. The problem is that *Coger* and *Audit* do work separately. There is no planning or actions that encompass both units. The *Audit's* agents do not like to report to *Coger* because they feel they are "snitching" on colleagues, so *Coger* has its own investigative division that does its own internal inspections, duplicating some efforts because they don't expect that *Audit* will

accurately report misconduct.

That is a cultural problem that requires drastic measures to solve. It should only be necessary to have one internal inspection unit; having two is inefficient. And the internal inspections have to faithfully report all problems they find, including cases of misconduct.

The internal control in Receita Federal should be under a unique authority. Currently the head of *Coger* and the head of *Audit* are on the same level. To concentrate both functions under the same authority would start changing the cultural view and should improve the role of both activities.

Given the present structure of *Receita Federal do Brasil*, it would be necessary to introduce a Controller, a person just below the head of the agency who would be in charge of overlooking all the internal control systems, including *Coger*, *Audit*, and other units such as the accounting and financial areas.

Supervision is the biggest control problem in *Receita Federal do Brasil*. Some people who assume positions of leadership are not prepared to control the acts of their subordinates and they are not committed to the internal control. In large measure this is because of the difficulty of getting people to assume these responsibilities. To find someone who wants to be a manager in *Receita Federal do Brasil* is very difficult, largely because the increment in salary and benefits does not compensate for all the added responsibilities and risks.

Of course there are some who agree to be leaders because they are committed to the institution. These selfless servants often burn out before their colleagues because they have to make decisions that are often contrary the interests of individual employees. It is especially difficult to find suitable persons in distant regions, outside the big cities - in the far units on the border, for example. Even in the main units in the big cities it is not easy. This makes the agency loath to act in ways that might cause managers to leave. The solution is to introduce incentives to properly compensate managers and to establish appropriate criteria to select the best

candidates.

Repression

Repression is an unpleasant, expensive, and difficult activity, but one necessary to ensure the integrity of the institution. In *Receita Federal do Brasil*, repression can be divided into two phases. The first phase is the *investigation*, which occurs when the agency is not yet certain about the occurrence of a fault or all the elements necessary to classify it. Once the fault is known, the second phase is the *disciplinary procedure* (PAD). When the PAD starts, the public officer who is suspected becomes *indicted*.

Investigating

Coger is in charge of investigating staff to find corruption. Usually, an investigation starts with an allegation or complaint of some irregularity, but it can also begin as a result of reviews and initiatives by *Coger* itself. *Coger* determines if the reported fact is properly a disciplinary matter and identifies the agents involved. Investigations are conducted by skilled teams of experts.

The most important tools are the agency's databases that provide logs and clues for the most events. *Coger* also has some systems that allow them to cross-reference information to detect irregularities, as well as a group of agents to research different sources of information such other agencies. Occasionally there are task forces in cooperation with the federal police when the irregularities go beyond the administrative sphere and reach schemes of fraud outside of government.

Repression actions at the *Receita Federal do Brasil* are based on the investigation of two separate phenomena: *misconduct*, and the *effects of misconduct*.

Investigating Misconduct

At the root of the misconduct investigations is the identification of actions in discord with either the rules or the relevant legislation and the agents involved in the

misconduct. The investigation seeks proof of factual events and clear evidence of an irregular action. Thus, the focus is the *actions of the agents*.

Investigating the Effects of Misconduct

Investigations into the effects of misconduct attempt to identify the impact of certain actions of the agents on their assets. According to the Brazilian law, if a public agent possesses assets exceeding their known income, this is presumed to be a result of misconduct in his public duties, which may lead to dismissal from the public service, in addition to the relevant civil action.

The Public Administration is responsible for proving that the servant's assets are not compliant with their stated income, and then the *indicted* must provide proof of the origin of the exceeding assets.

Many times, this kind of investigation is the only way to identify cases of corrupt agents who have striven to hide the evidence of the misconduct they have had performed. In the field of tax administration, for instance, if a tax inspector waives the charging of a duty after having been bribed by a taxpayer, it is hard to prove this since both parties (the corrupt officer and the taxpayer) have an interest in keeping the matter hidden. However, by identifying an improbable rise in assets, an administrative sanction may be adopted without the specific knowledge of the misconduct itself. The focus of these investigation is not what agents have done, but on the circumstances of the *agents* themselves, by checking the effects of their conduct.

Disciplinary Procedure (PAD)

As mentioned previously, in Brazil, repression of public servants' misconduct depends on a disciplinary procedure called *processo administrativo disciplinar* (PAD). At the *Receita Federal do Brasil*, the commencement of the action is independently performed by *Coger*. The finding of facts for the proceeding is done by a committee made up of three officials. Less serious cases are judged by the same official who has

commenced the proceeding; more serious cases are judged by the Minister of Finance.

As soon as an irregularity is verified, the administrative sanction will be enforced in accordance with the law. In Brazil, all administrative sanctions have to be prescribed in the laws; the Public Administration cannot create any sanctions.

The PAD is the instrument by which the Public Administration assesses the evidence of the misconduct and adopts the relevant sanction as prescribed in the specific legislation. All information obtained during the investigation must be proven in the PAD.

During the PAD, the *indicted* have the right to be presumed innocent until every element has been proven, the right to challenge the evidence, the right to confront witnesses and present their own witnesses, the right to due process of law (administrative law, in case of PAD), and the right to appeal.

Sanctions

In Brazil, the administrative and the judicial power are independent. The behaviors deemed to be misconduct do not necessarily correspond to a criminal infringement. Obviously, various types of conduct, particularly the most serious ones, violate both disciplinary and criminal bylaws.

When an infringement is deemed by the administrative arena to be criminal conduct, the relevant representation is submitted to the Public Prosecution Department to commence the judicial proceedings. However, the Public Administration may enforce the sanctions prescribed in the disciplinary legislation, irrespective of the result of the criminal action.

Critical Analysis of Repression in *Receita Federal do Brasil*

Coger has ten offices scattered over the country. The head of *Coger*, called *Corregedor-Geral*, and the head of each local office investigate and to analyze the reports, allegations, and complains about public officers in their regions and start a

PAD when necessary. The *Corregedor-Geral* can do the same for the whole agency.⁵ They are called *disciplinary authorities*.

If a *disciplinary authority* finds enough evidences of misconduct, he or she has to start a PAD. When the PAD finishes and the misconduct that was proved was not of a serious nature, the disciplinary authority that has started the process is able to judge and apply the relevant punishment. Also, *disciplinary authorities* can file a complaint or even a PAD if they are not convinced that there was misconduct at all. Depending on the disciplinary authority's interpretation, a conduct can be interpreted as misconduct in an office and as regular practice in another. In some cases a fact may be enough to initiate a PAD in one office and not in another.

Another problem is that the person who determines the investigation is the same as who determines the PAD and in most cases is the same one who judges the conduct. To improve *Coger's* activities and raise confidence in the system, it will be necessary to change the workflow and the chain of decisions to introduce separation of duties, control, and supervision of the activities of *Coger*. Investigators should not be judge and jury as well. All decisions should be subject to a competent reviewer.

Taking advantage of the existing structure, the local office should manage the investigations and submit the result to *Corregedor-Geral*. Then, the *Corregedor-Geral* can decide whether to file the case or to start a PAD, based on the information provided by the local office. After concluded of the PAD by the committee, it should be submitted to the *Secretário da Receita Federal do Brasil* to judge and enforce any sanction. In case of serious misconduct, the *Secretário da Receita Federal do Brasil* would submit the PAD to the Minister of Finance.

This proposed structure presumes that the higher authority can monitor and

⁵ There are some exceptions that *Corregedor-Geral* cannot investigate: the head of agency and his deputy, former *Corregedor-Geral*, the deputy *Corregedor-Geral* and former deputy *Corregedor-Geral*. In those cases, the investigation and the PAD are performed outside of *Coger*.

control the activities of the lower.

Conclusion

All institutions are subject to corruption. No organization is immune to this evil. To be concerned with corruption is a sign of respect for the moral values of society, which is why traditional and strong institutions need anti-corruption strategies.

Administrative corruption is caused by a conflict of interest wherein a public official seeks to fill some desire or need that cannot be achieved through ethical conduct. To control administrative corruption, institutions must develop strategies that encompass prevention, control, and repression.

The Brazilian Tax and Customs Administration Agency (*Receita Federal do Brasil*) has been done well in its efforts to control corruption; no other Brazilian federal agency has similar anti-corruption systems in place. Since 1997, when the anti-corruption unit was created, many goals have been achieved, but there are some measures that remain unimplemented and must be put in place to improve the agency's anti-corruption capacity.

To implement the integrity program, to be more efficient in identifying risky activities, to improve the exchange of information and procedures between *Coger* and *Audit*, to make the leaders more committed to the internal control in order to perform adequately their duty of supervision, to properly separate the functions on investigation, prosecutions, and judge the staff's conducts, those all are some measures that could be implemented to make the system even better.

Concern about corruption is a characteristic of the reputable institutions. People from *Receita Federal do Brasil* are proud to be on an institution that is formed by honest and competent staff but also believe that they must be ever watchful against this disease that can destroy their reputation and the institution.

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