COMPARATIVE STUDY BETWEEN THE NORTH AMERICAN AND BRAZILIAN SYSTEMS OF COMBATING CORRUPTION

Frederico Resende de Oliveira

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Advisor: Robert Cottrol

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Abstract

The reflections of this research paper are focused on the analysis of the institutional frameworks to fight corruption in both Brazil and the United States. The objective of this study is to compare the two institutional arrangements and how they influence the performance of the two countries in the fight against corruption.

This paper will also deal with the influence of international conventions against corruption (OAS, OECD and UN) in the national laws of both countries.

1 Introduction

The document “Rebuild in Depth: Legal Regulatory Environment[1]”, from the World Economic Forum establishes that "*corruption is the single greatest acknowledged obstacle to economic and social development worldwide. [...] Corruption distorts markets, stifles economic growth, erodes democracy and undermines the rule of law*."

The reasons for fighting corruption are economic, political and social. In extreme situations, the very survival of the state is threatened by corruption.

Brazil has lived with corrupt practices throughout its history however there are notorious advances of the Brazilian institutional framework to combat corruption. The fact that Brazilian laws and institutions are rapidly improving in this task is auspicious and includes the adequacy of Brazil to the OAS, OECD and UN Conventions against Corruption. Moreover, it is clear that tolerance of the population with such practice is diminishing.

The United States has also had episodes of corruption in its history, but the strength with which its institutions are modified and emerge stronger after the major corruption scandals is remarkable. The current configuration of the American system to combat corruption is largely a result of reforms implemented in response to the Watergate crisis in 1978.

The two countries are currently on different levels of corruption (perceived and real) and this text attempts to describe the main topics on institutions and laws of the two national systems to combat corruption.

The text also deals with the influence of international conventions against corruption (OAS, OECD and UN) in the national laws of Brazil and the United States, and presents results in combating corruption in both countries. Finally it presents the conclusions from the comparison between the two systems and suggestions for improvement of the Brazilian institutional framework.

[1] See http://www.weforum.org/sessions/summary/rebuild-depth-legal-regulatory-environment

2 Topics of Corruption in Brazil

2.1 Corruption in Colonial Brazil

Brazilians and corruption have been living together for a very long time. It is a commonplace to imagine such a practice as a result of a historical molding promoted by the Portuguese colonization. The tone of this view is pessimistic, treating as "inescapable" the fate of a people tolerant with corruption and whose recurring inability to curb corrupt practices is rooted in the adoption of a set of values provided by the Portuguese metropolis.

Beyond this general belief, there was actual corruption in the Brazilian colonial period, starting with the arrival of the Portuguese, in 1500 and ending with the independence proclamation in 1822. In this period, compensation for low wages paid to public servants recruited in Portugal was made through the connivance of the Portuguese government to the irregularities committed by them. Portugal tolerated that the public servants received commissions, distributed favors, protected friends and partners and even practiced trading through third parties, provided that two conditions are always fulfilled: low profile and respect to the public treasury (MELLO, 2008, p.219).

Father Antonio Vieira, a Jesuit that had a vast knowledge of the colonial Brazilian public scene, testifies the spread of corrupt practices in the colony. Vieira used the pulpit to denounce vile practices of public management, fraud and impunity in his "Sermon on the Good Thief[2]," preached before the King John V in the Chapel of Mercy, Lisbon, in 1655. Vieira said that there are not just thieves who cut the bags or steal clothes from others that are bathing. According with the Jesuit, the thieves who own more worthily deserve this title are those whom the king ordered to command the armies and legions, or the government of the provinces, or the administration of cities, who use tricks and power to steal from people. He concludes this piece of the sermon saying that ordinary thieves steal a man, while these powerful thieves steal cities and kingdoms; the ordinary steal under their own protection, while the powerful steal without fear or danger; the ordinary, evade, are hanged, while these powerful steal and hang.

[2] See http://www.dominiopublico.gov.br/download/texto/fs000025pdf.pdf

The Portuguese court, led by D. João VI, moved to Brazil in the period between 1808 and 1822. The colony was then raised to the category of the United Kingdom to Portugal. Francisco Targino, the Treasurer Chief of D. John VI, became famous in this period through an extensive list of misconduct while occupying a public office embodying an exemplary case of corruption and impunity at the highest levels of government.

During this period became popular a verse that dealt specifically with the Treasurer and with Joaquim José de Azevedo, another court member suspected to be involved in corrupt practices. The verses say that who is a thief just steals, who is very shy a baron, who steals more and more secretly, is promoted from viscount to baron. Azevedo steals in palace, Targino steals from the treasury, and the afflicted people carry a heavy cross to Calvary.

The real presence of corruption in Brazilian colonial society and, to a large extent, living with their practices forged a feature of tolerance in these and subsequent generations of Brazilians.

2.2 Corruption in Imperial Brazil

Semantic care relating to employment of the term "corruption" at the imperial era should be taken when examining this period in Brazilian history. Although the figure of the emperor was not directly linked to corruption, critics in that time rated the monarchy as corrupt because it was a despotic oligarchy and isolated from the popular aspirations (Carvalho, 2008, p. 237).

The newspapers have reported cases that illustrate the existence of corrupt practices. A good example was the episode of the theft of the crown jewels, which occurred at the end of the imperial period. Palace officials who carried out a theft of jewels of the Empress Tereza Cristina, wife of D. Pedro II, were not properly punished and the police investigating the case received commendations to be silent and thus facilitate the agreement with the robbers to return the jewelry.

2.3 Corruption in the Republican Period

2.3.1 The Proclamation (1889)

It is a Brazilian common belief to think about monarchy and republic as two opposing forms of government. A closer look, however, reveals that these are not mutually exclusive concepts. While the definition of monarchy sets who is the boss (just one power), the Republic says nothing in this respect, focusing rather the way power is exercised. The word Republic only translates the ends that the institute aims to: the common good, by the laws established in view of the collective (Ribeiro, 2002). The concept of the Republic embodies such a number of basic elements that is more profitable to launch a general and external look on these issues than to try to fit its definition in one sentence. Thus, it is more effective to turn attention to the practices of republicanism, which indicate the political condition of a society where (LAFER, 1991, p . 19):

a) The status of citizen and not the individual defines the political status of a man. Republicanism sees the polity as its standard.

b) There is a consensus about the role of law as it institutional glue.

c) There is the spread of the concept of common good, as well as the search for its implementation and maintenance. The Republican common good must be understood as a set of common assets and institutions that form the collective memory and shared customs by a particular people.

d) There is a concern about the creation and maintenance of conditions for the active character of freedom, managed by political participation.

The concept of republicanism is fundamentally grounded in the concept of active citizenship. The individual participation in the collective business and represents a superior form of citizenship participation, also expressed in the final analysis, a form of healing for the degeneration of democratic life.

It is clear that the republican ideal is supported by a vast, rich and idealistic theoretical framework. The Brazilian republic, however, had its origin far from the population and, consequently, far from the traditional republican ideals. The lack of participation in the process of establishment of the Brazilian Republic, in the late

nineteenth century, is a clear consensus of the proclamation made by Marshal Deodoro da Fonseca, on November 15, 1889.

According with Aurélio Lyra Tavares (Tavares, 1987, p.26 and 27), the words of Aristides Lobo, a militant of the Republican cause and witness of the events on the day of the proclamation, illustrate this specific point of the transition Monarchy-Republic in Brazil. Aristides Lobo said that he would like to give the proclamation date the following heading: November 15th the first year of the Republic, but he cannot, unfortunately, do so. He says that the new government was purely military because the cooperation of the civilian was almost null. He finishes saying that the people watched astonished, amazed, surprised and not knowing what it meant. Many sincerely believed they were seeing a parade.

Use of the term astonished results from the perception that there was no apparent motive for the population to overthrow the monarchy, given the popularity of the Emperor. The proclamation was reduced to a simple act of strength of the military (Mello, 2007, p. 09).

Other peculiarities of the Republic proclamation in Brazil can be found in the national literature. A fictional work written by Machado de Assis entitled “Esau and Jacob”, showed that the Republic proclamation got to annoy both the brothers; Paul, who was a Republican, and Peter, a monarchist. For both, the absence of popular participation on the barricades, for example, denigrated the performance of the two warring sides.

The adoption of the Republican regime in Brazil gives to some extent, the tone of what would be the trajectory of the system in its subsequent periods. The Brazilian republic was an elitist movement, lacked since its genesis of active citizenship, participation of the collective as a way to exercise freedom.

This elitist and "Little Republican" face explains the coexistence of the new regime with the corrupt practices. How can one expect a new order that had no appreciation for the *res publica* would root out corruption in Brazilian society?

2.3.2 The Old Republic (1889 – 1930)

If the absence of popular participation was the hallmark of the proclamation, the subsequent period (the Old Republic 1889-1930) shows no improvement in this respect. It was so full of dysfunctions with regard to freedom, popular participation and the existence of corruption, that it is difficult to see traces of the practices that characterize the republican tradition.

The change from monarchy Unitary State to the republican federalism can be thought as a kind of trigger for a change in the balance of political forces of the new regime. What we cannot lose of the sight is the fact that the beginnings of the Brazilian Republic did not bring significant gains in terms of popular participation and combating corruption.

In the imperial period the presidents of the Brazilian provinces were political leaders entrusted by the monarchical government. They were often transferred from one province to another and were strictly controlled in the role of intermediaries between central government and local groups of private power. The provinces presidents, given the geographical and temporal instability, rarely remained in a province long enough to create political roots and thus came to represent a threat to the hegemony of the imperial power.

The Republic brought a rupture to this model. Significant amount of autonomy was transferred to states and municipalities, since the federalist system broke the direct relationship between the holders of local and national political power that prevailed in the imperial times. It happened that the Republic's rulers had been elected and, by constitutional provision, became owners of a reasonable share of power. The heads of provinces controlled state politics from powerful state party machines. In the municipalities was the domain of the “Colonels”, so designated by association with the highest rank of the National Guard, an institution already decaying since the 1870's. The Colonels were big landowners who assumed the leadership of the municipal policy. The domain of the Colonels in the municipalities and the hegemony of oligarchies at the state and federal levels formed the structure basis that buried any attempt of application of republican principles to this stage of the Brazilian history (Trindade, 2004, p.180).

Although the 1891 Constitution had legally broadened political participation by the vote and the right of association, it was defeated by the facts, which resulted into a denial of the idea of political participation. A huge apparatus of repression against blacks, immigrants and social manifestations; a view that the social question as a police case and electoral fraud were the faces that best illustrated this reality (Trindade, 2004, p.184).

According to José Murilo de Carvalho (2001), the exhaustion of the Old Republic model took place on several fronts. Several segments of society were active players of its dismantling. The first segment was the working class that was hit hard by the chaos that has taken place in the Brazilian economy, at that time extremely based on the coffee culture, from the stock market crisis of 1929. The second social group was the military. They were dissatisfied with the state oligarchies that gradually undermined the influence that the army had in the early years of the Republic. The lieutenant group, called "tenentismo" was the greatest expression of the dissatisfaction of the military. The dissatisfaction in the areas of health, education, and from the cultural and intellectual fields can also be described in a separated. The presence of a broader spectrum of social actors demonstrates an evolution of popular participation in the movement that ended the Old Republic at 41 years of existence: the 1930 Revolution.

2.3.3 The Vargas Era (1930 – 1945)

In contrast to the initial movement of 1889, in the Revolution of 1930 good elements of citizenship and popular participation can be found. Despite playing a secondary role, there was room for revolutionary civilian mobilization in the states rebelling, not forgetting the fact that, similar to 1889, there was a need for military involvement in the revolutionary movement.

The following period, from 1930 to 1937, was marked by the expansion of political participation, both from the quantitative and qualitative points of view. Quantitatively the involvement of several states and the diversification of social groups that have participated more actively in the period, military, workers, industrialists, middle class, among others, can be seen in the period. In the qualitative aspect, the important point was to increase the degree of organization of political movements. A multiplication of unions and associations occurred and various political parties were

created, some of which have gained national character, a new fact in Brazilian republican history.

In this period Brazil had no Constitution and this fact caused the 1932 Revolution. It was the most important Brazilian civil war of the twentieth century and had a strong popular participation. Although the revolution failed, it got the reconstitutionalization of the country in 1934. The new Constitution promoted the adoption of new electoral rules incorporating the secret ballot, women voting rights and the creation of electoral justice. These facts represented advances in the participation of society, but they proved to be a short victory, because the 1937 revolution promoted the deletion of several achievements in the previous period. In the period known as "Estado Novo", that started in 1937 and ended in 1945, Brazil was under a typical dictatorship, in which political demonstrations were banned; the country was legislated by decree; the press was censored and there was the arrest of opponents.

At the Estado Novo the treatment given by the state to the relationship between employers and employees consisted in the rejection of social conflict tutoring and coordinating both sides. Employers and employees were forced to join the government-controlled unions and so were permanently monitored.

Throughout the period 1930 to 1945 is strongly perceived a reversal behavior in the federative character of the Brazilian Republic. The federalism of the Old Republic was a synonymous of the states and oligarchs power, in such a way that there was a plea for the central power supremacy at the expense of local shares of power. The actions undertaken in the period in fact carried out this task: the federal character of the Republic became unbalanced in favor of the Federal level and so remains today. In addition to this predominance of the Union over the states and municipalities, the new model developed in Brazilian republican period also promoted the primacy of the state over civil society. The Vargas period had, however, major advances in the field of social rights, notably, labor rights, that were incipient in Brazil.

2.3.4 The Democratic Period (1946-1964)

In 1945 the international situation was favorable to democracy again and the Vargas deposition occurred in this year. Brazil had the constitution of 1946 as a regiment, which expanded the achievements of the constitution of 1934. In this phase,

which lasted until 1964, compulsory voting, secret and direct was extended to all citizens over 18 years. The illiterate and armed forces personnel, however, were eliminated from the electoral process. The existence of an electoral justice has been confirmed, although this fact should not be interpreted as synonymous of the extinction of electoral fraud in this period. There was also, at this stage, an increased number of political parties, including those with national character. Symptomatically, social rights, which had a remarkable growth in the previous period, have evolved little from 1945 to 1964. Despite having democratic characteristics, this time in Brazil's history was also marked, especially at the end, by the exacerbation of left-right conflict for control of power, which resulted in his own end with the revolution of March 31st, 1964.

The second Vargas government is contained in this brief interlude of democracy in Brazilian history. It was the culmination of complaints of administrative and politics corruption of this epoch. Although the figure of the President was spared the most serious charges, his circle of close advisers was accused of taking advantage of public resources for personal benefit. According to Rodrigo Patto Sá Motta (2008), in this time was coined the phrase "sea of mud", which is ingrained in the collective imagination of Brazilian and came to be widely used in dealing with the issue of corruption in the country since then.

Juscelino Kubitschek was the Vargas successor. He carried throughout his administration the fame of political heir of a corrupt group, exacerbated due to the fact that his government was in a great number of big constructions works, notably the construction of Brasilia. It is symptomatic that these two leaders have been succeeded by Janio Quadros, who won the elections with significant numbers. His campaign symbol was a broom that represented his main idea; sweeping corruption from the Brazilian public scene.

Quadros' resignation, followed by the rise of Joao Goulart represented, at the same time, a betrayal of the promise to ban corrupt practices and a return to power of the group labeled as corrupt. This particular point has meant, for the perpetrators of the 1964 military coup, a justification for their actions.

São Paulo Governor, Ademar de Barros, also was a typical illustration of the corrupt practices of that epoch. In his work the governor did not deny the corruption

charges that were made and his reputation among voters was the politician who "steals but do."

2.3.5 The Military Period (1964 – 1985)

The 1964 Revolution inaugurated a new stage in the Brazilian history which had a close resemblance to Vargas' "Estado Novo", once that it restricted to an unprecedented extent in the Republic, political rights, while tried to compensate for such restriction with an increase of social rights. The cost of political repression was much higher for the military that was to Vargas, the benefits of the social rights expansion, in contrast, were much lower for the 1964 regime than they were in the "Estado Novo". These events were due to a variety of causes, among which can be pointed out the stage of politicization of the population at the time of the movement, the international scenario and the scope of social reforms.

The coup founded justification in the fight against the binomial corruption-subversion, and the second item gained importance especially after the success of the movement. According to Heloisa Maria Murgel Starling (2008) the military notion of corruption considered it a phenomenon restricted to the misuse of public funds, due to low moral quality of the society. For the military, it was a moral problem easy to detect and measure as well as remediable through the regeneration of the society. This belief soon was proved false, since the government of Marshal Humberto de Alencar Castelo Branco, the first president of the military period. He said that the most serious problem in Brazil was not subversion. According with him, corruption was much more difficult to characterize, punish and eradicate.

The perception of such difficulties at the beginning of the military regime led to a deepening of arbitrariness used in the alleged fight against the corruption. The legal framework has been transformed in order to justify the most violent and repressive period of this phase of Brazilian history. The General Committee of Investigations - CGI was established, which had the task of conducting surveys and military police that were prepared to identify those involved in corruption / subversion. This commission has failed miserably in its mission, basically for two reasons: first, the CGI thought to be possible to eliminate corrupt practices by the simple use of techniques of intimidation and, secondly, the Commission has a very broad scope of work, which

covered all acts of national life that present the slightest hint of corruption. The CGI failures can be added to the closely of the corruption with the very nature of the dictatorial regimes, which, by definition, are incapable of allowing the participation of citizens in the public arena. The synthesis set forth by Murgel (2008) translates a brilliant analysis of the fight against corruption in the military period in Brazil. She said that corruption degrades the meaning of public. Because of this, in dictatorships, corruption has functionality: is to ensure the dissipation of public life. In democracies, said the writer, its effect is other: it serves to dissolve the political principles that sustain the conditions for exercise citizen's virtue. She brightly concludes the analysis saying that the Brazilian military regime has failed in fighting corruption for a simple reason: there is only one remedy against corruption, more democracy.

The end of military period coincided with one of the largest movements of popular political mobilization, the movement for direct elections in 1984. The period that began received the name of New Republic and has the 1988 Constitution as its legal text, in which is the prediction of civil, political and social rights, which magnitude allows us to say that this is the most democratic constitution of the Brazilian Republic.

2.3.6 The New Republic (1985 - …)

The period between 1985 and 2011 is already and the longest truly democratic period of the Brazilian Republic. The maturation of the institutional arrangements in Brazil, including those related to combating corruption, is clearly noticeable, however the increase in the number of institutions and mechanisms dedicated to fighting corruption cannot be soundly interpreted as a complete victory in this war. There is still much to be done, as can be seen in ordinary search on the Internet about the corruption scandals in Brazil:

Period	Number of Corruption Scandals Listed
1990 - 1999	96
2000 – 2009	69
2010	18

*Source: http://pt.wikipedia.org/wiki/Anexo:Lista_de_esc%C3%A2ndalos_pol%C3%ADticos_no_Brasil

It is worth noting the recent emergence of an anti-corruption movement in Brazil. The movement arose from a group of Brasilia who decided to unite to promote

the first March against Corruption in Brazil's Independence Day (September 7), which gathered some 30,000 people in Brasilia. In addition to Brasilia, there were crowds mobilized on the fight against corruption in other major capitals of Brazil.

Due to the success of the movement, on October 12 there was the second March against Corruption in sixteen state capitals. The movement had no connotation party and its agenda includes the claim for the end of the secret ballot in the Legislative branch, the effective apply of the Law of Clean Record (law that prohibits the participation of politicians with judicial troubles in elections) and the transformation of corruption into a heinous crime.

3 Fighting against Corruption in Brazil

3.1 Institutions

3.1.1 Councils and Popular Participation

With respect to political rights, the Constitution of 1988 corrected the historical absence of the participation of illiterate people in the electoral process, making voting optional for this class of citizens historically excluded from the electoral process.

In terms of civil rights, the list of constitutional remedies provided in the text is a fairly extensive, for example, *habeas corpus, habeas data*, *writ*, among others. Even by the Constitution, any citizen is able to institute a *people action*.

There is now a big amount of councils, especially at the municipal level, which constitute an important instrument for popular participation in the conduct of public policies in health, education, social assistance, among others, given their enormous capillary. The period after 1988 includes the appearance of two new classes of social actors; Social Organizations and Civil Society Organization of Public Interest, which have been active in education, environment, culture, health, among others fields. The major proliferation of NGOs is noteworthy, making this sector very active on the national scene. The practice of participatory budgeting was implemented in various Brazilian states and cities. Several sectors historically deprived of representation formed themselves into leagues and very strong social movements, and are other examples of freedom and participation.

It can be noticed therefore that there is a strong tendency to increase popular participation in Brazil post-1988. In this context, it is clear that Brazilian society is learning to deal democratically with the corruption. There is, in the period, a succession of scandals motivated by issues related to corruption that became public, which, according to Bobbio (1990), it is a sign that the political system is robust, since a scandal is conceptually defined as the corruption that comes to public. Several topics related to corruption have to be debated and became larger field of society in order to try to avoid these scandals. A large institutional progress can be recorded in the period, with regard to combating corruption.

The key to understanding the current stage of the fight against corruption in Brazil is by grasping the institutional framework designed by the Constitution of 1988 and the increasing of popular participation with the resumption of democratic practices in combating corruption. Notably, at the local level, a new arrangement has been established since 1988 and it became a complex arena. The increase of the number of actors and processes in the discussion on matters affecting municipalities was huge after 1988 in Brazil. Negotiations pertaining to issues of local nature have gained, as well as the participation of the three spheres of government, the participation of civil society and NGO entities. All this movement increases the representation of society and the accountability, whose examination of the related concepts also sheds light on increasing social participation in fighting corruption in Brazil. Given the theoretical scheme proposed by Guillermo O'Donnell (1998), the division between vertical and horizontal accountability helps to understand such behavior. The concept of vertical accountability treats the relation of punishment or reward between representatives and represented. The performance of the representatives elected by citizens, in accordance with this concept, is rewarded or punished for them, through their votes in the subsequent elections to their terms as representatives. The horizontal accountability, in turn, relates to the action of the state bureaucracy itself in the regulation of state action, through administrative supervision.

The theoretical framework proposed by Guillermo O'Donnell finds its complement in the definition of social accountability, extensive work by Enrique Peruzzoti (2005), whereby the social face of accountability lies in: A diverse set of initiatives taken by NGOs, social movements, civil associations, or the independent media driven by a common concern to improve the transparency and accountability of government action. This set of different actors and initiatives include actions to oversee the behavior of public officials or agencies, to denounce and expose the violations of the law or corruption by the authorities, and put pressure on the control agencies to activate the corresponding mechanisms for investigation and sanction. This heterogeneous set of social actors develops new features that add to the classic repertoire of legal instruments and electoral control of government actions.

There are various institutional tools of the Brazilian legal system that are related to horizontal accountability.

3.1.2 The Public Ministry

The Public Ministry was raised to the constitutional level by the text of 1988, which gave it administrative and functional autonomy. In accordance with the Constitution, the defense of law, of democratic regime and of the inalienable social and individual interests rests to the Public Ministry.

The Brazilian Public Ministry can perform investigative activities beyond its work in civil, criminal or constitutional law. The fight against corruption is included in its work to protect the diffuse and collective interests of the Brazilian Society.

The arsenal of legal instruments available to the public prosecutor is very effective and we should also list the active character of the institution, which can act regardless of provocation by third parties and their members enjoy privileges that give them functional independence.

The fact that the actions of prosecutors in the post-1988 are increasingly felt by the population is well known. Notably in scandals of corruption cases people can notice the effective presence of the Public Ministry, who has managed, through the work of its prosecutors, significant results in fighting corruption.

3.1.3 The External and Internal Control Systems

The control system designed by the 1988 Constitution should also be listed as an important tool in fighting corruption.

In order to contextualize the theme under discussion meets present some introductory concepts are necessary. First one uses the definition of control by Cruz and Glock (2007, p.20), which says that the control is characterized for any activity to systematic verification of a record, exercised on a permanent or periodic, embodied in a document or in another medium, that expresses an action, a situation, a result, etc., with the aim of check in whether there is compliance with the standards established, or to what determined by laws and ruled standards.

It is therefore an activity that can be used in several areas of human knowledge. At the individual level, by controlling the household or personal finances, at the professional level can be cited a multitude of processes for producing goods or providing services as well as collective actions that, without proper control, would not

be successful. The scope that is inserted into the control structure determines its classification. Thus, it is understood as internal control that belongs to the internal structure of the organization, while the opposite is true for the external control, its counterpoint.

The implementation of the internal and external control systems was predicted by the Brazilian Constitution. Regarding the latter, the Brazilian model is based on Court of Accounts, which total 34 nationwide (1 National Audit Courts + 27 State Audit Courts + 4 Municipal Audit Courts in the states of Ceará, Bahia, Pará and Goiás and 2 Audit Courts exclusive to the municipalities of Rio de Janeiro and São Paulo, respectively). These organs have a collegiate nature and act as administrative courts, in which provision of management accounts are judged by a group of ministers or counselors assisted by a staff that performs audits and inspections covering aspects of accounting, finance, budgeting, operation and property of the public resources applied. Its radius of action covers any person or entity, public or private, dealing with public funds. The predictions relate directly to the Constitutional Court of Audit (TCU), but must be followed by other courts belonging to the federation. It is important to note that the TCU is a century-old institution, having been installed in 1893 at the dawn of the republic

The Instruction No. 16, December 20, 1991 edited by the National Treasury Department, was revoked; however it contained a very nice definition of internal control. The instruction stated that internal control is in the public sphere is the set of activities, plans, methods and procedures linked, used in order to ensure that the objectives of the organs and entities of government are achieved reliably and concrete evidence of any deviations over the management, to achieve the objectives set by the public.

The internal control system has constitutional status since 1988. Its prevision covers several articles of the constitutional text. The most explicit statement on internal control is found in Article 70. This article says that the accounting, financial, budgetary, operational and property control, in the Brazilian Federal level and entities of direct and indirect Public Administration, regarding to the legality, legitimacy, economy,

application of subsidies and waiver of revenues is exercised by the Congress, through external and internal control systems of each branch.

The Constitution says too that any person or entity, public or private, which uses, collects, keeps, manages or administers money, goods and public values or for which is responsible, or assumes obligations of a pecuniary nature on behalf of the central government is accountable.

The commands of Article 74 are more specific about the structure and operation of internal control systems. The Constitution establishes that the Legislative, Executive and Judicial branches will maintain an integrated system of internal control for the purpose of evaluating compliance with the goals of the four year budget plan; the implementation of government programs and budgets of the federal government level; evaluate the lawfulness and the results, regarding to the effectiveness and efficiency of budget, finance and property in the entities of the federal administration; the application of public funds by private entities; control of loans, guarantees, as well as the rights and assets of the federal government level; support the external control system in the exercise of its institutional mission.

The constitution also says that those responsible for internal control, upon learning of any irregularity or illegality, shall inform the Court of Audit, under penalty of joint liability and that any citizen, political party, association or union has standing to institute, under the law to denounce irregularities or illegalities to the Audit Court.

The Office of the Comptroller General (CGU) is the central organ of the Federal Executive Branch Internal Control System. It handles the technical supervision of the organs that make up the Executive Internal Control System. CGU attends, directly and immediately to the President on the issues connected with protection of public property and increasing the transparency of management, through the activities of public auditing, Internal Affairs, corruption prevention and ombudsmen.

3.1.4 Other important institutions

In addition to the aforementioned institutions, it also highlighted the Brazilian Federal Police, which has triggered a large number of operations against criminals involved in corruption scandals.

The Attorney General's Office (AGU) is the institution that represents the federal level of government at the court and has also had a significant role in litigation arising from the fight against corruption.

3.2 Laws

In addition to fighting in the administrative sphere, the Brazilian regulatory system is also structured to combat corrupt practices in court.

There are typified in the Brazilian penal code offenses of;

- Embezzlement - appropriation or diversion by a public official, who has goods in his possession due to the exercise of his public function.
- Violation of functional secrecy - revelation of the fact which is known due to a public official position and that should remain secret.
- Influence-peddling - requesting, demanding, charging or obtaining advantage for influencing an act committed by a public officer.
- Accepting bribes - requesting, receiving or accepting a promise of an undue advantage, because of the civil servant position.
- Offering bribery - offering the promise of advantage to a public official to influence him to practice, omit or delay any official act.
- Offering bribery in international business transaction - promising, offering or granting undue advantage to an international official to influence him to practice, to omit or to delay any official act relating to international business transaction.
- Trafficking in influence in international business transaction - requesting, demanding, charging or obtaining advantage or its promise, under the pretext of influencing an act practiced by foreign public official in the exercise of his functions, among others.

In addition to criminal types associated with corrupt practices, the Brazilian Penal Code also brings the criminal concept of a public official. The code defines a public official as anyone who holds a position, or public function, even if temporarily or without pay. This prediction complements the criminal definition of crimes related to public administration; it circumscribes the subject able to practice exclusive crimes of public officials.

Apart from those contained in the Criminal Code, it is important to note the contents of Article 37 § 4 of the Constitution which establishes, by an indirect way, the principle of administrative probity. It says that the acts of administrative malfeasance will be punished by the suspension of political rights, the loss of civil service, a lock on personal property and the reimbursement to the Treasury, grading as provided by law, without prejudice to applicable criminal action.

The Law 8.429/92 regulates the Article 37 § 4 of the Constitution. This nationwide Act, systematized the cases of administrative misconduct in three types, namely:

- Administrative acts that involve illicit enrichment - dealt with in Article 9 of Law;
- Administrative acts which cause injury to the public treasury - covered by Article 10;
- Administrative acts that violate the principles of public administration - governed by Article 11 of the Law 8.429/92.

It is important to pay attention to the spirit of Law 8.429/92. Initially the legislature describes two cases of misconduct whose effects are clearly visible and directly measurable. The third class of acts of misconduct provided by law, conversely, is quite general, relying on the affront to the principles that guide public administration - legality, impersonality, morality, transparency and efficiency - to typify the improper conduct.

The penalties provided for in Law 8.429/92 are expressed in Article 12: Loss of property or illegally added values to the property, full indemnification of the damage, loss of civil service, suspension of political rights, payment of civil penalty and prohibition from engaging with the government or receiving benefits or fiscal and/or credit incentives for a period of ten years. It is noteworthy that in fixing the punishment the judge must take into account the extent of damage, as well as the advantage of equity gained by the offender.

In the list expressed in the previous paragraph, we see the absence of the criminal sanctions for those involved in acts of improper conduct. In fact, the only

provision contained in this statute that calls for criminal punishment is slanderous denunciation of the action of administrative misconduct.

The Public Civil Action Law (Law 7347/85) is a very important tool for the Public Ministry, with the civil investigation, as well as the possibility of signing Terms Adjustment of Conduct for the correction of conduct detrimental to the public interest.

3.3 Influences from International Conventions against the Corruption

The international fight against corruption has gained momentum in recent years. However fighting against corruption and its related themes are not new, historical, economic politic circumstances in the last twenty-five years have altered public awareness regarding these issues, so that a new fact has been noted in this field (Ramina, 2003). From the consensus about democracy, somewhere around one hundred and forty countries from all continents now live under democratic regimes (PNUD, 2004), and considering that it is undisputed understanding that considers corruption to be a destabilizing element of democracy. Fighting against corruption has recently found formal translation in International Conventions on the theme. This procedure brings three international conventions on the subject, namely:

a) Inter-American Convention against Corruption - the Organization of American States (OAS) signed on March 29, 1996;

b) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - the Organization for Economic Cooperation and Development, signed on December 17, 1997;

c) UN Convention against Corruption - the United Nations, signed on December 9, 2003.

The phenomenon that explains the position taken by the countries and establishes a consensus on the need for the international fight against corruption has multiple causes. A quick reading of the preambles of the three conventions mentioned above shows that there are several reasons justifying them. So the conventions recognize the transnational nature of corruption, its deleterious effects on societies by undermining the institutions, their close connection with organized crime as well as the

need to strengthen its combat as a means of preserving the legitimacy of institutions and ensure the nation's social development.

3.3.1 Inter-American Convention against Corruption

3.3.1.1 Brief History

The concern with the fight against corruption has been recurrent in the Organization of American States (OAS). The OAS Charter, the founding document of the entity, recognizes the indispensable nature of democracy as a condition for stability, peace and development in the region, as well as pointing to corruption as one of the its gravest threats.

A large number of instruments adopted by the OAS continued its trend of formalizing the fight against corruption, among which can be mentioned the "Santiago Commitment to Democracy and the Renewal of the Inter-American System," the "Declaration of Managua for the Promotion of Democracy and Development" and the "Declaration of Belém do Pará ", among others.

The adoption of the mechanism of the Summits of the Americas truly served as a catalyst for institutionalizing the fight against corruption. The First Summit of the Americas held in Miami in 1994 served as a watershed in this process. After its completion referrals became more rapid and the corruption was recognized as a multilateral problem. The Miami Summit was the beginning what would became an international agreement on the subject. The culmination of this process took place in Caracas in 1996, when it was approved by members of the OAS Inter-American Convention against Corruption.

Several actions whose goal was the operationalization of the Convention were taken by its signatories in various forums after the Caracas at the OAS, especially the Second and Third Summits of the Americas held respectively in Chile (Santiago, 1998) and Canada (Quebec-2001), and the Summit Meeting held in Mexico (Monterey-2004). Among these, undoubtedly the most important was the creation and effective operation of the Mechanism for Implementation of the Inter-American Convention against Corruption (MESICIC), a key instrument in ensuring that the Convention did not become ineffective.

3.3.1.2 Overview

Having had completed their negotiations on March 29, 1996, the Inter-American Convention against Corruption began being enforced on March 7, 1997. To date, the Convention has being signed by all thirty-four members of the OAS and ratified by thirty-three of them (only Barbados has not) (OAS, 2008).

The Convention is the first international legal instrument on the subject of transnational corruption (Ramina, 2003). The central idea contained in the text is that only through a collective effort of all states will it be possible to fight corruption effectively. This is because in a globalized world, countries with legal systems and institutional permissive corrupt practices easily become a refuge for those who take advantage of them.

From the foregoing it is easy to understand the two main lines of action contained in the scope of the Convention:

a) Promotion and strengthening development of mechanisms to prevent, detect, punish and eradicate corruption in the States Parties;

b) Promotion, facilitation and regulation of cooperation among States Parties to ensure the effectiveness of its measures.

The convention deals with preventive actions encompassing the modernization of institutions, the elimination of the causes of corruption and the conditions that facilitate or provide it. Thus OAS recognized that the problem won't be solved only by enforcement actions.

The idea by which the fight against corruption is conceived as a process, not as a simple sum of isolated acts, permeates the entire text of the Convention, which avoids simplistic solutions and favors a more comprehensive approach to the problem, whose solution demands the participation of all stakeholders: the government, the private sector, civil society and international community.

For a series of issues to the Convention constitutes the most important legal mechanism of the Americas: extradition of individuals for crimes related to corruption, cooperation and assistance among states, procedures pertaining to the allocation of assets obtained through corruption, among others.

Bank secrecy is also reflected in the Convention in order to prevent it from being used as a protection against corruption.

The right to asylum is especially observed in the Convention, which seeks to establish a balance between the values it protects and those concerning the fight against corruption.

Finally, we emphasize that the Convention includes an article on transnational bribery, which represents a major advance in this legal instrument.

3.3.1.3 Follow-up Mechanism for Implementation of the Inter-American Convention against Corruption (MESICIC)

In order to facilitate effective implementation of the Inter-American Convention against Corruption, the signatory states have implemented a peer review mechanism called a follow-up Mechanism for Implementation of the Inter-American Convention against Corruption (MESICIC). (Brandolino and Luna, 2008)

The formalization of the mechanism is based on the "Document of Buenos Aires", May 2001. The MESICIC shall observe the principles that guide the OAS Charter: sovereignty, nonintervention, and legal equality between states, moreover, it must have the characteristics of impartiality, objectivity and absence of punishment, considering that it is not the mechanism’s objective to establish a ranking of participating states' adherence to the Convention.

The MESICIC nature is intergovernmental and it is composed of two bodies:

a) Conference of States Parties, which is comprised of representatives of States parties to the Convention;

b) Committee of Experts, which aims to make the technical analysis of the implementation of the Convention, being made up of specialists whose designations are made by States Parties.

Despite its nature, it is important to note that the MESICIC is totally permeable to the participation of civil society, including having created the institutional space for this participation, during the evaluation of states by the Commission of Experts.

The overseeing of the Convention takes place in rounds, in which a set of provisions is selected in the text for evaluation, as shown in the following table;

Round/ Year	**Articles Checked**
01 / 2006	III, 1 and 2 (standards of conduct for the correct, honorable and proper fulfillment of public functions) III, 4 (systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law) III, 9 (oversight entities, solely having to do with the oversight entities charged with functions relating to compliance with the provisions of paragraphs 1, 2, 4 and 11 of Article III) III, 11 (mechanisms to encourage participation by civil society and nongovernmental organizations in efforts to prevent corruption) XIV (assistance and cooperation) and XVIII (central authorities).
02 / 2008	III, 5 (systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems); III, 8 (systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal systems) and VI (acts of corruption).
03 / 2011	III, 7 (government revenue collection and control systems that deter corruption) III, 10 (deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records which, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts) VIII (transnational bribery) IX (illicit enrichment) X (notification of illicit enrichment) XIII (extradition)

Source: http://www.oas.org/juridico/portuguese/bra.htm.

The choice of a set of articles, rather than a complete analysis of the Convention, is due to the analysis feasibility of the extent of tests. The MESICIC works with a methodology very similar to that employed by ISO certifiers, segregating a slice of the Convention provisions for each round.

The analysis of the provisions of the Convention by the experts follows the universally pervasive principle of Due Process, which is illustrated by the fact that the state is granted complete freedom to take on the issue of its comments, in addition to the results expressed in the final reports should be reached preferably by consensus.

Subgroups are formed for the performance analysis by random selection of States Parties. The subgroup, however, is formed in such a way that at least one of its members has the same legal tradition of the state examined.

The convention has been the catalyst for a series of modifications (or attempted) of Brazilian law. In 2002 the OAS has prepared and sent a report to the Brazilian Ministry of Justice written by Dr. Luiz Regis Prado, which analyzed in depth the Brazilian criminal law. The analysis evaluated in detail the Brazilian Penal Code, by comparing their predictions with the legal text of the Convention. His opinion was very illustrative of the need to change some articles of the code and was sent to ministry as a suggestion. It is through the MESICIC, however, that main changes take place. The rounds held so far have many cases of propositions of improvements in the Brazilian legal system that can be cited here:

a) Presidential Decrees
    - Decree 5480 (June 30, 2005) - instituted the internal affairs system of Brazilian Executive Federal level.
    - Decree 5481 (June 30, 2005) - provided for the disclosure, on the Internet, of the annual report of accounts produced by the CGU auditing the several executive federal institutions.
    - Decree 5482 (June 30, 2005) - Instituted the Transparency Portal, that is the transparency page of the Brazilian federal government on the Internet.
    - Decree 5483 (June 30, 2005) - regulated the Patrimonial Inquiry.

- Decree 5683 (January 24, 2006) - adopted a new regimental structure for the CGU by adding correctional and preventive activities.
- Decree 6906 (July 21, 2009) - compelled Ministers of State, occupying a position of special nature and members of the Steering Group and Advisory Superior Federal Public Administration to report the existence of ties of kinship with other occupants of positions in committee or positions of trust within the executive branch, under penalty of prosecution of administrative discipline.

b) Bills

- Bill 7528/2006 – creates rules for conflict of interest and is applicable to all public employees in Brazil. This project is awaiting vote in plenary of the House of Representatives.
- Bill 7709/2007 - modifies the current Procurement Law - 8666/1993, extending the penalties to owners and company directors. This bill is pending in the Senate.
- Bill 5228/2009 - establishes the obligation to disclose information of collective interest, produced or held in custody by governmental entities. This Bill was approved by the Senate in 10/25/2011. The law will take effect after 180 days of its official publication[3].
- Bill 6826/2010 - establishes the possibility of ignoring the legal personality of the firms when used with abuse of law to facilitate concealing or disguising the illicit behavior, including as part of procurement processes. The bill is in the House of Representatives.
- Bill 6616/2010 - increases penalties for offenses relating to public administration, embezzlement, graft, corruption, active and passive corruption including international business transactions. In addition, the project qualifies as heinous crimes related to corruption when committed by high officials, for example; President, Governors, Legislators, Judges, Ministers, etc. The 6616/2010 bill makes it tougher punishment of these crimes, since it obliges that since the beginning the sentence is made in a

[3] See http://www.cgu.gov.br/Imprensa/Noticias/2011/noticia19511.asp

closed system, hinders parole and progression of the sentence, and prohibits bail and amnesty, in addition to allow the temporary detention for a period longer than the non-considered heinous offenses. The bill also is pending before the House of Representatives.

c) Other norms that are related with the OAS Convention spirit

- Constitutional Amendment 45/2004 - established the National Council of Justice and the National Council of the Public Ministry. They are enforcement entities that oversee Judges and Public Prosecutors activities.
- Binding Precedent N 13 of the Supreme Court, August 2008 - established the prohibition of nepotism in the three branches of the government.
- There are state level rules similar to those described here, such as the State Decree 41,488 of Rio de Janeiro, from September 22, 2008 - forbid nepotism in that state.

3.3.2 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - the Organization for Economic Cooperation and Development

The OECD Convention is a very specialized agreement, which only addresses the bribery of foreign public officials in international business transactions. The object of the Convention is related to active and passive bribery. According with OECD Glossary about Corruption, this Convention requires functional equivalence among its Parties, what means that they are not expected to change fundamental principles in their legal systems in order to standardize the actions against corruption. As the OAS Convention, the implementation of the OECD Convention is monitored through a review process. According with the OECD glossary about corruption, the monitoring process consists of two phases; 1) focuses on whether the Parties' national legislation complies with the Convention's requirements; 2) examines how their legislative and institutional frameworks are applied in practice. There are reports and recommendations for each phase.

Although not a member of OECD, Brazil enacted the Convention as national law by Decree 3678 of November, 30 2000. The most important effect of the OECD

Convention in national legislation was the Law 10467 of June,11 2002, which amended the Brazilian Penal Code by creating, in Articles 337-B 337-D, the crime of corruption of foreign public officials.

The Working Group responsible for the first phase of the Brazilian evaluation about the OECD Convention`s implementation considered that Brazil's legislation is broadly in conformity with the Convention.

The Working Group responsible for the second phase of the evaluation praised the Brazilian use of modern investigative techniques in combating corruption, and the advanced system to combat money laundering.

Despite the positive Brazilian evaluation, the assessors of the OECD requested the creation of rules in Brazil for the imputation of the corporation by an act of corruption, especially by paying bribes to foreign public officials.

Although the Brazilian procurement law allows the prohibition of ill-reputed companies to contract with the Government, to achieve equity, to suspend activities or to close companies is still very difficult, implicated in the illicit. The OECD also pointed the absence of law, in the Brazilian legal system, to ensure protection of witness who reports cases of corruption.

Given the restricted scope of the OECD Convention, it is clear that its influence on Brazilian legislation dedicated to fighting corruption is lower than the effect of the modifier from the OAS Convention[4].

3.3.3 United Nations Convention against Corruption

In the 81st Plenary Meeting of December 4, 2000, the United Nations General Assembly, through Resolution 55/61, recognized the importance of developing a legal instrument against corruption which had international scope and ruled member states. The UN then established an Ad Hoc Committee open to all States, in preparing the document. The legal instrument should consider criminalizing all forms of corruption, international cooperation to combat it and its relation to money laundering. The next step consisted in the convening of the UN Secretary-General of the Intergovernmental Group of Experts for the preparation of a draft instrument. Between January 21, 2002 and October 1, 2003, there were seven Committee of Experts meetings, which resulted the text of the UN Convention which was adopted by the UN General Assembly by

[4] See http://www.cgu.gov.br/ocde

Resolution 58 / 4 Oct. 31 2003. On December 9, 2003 the United Nations Convention against Corruption was signed in the city of Merida, Mexico, becoming the largest and most comprehensive international instrument against corruption. The UN also established the 9th of December the International Day against Corruption to raise awareness of corruption and of the role of the Convention in combating and preventing it.

Among others, the UN Conventions treats about the following themes:

- Preventive measures.
- Criminalization and law enforcement.
- International cooperation.
- Asset recovery.
- Technical assistance and information exchange.
- Mechanisms for implementation.

In Brazil, the UN Convention against Corruption was ratified by Legislative Decree No. 348 of May 18, 2005, and promulgated by Presidential Decree No. 5687 of January 31, 2006.

At several points, Brazil is already in compliance with the terms of the UN Convention against Corruption. In addition, several measures were taken by the Brazilian government in order to adapt the Brazilian institutional framework of the UN Convention.

• Department of Prevention of Corruption and Strategic Information (SPCI) - This office was created in January 2006 in accordance with Article 6 of the UN Convention against Corruption. It is housed within the CGU and its mission is the defense of the public patrimony and combating the diversion and waste of federal resources.

• Strengthening of the Council of Public Transparency and Combating Corruption - the Council is consultative body attached to CGU. It was created by Decree No. 4.923/2003 and is composed of ten representatives of public entities, among which are the CGU, the Public Ministry and the Court of Audit. Furthermore the Council has the participation of ten civil society organizations representatives, including

the Lawyers Association of Brazil (OAB), the Brazilian Press Association (ABI), National Confederation of Bishops of Brazil (CNBB) and the NGO Transparency Brazil.

• Social Control - The Brazilian government, through the CGU, is conducting actions to encourage social control and training of municipal officials since early 2004.

• Promotion of Public Transparency - Under the Federal Government, the CGU is responsible for promoting public transparency. To take preventive measures provided pursuant to the United Nations, the CGU set up the Transparency Portal and Public Transparency Pages already mentioned when dealing with the OAS Convention. The Federal Government also has the site www.comprasnet.gov.br, through which all electronic hiring is done.

• Expanding the scope of work of the National Strategy for Combating Corruption and Money Laundering (ENCCLA) - The ENCCLA was established in 2003 with the aim of combating money laundering. In 2006 the theme of corruption has become part of the Strategy, in order to strengthen efforts to prevent it. The ENCCLA comprises over fifty members of government and civil society.

• Recovery of assets - the appropriateness of the Brazilian institutional framework to Chapter V of the Convention is executed by the Department of Assets Recovery and International Legal Cooperation (DRCI), established under the National Secretariat of Justice of the Ministry of Justice. The DRCI articulates and collaborates with law enforcement agencies and judicial authorities to recover, in Brazil and abroad, assets derived from illegal activities. Besides the DRCI, may be listed the Board of Control of Financial Activities (COAF), which is the government agency that works with Brazilian Financial Intelligence. The COAF was created by Law 9613/1998 and is intended to deal with suspicions of illegal activities by law.

• Improving the legal framework for preventing and combating corruption - Brazil has been making changes to its legislation in order to adapt it to the terms of the Convention. Besides the changes resulting from adaptation to the Convention of the OAS, can also be listed:

a) Criminalization of Illicit Enrichment - the Executive referred the Bill 5586 in 2005 to Congress, which defines the crime of illicit enrichment. The Bill is ready to air alongside the full House of Deputies and it aims the adequacy of the Brazilian legislation to the Article 20 of the Convention.

b) Changing the money laundering crime definition - Bill 3.443/2008 is pending before the House of Representatives and wants to change the Law 9.613/98. The project uses a modern approach, stating that is a crime laundering assets, rights and valuables resulting from any criminal offense.

The mechanism of evaluation of the UN Convention is very similar to MESICIC. It was established in November 2009, at the 3rd Session of the Conference of States Parties to the UN Convention against Corruption held in Doha. The rules of the evaluation mechanism predict that all States Parties should be evaluated in two cycles, each with five years' duration. Each country is evaluated by two other states, chosen by lottery, one being the same geographic region of the state assessed and, if possible, with similar legal systems. The results are compiled into review reports by country.

4 Fighting against Corruption in United States

4.1 Institutions

The American institutional framework, used in the fight against corruption, has a close connection with its federal system. The autonomy of the American states is quite large compared to other federal systems. Because of this fact, states are often the element which induces changes at the federal level of government.

Therefore, it is a very arduous task to accommodate the entire anticorruption American system into a single analysis, because in addition to describing and analyzing a complex structure of entities contained in the federal level of government, it would be necessary also to examine the treatment of the theme by the fifty states of the federation. It is important to mention that the local level of government also has the authority to deal with the issue and thus develop their own anticorruption systems, which makes it still more difficult to embrace the entire American system in a single analysis. In this paper only the federal level of the system will be examined.

As historical background, the short story told by Stuart C. Gilman works as perfect illustration of the beginning of American anticorruption system:

In August of 1838 Samuel Swartwout, the federal Customs Collector for the Port of New York disembarked on a schooner for London with two black satchels. Within them he took more than five percent of the entire treasury of the United States. In the proceedings against him, at least four employees admitted knowing about the embezzlement from the beginning. About their conduct, Joshua Phillips, Assistant Cashier, explained: "I was Mr. Swartwout's clerk, and would not betray the secret of my employer. We clerks of the custom-house consider ourselves as in the service of the collector, and not in the service of the United States." There was no extradition treaty with England. Neither Mr. Swartwout nor the money were ever recovered.

In reaction to the massive corruptions in his administration, President Andrew Jackson empowered his Post Master General, Amos Kendall, to fundamentally redesign the Post Office Department, and his fellow cabinet members followed Kendall's model in reorganizing governmental institutions. Instead of relying on men of character, as Presidents since Washington had done, Kendall designed a system of redundancy of signatures in order to spend money on behalf of the United States. Additionally, he

developed the first "transparent" procurement and contracting systems, and even developed "Rules of Conduct" for public employees.

The American anticorruption system tries to balance integrity and compliance programs and its institutions, which according to Gilman can be divided in four major issues: prevention, investigation, prosecution and protection. Gilman says that even though the boundaries between these four elements are not so defined, this is a useful way to organize a theoretical framework in order to study the theme.

The Watergate crisis, in 1978, can be thought as a trigger for the Ethics in Government Act to be passed in the Congress defining the beginning of the current structure of the American anticorruption system. This act created the Office of Government Ethics. The Federal Election Commission was also created in this year to oversee the American elections among other laws. In 1978 laws were also passed creating the first domestic Inspectors General and the Office of Special Counsel who responsible for whistle-blowers' protection.

The structure used by the executive branch of the United States in combating corruption is examined below:

a) Prevention:

The key institution in the task of preventing corruption is the Office of Government Ethics (OGE). It is an independent agency that seeks to prevent corrupt practices through the issuance of standards dealing with functional behavior, financial disclosure, conflicts of interest and post-employment restrictions, to executive branch officials. The OGE also advises employees of other executive branch agencies and interprets rules issued. This guidance includes informal oral counseling or written opinions. The OGE oversees transparency systems (public and confidential financial disclosure systems). The OGE also operates in the Presidential nominees' confirmation process reviewing financial disclosure reports.

The OGE is a small agency since it carries out its responsibilities in a decentralized manner, in other words, the implementation of the ethics program takes place in each agency of the executive branch, in which there are appointed Designated Agency Ethics Officials.

The democratic system of checks and balances reaches the OGE in two ways: first the Director of OGE is a Presidential appointee who serves for a five-year term and must be confirmed by the Senate; second its budget is approved and overseen by the Congress.

Finally, it is important to mention that the OGE provides ethics training for other agencies of the federal executive branch.

b) Investigation

The Inspectors Generals (IG) Act, from 1978, has completely transformed from the investigation function of the U.S. executive branch. The investigations that were previously in charge of the FBI, Department of Justice and the General Accounting Office, gained a broader scope, since the Act requires IGs to Prevent and detect "waste, fraud and abuse in government" beyond having concerns about economy and efficiency, and are now mostly performed by the IGs.

Today there is in the United States a lot of IG Offices, which carry, in addition to the investigation function itself, activities in the areas of Audit and Evaluation (also called Inspection). It is noteworthy that most investigations by IGs comes from complaints by whistle-blowers.

Given that each IG Office has jurisdiction only over its agency, the treatment of larger and more complex cases involving many areas of the government was made more difficult. For this reason, in 1980, the President's Council on Integrity and Efficiency (PCIE) was created with the task of facilitating investigations involving the participation of multiple agencies.

c) Prosecution

The United States has 102 federal judicial districts, each one headed by a U.S. Attorney appointed by the President. These regional offices of federal courts have the mandate to prosecute those involved in the crime of corruption. A U.S. Attorney may request the FBI or an IG Office’s help in cases involving crimes of corruption.

The treatment of American anticorruption system for sensitive cases, in which a special section of the Justice Department created to deal with this kind of situation: The Public Integrity Section of Justice. This Section deals with high profile political cases,

cases involving large sums of money and cases involving abuse of power by the government.

Finally, it is important to note that in cases in which the U.S. Attorney decides not to prosecute the person being investigated, there may be the application of administrative penalties to the public official.

d) Protection of Whistle-blowers

The Office of Special Counsel (OSC) is part of the structure of the American system to combat corruption. It has the function of protecting public servants who report irregularities or illegalities (the whistle-blowers), preventing them from suffering reprisals because they had made complaints. Its top manager is appointed by the President, has a term of five years and must have the name confirmed by the Senate.

In its work, the OSC may investigate, examine the records of an agency, take sworn statements and may also resort to the courts to resolve situations in which public officials who made the complaint are suffering reprisals.

Finally, it is important to mention that, along with the structure described above, important agencies responsible for investigations and audits, as the Federal Bureau of Investigations (FBI) and the Government Accountability Office (GAO) still work.

4.2 Laws

The Brazilian and American legal traditions belong to different schools. While Brazilian law is based on Civil Law, the United States has its laws based on system known as Common Law. While the first system is collected in the law codes, the second uses co-creation of law by decisions of the judges on a case by case basis rather than statutes.

Although the American tradition is based on Common Law, it is important to mention some legal texts dealing with the fight against corruption in the United States:

a) The United States Code in its Title 18 - Crimes and criminal procedure; Part I – Crimes; Chapter 11 - Bribery, graft, and conflicts of interest talks about relevant corruption topics in several sections, as shown in the following list:
    - Section 201 Bribery of public officials and witnesses

- Section 208 Acts affecting a personal financial interest
- Section 209 Salary of Government officials and employees payable only by United States
- Section 215 Receipt of commissions or gifts for procuring loans
- Section 216 Penalties and injunctions

b) The Ethics in Government Act of 1978 created the Office of Government Ethics and established the requirement of public disclosure for public officials and their families.

c) The Inspector General Act of 1978 created positions of Inspector General in agencies of the federal executive branch.

d) The Executive Order 12674 among other things set out fourteen basic principles of ethical conduct for employees of the executive branch and directed OGE to establish a single, comprehensive, and clear set of executive branch standards of conduct[5].

e) The Foreign Corrupt Practices Act – FCPA is also a very important American law and will be examined in the section 4.3.

In addition to the written rules, several cases tried in U.S. courts create precedent and consolidate the law in combating corruption. We mention the following two cases from the "Report to Congress on the Activities and Operations of the Public Integrity Section for 2009" of the Public Integrity Section of the Criminal Division of the United States Department of Justice that illustrate this theme:

a) According to the report, in a case of corruption related to Iraq and Kuwait: *John Cockerham, a former major in the United States Army, was sentenced to 210 months of imprisonment, 3 years of supervised release, and $9.6 million in restitution for his role, along with his wife, his sister, and his niece, in a bribery and money laundering scheme related to bribes paid for contracts awarded in support of the Iraq war. Melissa Cockerham, John Cockerham's wife, was sentenced to 41 months of imprisonment, 3 years of supervised release, and $1.4 million in restitution. Carolyn Blake, John Cockerham's sister, was sentenced to 70 months of imprisonment, 3 years of*

[5] See (http://www.usoge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-12674-(Apr--12,-1989)---Principles-of-Ethical-Conduct-for-Government-Officers-and-Employees/)

supervised release, and $3.1 million in restitution. Nyree Pettaway, John Cockerham's niece, was sentenced to 12 months and 1 day of imprisonment, 2 years of supervised release, and $5 million in restitution.

This case calls attention due to the high restitution values established by the court.

b) A second case which also provides a good example is related to former lobbyist Jack Abramoff. This is a very famous case in the United States and highlights the number of subcases that unfolded. Also noteworthy is the fact that the Public Integrity Section worked in order to punish all the people involved in the matter. In its Report the Section states that:

• *Todd Boulanger, a lobbyist with Jack Abramoff, pled guilty to conspiracy to commit honest services fraud. He took part in a scheme to provide tickets for entertainment events to a staff person of a United States Senator. In total, Boulanger provided tens of thousands of dollars worth of entertainment to Capitol Hill aides in return for their assistance in getting legislation passed that was favorable to his clients.*

• *Ann Copland, a former congressional staff person, pleaded guilty to conspiring to commit honest services fraud. She worked as an assistant on legislative and administrative matters and was lobbied by Jack Abramoff, Todd Boulanger, and another lobbyist on matters involving a Native American tribe. She received more than $25,000 worth of entertainment and meals in return for taking a variety of official actions beneficial to the lobbyists and their clients.*

• *Horace M. Cooper was indicted for conspiracy, fraudulent concealment, false statements, and obstruction of an official proceeding. During the time he worked at the Voice of America and the Department of Labor, Cooper allegedly conspired with Jack Abramoff and others to defraud the United States of Cooper's honest services. Cooper allegedly solicited and received from Abramoff and his colleagues thousands of dollars worth of meals and event tickets in return for using his official positions at these two agencies to advance Abramoff's interests and those of his clients. In addition, during the*

time he served as a congressional staff person, Cooper also allegedly received from Abramoff and others thousands of dollars worth of entertainment tickets.

• David H. Safavian, former General Services Administration (GSA) Chief of Staff and former Administrator for the Office of Federal Procurement Policy at the Office of Management and Budget, was sentenced to one year of imprisonment and two years of supervised release on charges of obstruction of justice and false statements. Jack Abramoff took him on a luxury golf trip to Scotland and to London and, in return, Safavian assisted Abramoff in connection with the lobbyist's attempts to acquire GSA-controlled properties. Safavian subsequently made false statements to federal officials and made a false certification on his financial disclosure form related to these gifts.

• Fraser C. Verrusio, a former staff member in the United States House of Representatives, was indicted on charges of conspiring to accept an illegal gratuity, accepting an illegal gratuity, and making a false statement on a required financial disclosure form. Verrusio was charged with accepting an all-expense paid trip to Game One of the World Series for and because of his official assistance to an equipment rental company in securing favorable amendments to the Federal Highway Bill.

4.3 Influences from International Conventions against the Corruption

The resignation of President Nixon on August 8, 1974, did not finish the investigation works of the Watergate crisis. According to Peter W. Schroth, investigations continued for three years and through them it was possible to discover the involvement of more than 400 U.S. companies with foreign bribery worth more than $300 million. The findings had dramatic international results among which are the resignations of the Prime Minister of Japan and of the President of Italy beyond the suicide of the chairman of the United Brands Corporation.

Based on the findings of Watergate, was clearly demonstrated the need for a multilateral response to the problem of foreign bribery. In 1975 the U.S. Senate issued a resolution calling for an international code that addressed the subject. In 1976 the United States created a task force chaired by the Secretary of Commerce, in order to try

to criminalize foreign bribery. The United States then worked in this theme with several international organizations, but has found resonance only in the OAS and UN, which in 1975 issued resolutions condemning the practices related to foreign bribery. The resolutions issued, however, were not effective in enforcing foreign bribery.

Instead of waiting for the lengthy international response, the United States issued, in 1977 (Jimmy Carter Administration), the Foreign Corrupt Practices Act – FCPA which addressed the subject.

The act requires recording-keeping, internal accounting controls and disclosure from persons subject to the American jurisdiction. It also outlawed some kinds of payments.

The FCPA has been amended twice since its inception: in 1988 and 1998, when the changes were due to adequacy of U.S. legislation to the OECD anti-bribery Convention. The FCPA penalties include fines of high value (in some cases reaching millions of dollars) and imprisonment.

There was no major progress in the international fight against corruption in the administrations of Presidents Ronald Reagan and George H. W. Bush. According to Peter W. Schroth, during this time, there was a strong resistance from European governments to the adoption of international actions to combat corruption. The situation changed in 1993 with the Clinton Administration. The issue has become a priority for the U.S. government, which placed the Departments of State, Commerce and Treasury together to pressure the European governments, as well as Japan, in the sense that these countries support the U.S. proposal in international organizations.

As a result of this process, came the anti-corruption conventions of the OAS, UN and OECD, already described in 3.3 topic. The support provided by the NGO Transparency International, contemporary with the conventions should also be highlighted.

Although the United States have ratified the three international conventions against corruption, little practical effect resulted, since the U.S. legislation was before them and, in general, its provisions are more comprehensive and stringent than those contained in the Conventions. The United States has been alone for two decades at the

forefront in the prevention and prosecution of foreign bribery, so that they were inducers of international law on the subject.

Two important points of the U.S. relationship with the OAS Convention are worth mentioning:

a) The FCPA excludes from its bans payments to civil servants in order to induce them to do acts that are already provided in their routines. The third round MESICIC report[6] condemns this practice and calls for action, as described below:

> *Nonetheless, the Committee considers it appropriate to formulate the following observations:*
>
> *The Committee observes that Section 162 of Title 26 of the United States Code prohibits the deduction of illegal bribes and kickbacks paid to any government official or employee. Similarly, the same section prohibits the deduction of those payments when they are made to a foreign government official or employee, provided that the payment is unlawful under the FCPA.*
>
> *In this regard, the Committee observes that while the FCPA criminalizes many forms of payment made to foreign government officials and employees, Sections 78dd-1, 2, and 3 provide an exception for facilitation or expediting payments for routine government action.*
>
> *[…]*
>
> *In view of the foregoing, and taking into consideration that facilitation payments are not criminalized in the country under review, the Committee believes that the United States could consider continuing to make efforts to ensure that these payments do not receive favorable tax treatment.*

b) The second important point is the fact that the United States took the position that the country was not required to comply with the provision contained in Article IX of the Convention (Illicit Enrichment). This provision, according to the U.S., violates their constitutional presumption of innocence. Thus, the United States made a reservation with respect to this article.

[6] See http://www.oas.org/juridico/english/mesicic3 usarep.pdf

5 Results

According to Speck (2000), quantification methods used in corruption measures are based on three sources: the scandals in the press, the legal convictions related to the subject and the information obtained in surveys.

The quantification of the corruption of a country through the first source (corruption scandals) is severely condemned, since the degree of freedom of the press can influence strongly the results. Critics of the second data source for measurement of corruption argue that the values obtained from criminal convictions cannot correctly quantify corruption, because the number of crimes would be much greater than the number of crimes investigated. The application of research as a method of obtaining data about corruption also is criticized and it will be examined in topic 5.3.

The results achieved by the systems used to fight corruption in Brazil and in United States will be divided into the following three topics:

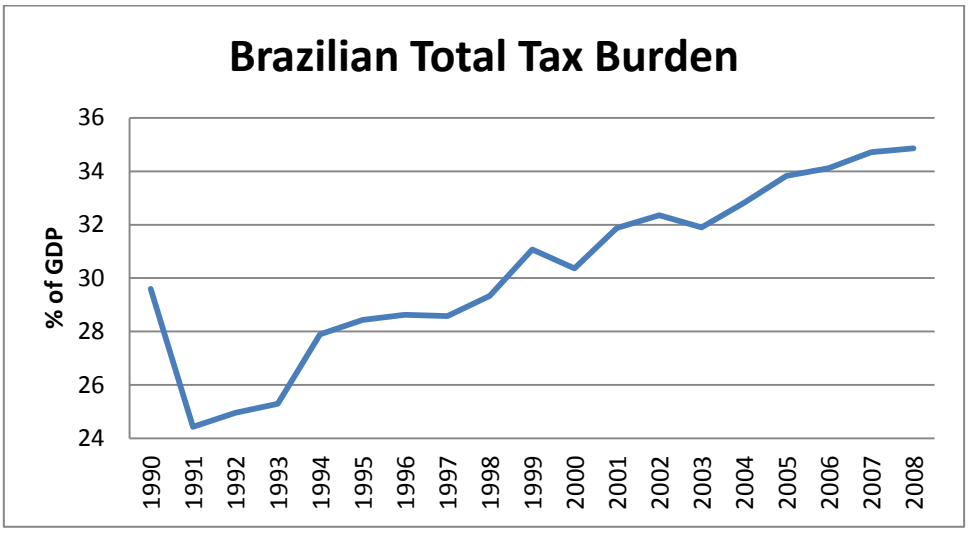
5.1 Potential corruption

In their brilliant text, “Weathering Corruption”, published in the Journal of Law & Economics in 2008, Peter T. Leeson and Russell S. Sobel inquired: "Could bad weather be responsible for U.S. corruption?” The answer was a surprising yes, at least indirectly. In their work, Leeson and Sobel have demonstrated an uneven geographical distribution of cases of corruption in U.S., but they also demonstrated the existence of a correlation between these cases and events related to natural disasters in the states. Bad weather alone, according to the authors, does not cause corruption, but the avalanche of federal funds that come to the rescue of the victims provides the opportunity for unscrupulous people to take ownership of public money.

The idea contained in the work of Sobel and Leeson can be generalized by saying that corruption will be higher the greater the possibility of misappropriation of public funds, in other words, the larger the sums employed in government programs and also the lower the capacity for coordination and monitoring of government expenditures.

The Brazilian numbers stress a strong presence of the state in the economy, as can be seen from the analysis of the chart below. The tax burden is high and increasing

and accounts a significant percentage of the Brazilian GDP. A larger volume of resources in the hands of the state indicates possible occurrences similar to those told by Sobel and Leeson in their work.



Source: http://www.ipeadata.gov.br

Furthermore, analyzing the structure of the Brazilian budget also verifies the existence of great numbers, whose management requires a large amount of resources.

Government Expenditures 2011	**Programs**	**R$**
Government direct spending	299	925,609,765,059.45
Transfers	219	172,845,989,573.09

Source: http://www.portaltransparencia.gov.br 10/24/2011

American government spending, on the other hand, is at a level of 20% of GDP and personal consumption is the major item in its composition, as shown in the table below:

Item / Year	2008	2009	2010
Personal consumption expenditures (GDP %)	70	71	71
Gross private domestic investment (GDP %)	15	11	12
Net exports (GDP %)	-5	-3	-4
Government purchases of goods and services (GDP %)	20	21	21
Total	100	100	100

Source: www.bea.gov (Bureau of Economic Analysis)

These numbers show a lower state presence in the American economy than in Brazil.

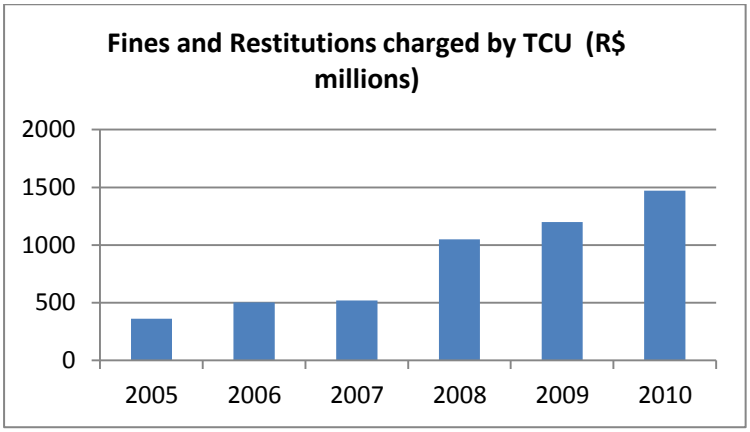
5.2 Corruption combat

5.2.1 Brazil

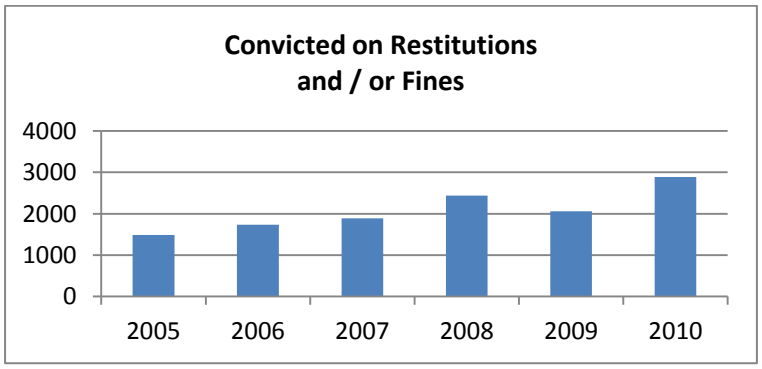
Several Brazilian institutions have improved their performances, as seen from the figures described below.

5.2.1.1 TCU

The role of the Brazilian Court of Audit illustrates clearly that the fight against corrupt practices by this institution has evolved over the past years. The values of fines and restitutions have grown significantly 2005 to 2010. Also we can see a clear trend of increasing number of convicted on restitutions and / or fines at the same time interval.



Source: http://portal2.tcu.gov.br



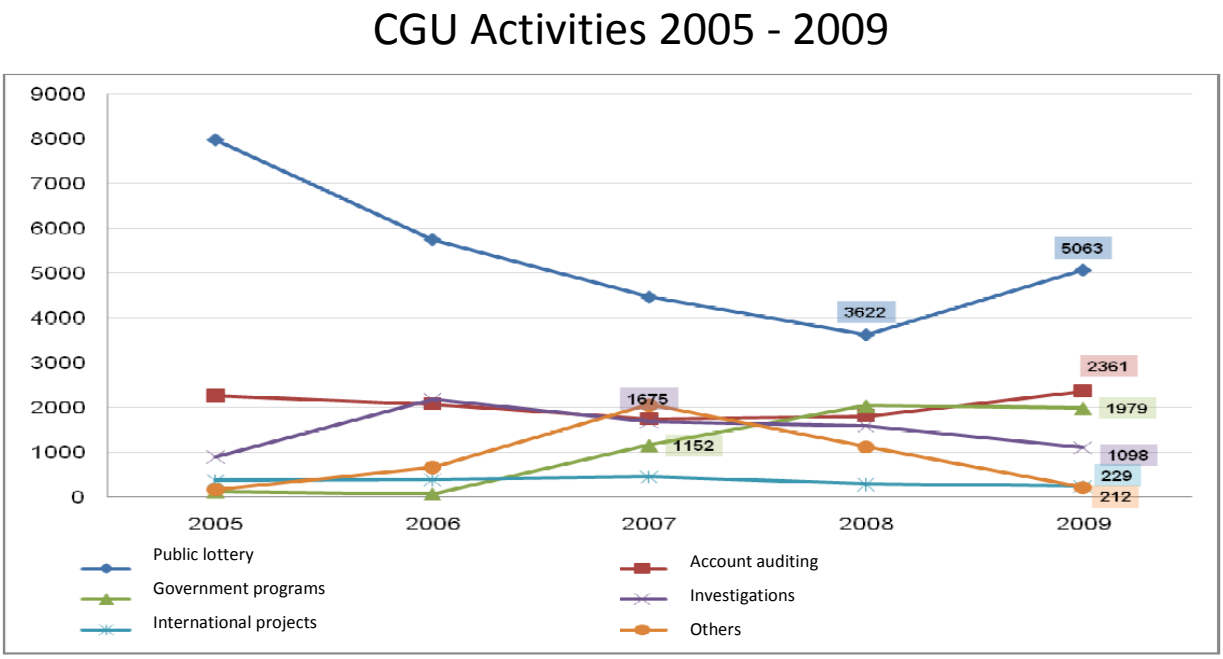
Source: http://portal2.tcu.gov.br

5.2.1.2 CGU

The CGU, through its Federal Internal Control Secretariat, assess the implementation of the federal budget, oversees the implementation of government programs and perform audits on the management of public resources under the federal responsibility to agencies and public and/or private entities, in addition to performing auditing in programs financed by international organizations.

"The Surveillance Program from Public Lottery" is one of the tools employed by the CGU in its activities. This program aims to inhibit corruption among public officials. Created in April 2003, the program sets the municipalities, states, and areas (education, health, social welfare, etc.) to be monitored using the system of public lottery. The methodology makes the chances equal to define the scope and subjects inspected on the use of federal resources.

There is, in the following figure, the evolution of the performance of the CGU in the period between 2005 and 2009.



Source: CGU's ATIVA System, in 01/27/2010

It is important to consider apart audits conducted by the CGU in Processes of Special Accounts (TCE). Such audits are used in cases of damage to government in

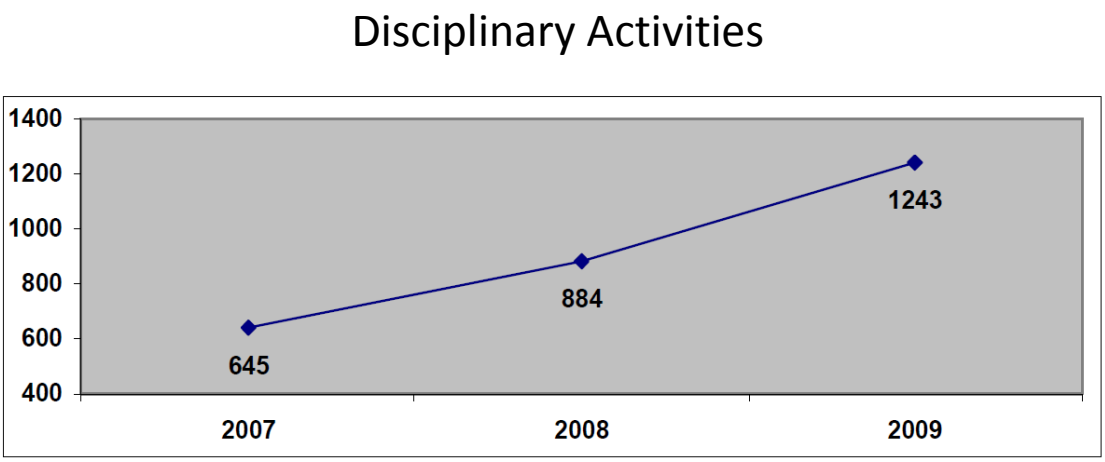
order to identify those responsible, quantify the damage value and promote the respective reimbursement. The use of this procedure between 2005 and 2009 resulted in a significant amount of potential resources to be reimbursed to the treasury, as illustrated below:

Years	TCE	Potential return to the treasury (R$ millions)
2005	1,934	448
2006	1,496	656
2007	1,722	659
2008	1,539	642
2009	1,605	702
TOTAL	**8,296**	**3,107**

Source: CGU Internal Control Federal Secretary

A second line of action of CGU lies in the disciplinary activities. In this field, CGU acts combating impunity, regarding the administrative liability of public officials.

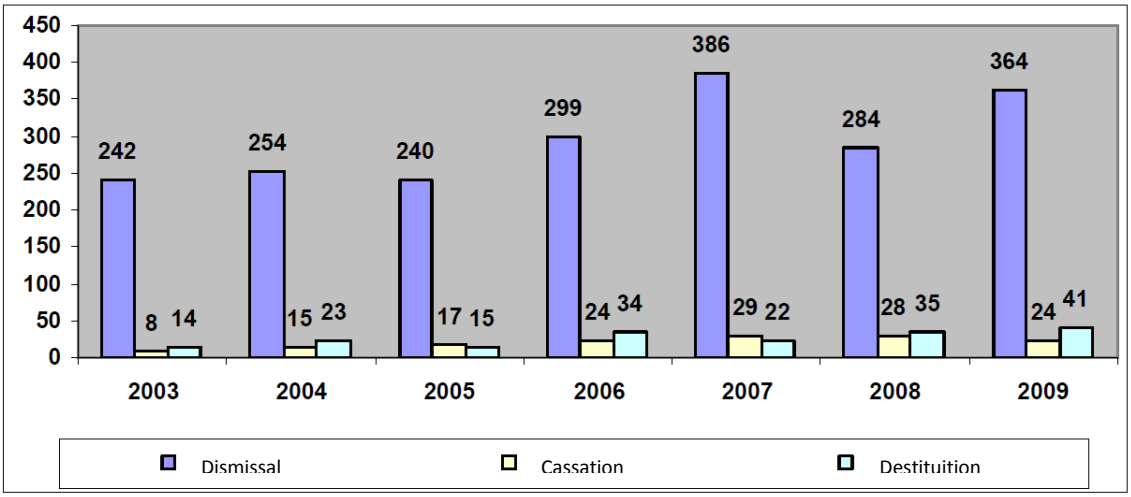
It is understood by the following illustration that the performance of the disciplinary activities has intensified in the period between 2007 and 2009.



Source: www.cgu.gov.br

The substantial increase in disciplinary proceedings was reflected in the punishments applied to the servers involved in misconduct.

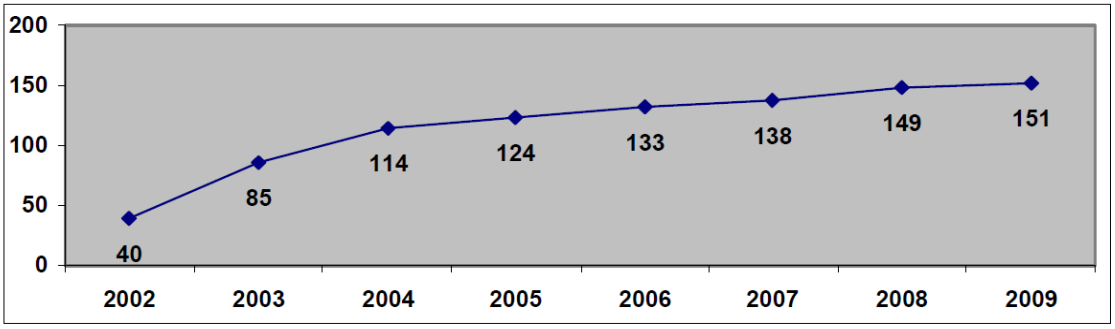
Punishments – Federal Executive Branch



Source: www.cgu.gov.br

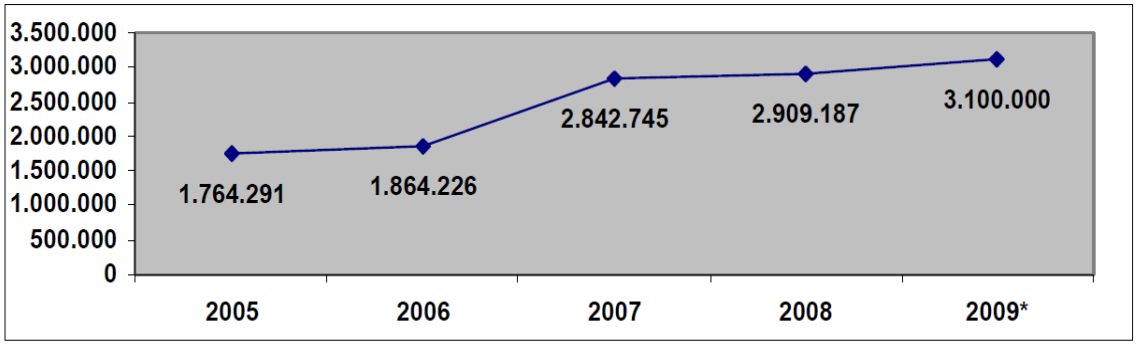
The third aspect of CGU performance is the management of the Federal Ombudsman's Offices. Through this type of tool, the citizens have the opportunity to make complaints about corrupt practices, among other topics. The handling of complaints is through the functions of monitoring/auditing and disciplinary activities. It can be seen that the presence of Ombudsman's Offices has intensified in the federal executive branch and its use by citizens has become increasingly commonplace practice.

Operating Ombudsman's Offices – Federal Executive



Source: www.cgu.gov.br

Complaints Received by Ombudsman's Offices



Source: www.cgu.gov.br

5.2.1.3 Public Ministry and Judicial Branch

The following statistics quantify the performances of Federal and State Civil lawsuits, including for acts of administrative dishonesty.

Cases filed by federal prosecutors:

Civil lawsuits / Year	2006	2007
Filed	1,427	1,791
In progress	5,035	8,530

Source: http://www.oas.org/juridico/portuguese/mesicic2_br.htm

Cases filed by the Federal District prosecutors:

Civil lawsuits / Year	2006	2007
Filed	257	241
In progress	566	715

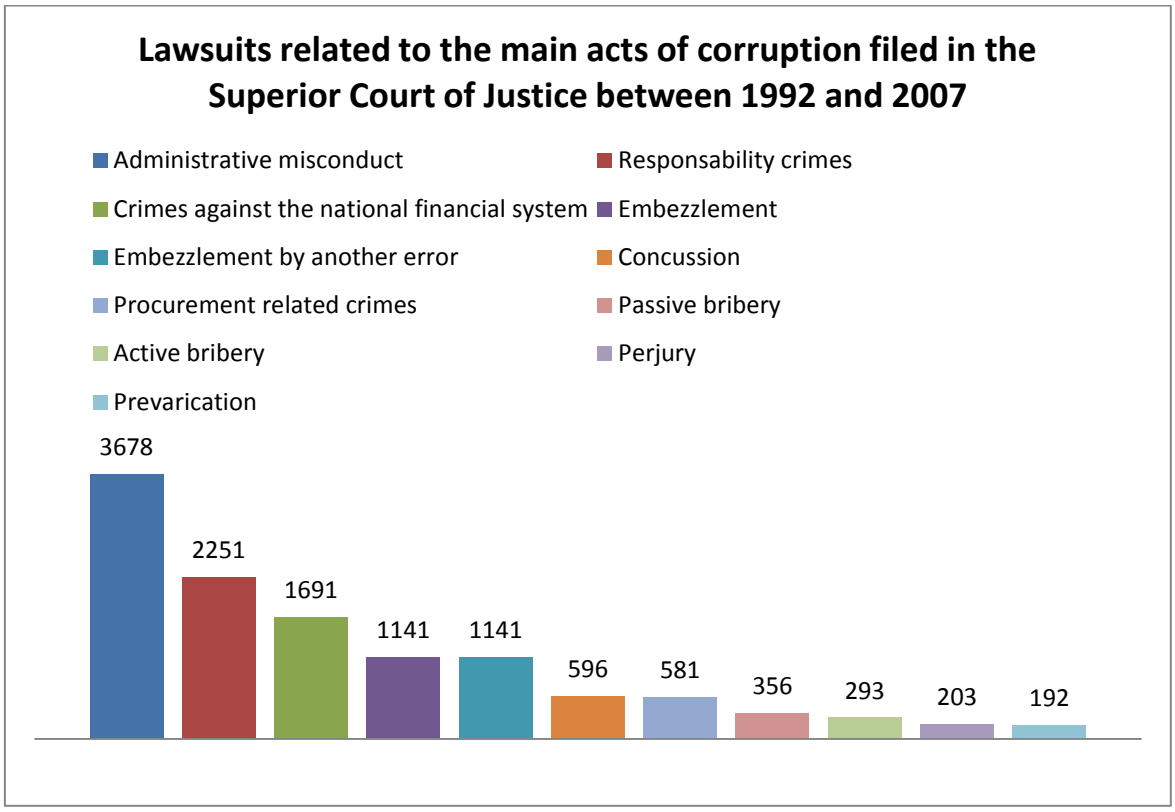
Source: http://www.oas.org/juridico/portuguese/mesicic2_br.htm

Cases filed by state prosecutors:

Civil lawsuits / Year	2006	2007
Filed	19,059	25,714
In progress	91,255	33,579

Source: http://www.oas.org/juridico/portuguese/mesicic2_br.htm

The number of cases related to crimes of corruption filed in the Superior Court of Justice Between 1992 and 2007 is quite significant. The total is more than 12,000 cases, resulting in an annual average of more than 2,000 cases.



Source: http://www.oas.org/juridico/portuguese/mesicic2_br.htm

In short, the tools that a country uses to address the corruption set its success or failure in its combat. In general, the corruption fighting cycle finishes in a judicial action to punish the guilty, and this is why it is extremely important that a country has a set of effective laws, as well as fair, solid and speedy procedural steps.

Brazilian penal law has been seen as one of the greatest obstacles to punishing those responsible for crimes related to corruption, especially because the related procedural law contains various legal remedies that delay law suits, increase perpetrators impunity and provide an extremely low percentage of recovery of misappropriated public funds.

The Minister of State Chief of the Office of the Comptroller General (CGU)[7] has said that there are over a thousand court cases arising from irregularities identified by

[7] See http://www.redecultura.com.br/portal/?pg=noticia&id=665

the CGU in its monitoring reports. However, only 10% of money spent illegally is recovered and few people are arrested. The Minister has repeatedly stressed the importance of reviewing the law applicable to crimes related to corruption, which would reduce the negative effects of such practice in society.

5.2.2 United States

5.2.2.1 United States Attorney's Offices

In the last two decades the United States Attorneys' Offices have played a major role in fighting corruption. They sentenced more than 20,000 people in this period, among which were approximately 15,000 public officials. The average annual convictions were around 1,000 cases per year (767 Public Officials), which represents a very small percentage, approximately 0.004% of the workforce of the U.S. government[8].

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Federal officials charged	615	803	624	627	571	527	456	459	442	480	441
Federal officials convicted	583	665	532	595	488	438	459	392	414	460	422
State officials charged	96	115	81	113	99	61	109	51	91	115	92
State officials convicted	79	77	92	133	97	61	83	49	58	80	91
Local officials charged	257	242	232	309	248	236	219	255	277	237	211
Local officials convicted	225	180	211	272	202	191	190	169	264	219	183
Private citizens charged	208	292	252	322	247	227	200	292	364	302	256
Private citizens convicted	197	272	246	362	182	188	170	243	278	306	242
Total officials charged	**968**	**1,160**	**937**	**1,049**	**918**	**824**	**784**	**765**	**810**	**832**	**744**
Total officials + citizens charged	**1,176**	**1,452**	**1,189**	**1,371**	**1,165**	**1,051**	**984**	**1,057**	**1,174**	**1,134**	**1,000**
Total officials convicted	**887**	**922**	**835**	**1,000**	**787**	**690**	**732**	**610**	**736**	**759**	**696**
Total officials + citizens convicted	**1,084**	**1,194**	**1,081**	**1,362**	**969**	**878**	**902**	**853**	**1,014**	**1,065**	**938**

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total	Average
Federal officials charged	502	478	479	424	445	463	426	518	425	**10,205**	**510**
Federal officials convicted	414	429	421	381	390	407	405	458	426	**9,179**	**459**
State officials charged	95	110	94	111	96	101	128	144	93	**1,995**	**100**
State officials convicted	61	132	87	81	94	116	85	123	102	**1,781**	**89**
Local officials charged	224	299	259	268	309	291	284	287	270	**5,214**	**261**
Local officials convicted	184	262	119	252	232	241	275	246	257	**4,374**	**219**
Private citizens charged	266	249	318	410	313	295	303	355	294	**5,765**	**288**
Private citizens convicted	261	188	241	306	311	266	249	302	276	**5,086**	**254**
Total officials charged	**821**	**887**	**832**	**803**	**850**	**855**	**838**	**949**	**788**	**17,414**	**871**
Total officials + citizens charged	**1,087**	**1,136**	**1,150**	**1,213**	**1,163**	**1,150**	**1,141**	**1,304**	**1,082**	**23,179**	**1,159**
Total officials convicted	**659**	**823**	**627**	**714**	**716**	**764**	**765**	**827**	**785**	**15,334**	**767**
Total officials + citizens convicted	**920**	**1,011**	**868**	**1,020**	**1,027**	**1,030**	**1,014**	**1,129**	**1,061**	**20,420**	**1,021**

Source: Report to Congress on the Activities and Operations of the Public Integrity Section for 2009

[8] See http://www2.census.gov/govs/apes. The data used considered full-time equivalent employment in the year 2009 for state and local levels and from 2010 to the federal level.

5.2.2.2 The Public Integrity Section

The Public Integrity Section works in a few high profile political cases, cases involving large sums of money and cases involving abuse of power by the government. In 2009 the Section obtained the performance described in the following table:

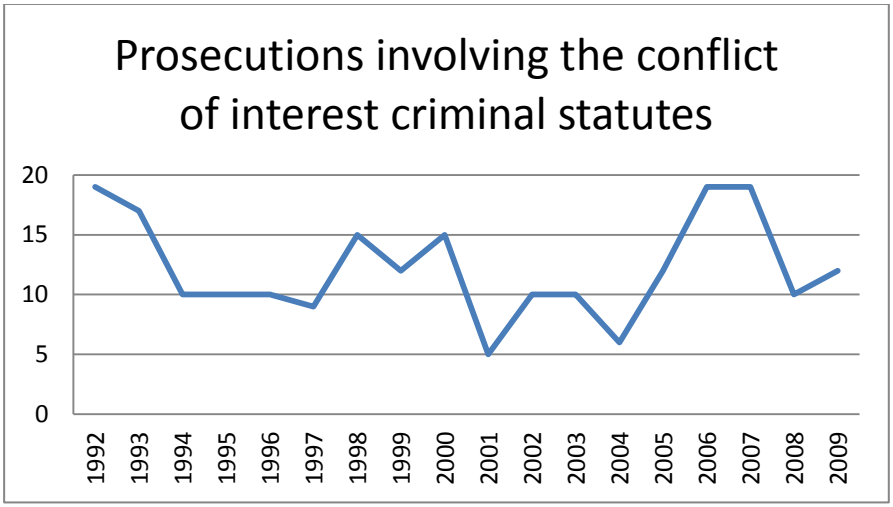
Public Integrity Section's Federal Prosecutions of Corrupt Public Officials - 2009

Officials	Charged	Convicted
Federal	21	22
State	1	3
Local	1	0
Citizens	13	16
Total	**36**	**41**

Source: Report to Congress on the Activities and Operations of the Public Integrity Section for 2009

5.2.2.3 The Office of Government Ethics (OGE)

The Office of Government Ethics (OGE) publishes annual surveys of prosecutions involving the conflict of interest criminal statutes (18 U.S.C. §§ 202-209). The prosecutions are carried out by U.S. Attorneys' offices and the Public Integrity Section of the Department of Justice's Criminal Division. The number of cases involving conflict of interest is small and its historical evolution from 1992 to 2009 can be examined in the following chart:

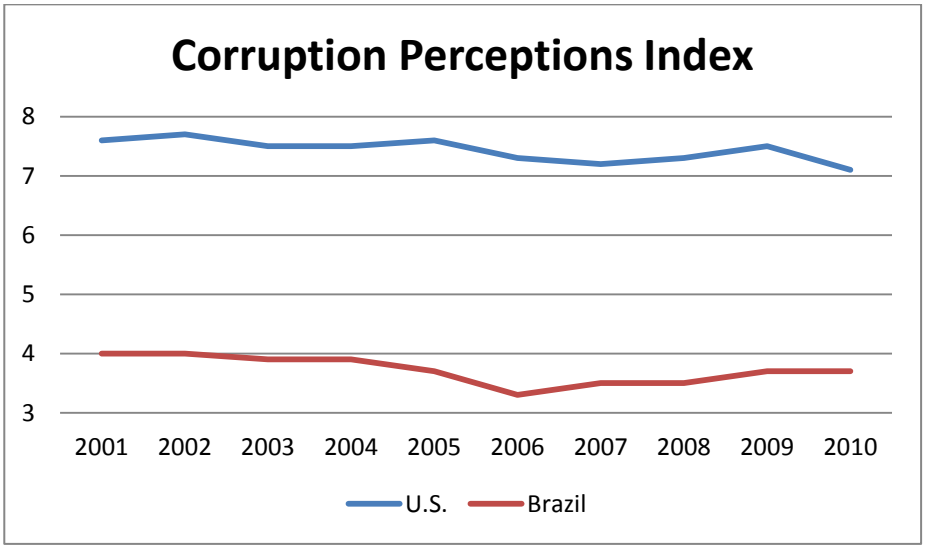


Source: http://www.oge.gov/Topics/Enforcement/Conflict-of-Interest-Prosecution-Surveys

5.3 Corruption perception

The perception of corruption is a very controversial issue and caution should be taken in the analysis of indexes that try to measure it. Since corruption is a procedure done in secret, its perception can translate a fallacy about the effectiveness of its combat. In a society where the effectiveness of the fight against corruption is increasing, the dissemination of information by the press about the extinguished corrupt schemes can generate the false impression that corruption is increasing, when in fact, it is declining, and the opposite may also be true.

The best known index that measures the perception of corruption is the Corruption Perceptions Index (CPI) of the NGO Transparency International, but its acceptance is not unanimous in Brazil and the methodology employed in it has been criticized by Brazilian entities. The results of measurements of the index in the period 2001 to 2010, for Brazil and the United States, are described in the following chart:



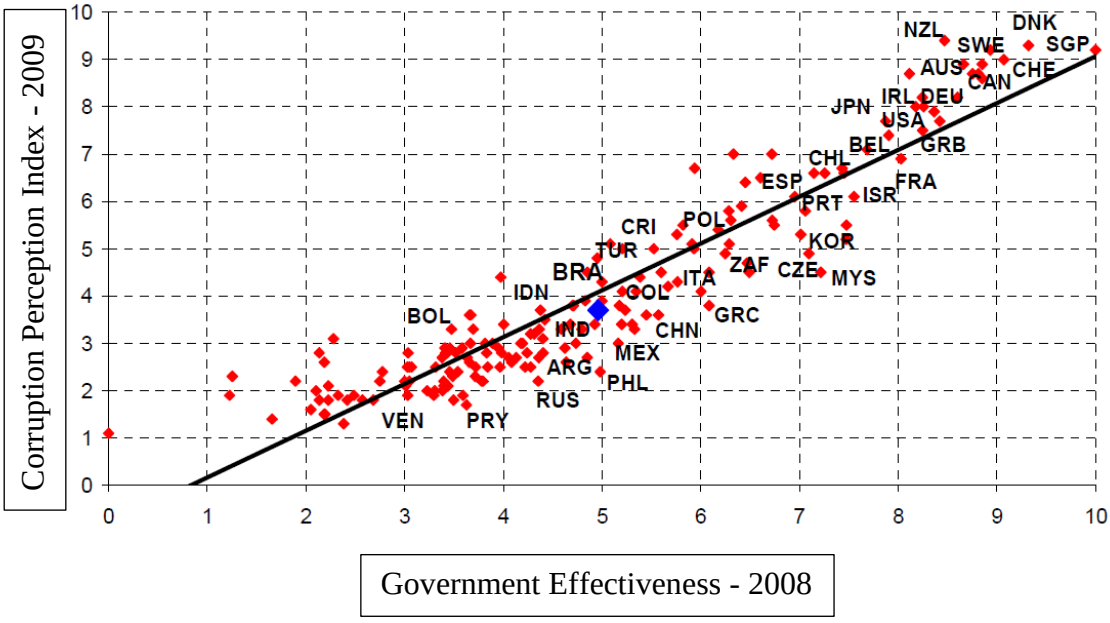
Source: http://www.transparency.org

Without going into possible controversy about the methodology employed in obtaining the index, it is possible to say that the two countries stood over the decade, at different levels of corruption perception. While the United States had values between 7.1 and 7.6 for its index (on a scale from 0 to 10), the range of values for Brazil was 3.3 to 4.0. These values assured to the United States positions between the 16th and 22nd in a ranking of 178 countries. Brazil had placements in the interval between 45th and 80th over the years analyzed.

Again caution is required in the data analysis because the CPI is an index of subjective character. The CPI is constructed from opinion polls of a group of entrepreneurs and institutions concerning their perceptions about corrupt practices in each of the analyzed countries. This methodology is far from perfect, as different countries can evaluate the same level of corruption using different grades. Another precaution is due to the increasing number of countries evaluated every year by Transparency International, which makes the classification of countries further relativized year to year.

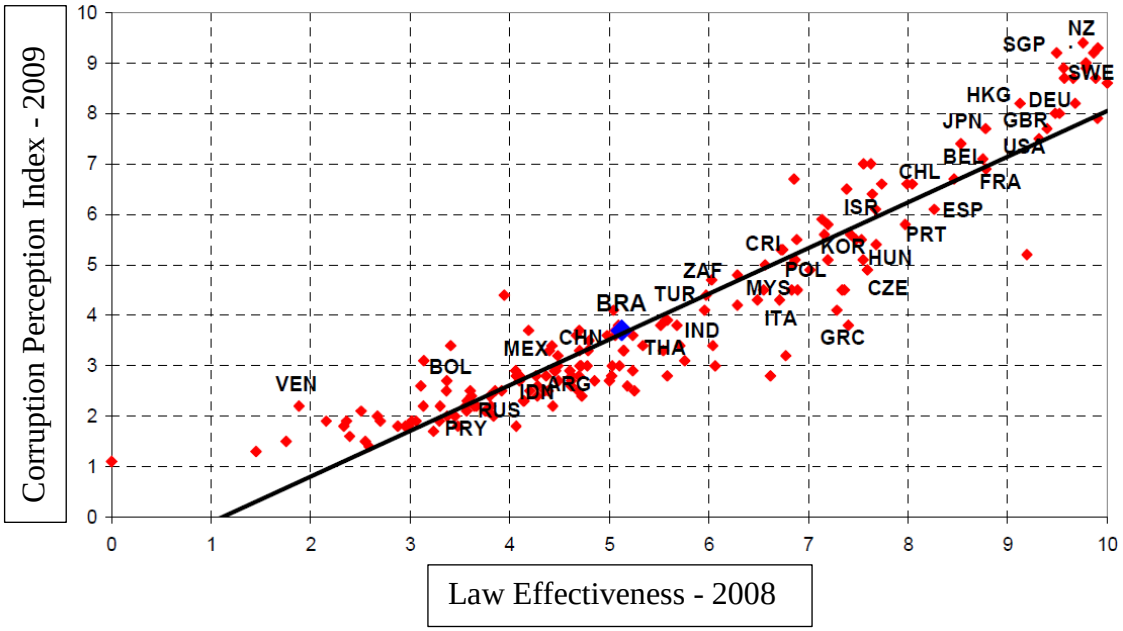
Still, the CPI has the merit of indicating, in a qualitative manner, the situation of a country in relation to corruption. An extensive study carried out by the Federation of Industries of São Paulo (FIESP) demonstrated a relationship between the relevance of the CPI relative position of Brazil and a number of indices of governance produced by the World Bank. The study also demonstrated a relationship between the CPI and other economic indicators such as GDP per capita and human development index (HDI) produced by the UN.

The chart below shows the relationship between the governance indicator "Government Effectiveness - 2008", produced by the World Bank and the Corruption Perception Index - 2009.



Source: Mundial Bank and Transparency International. Organization by: DECOMTEC / FIESP.

The chart below shows the relationship between the governance indicator "Law Effectiveness - 2008", produced by the World Bank and the Corruption Perception Index - 2009.



Source: Mundial Bank and Transparency International. Organization by: DECOMTEC / FIESP.

The FIESP researchers also conducted in 2010 an attempt to quantify the economic effects of corruption in Brazil. The article's authors added the influence of the level of corruption that exists in the economy, as measured by the index of perception of corruption, to a model of economic growth based on the Solow model of growth. In its original form the model states that the long-term per capita GDP of a country is determined only by the following items:

a) Savings rate of the economy.

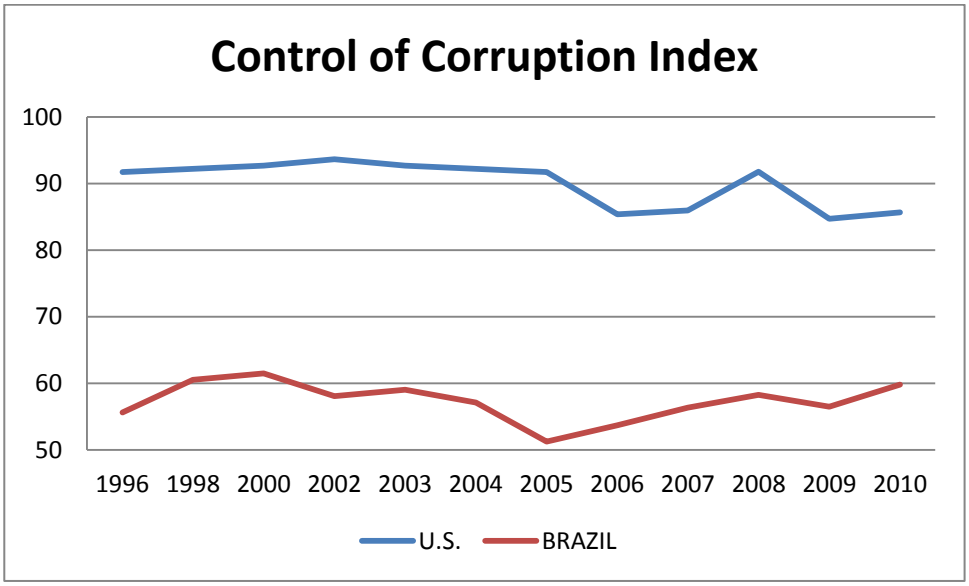
b) Growth rate of labor force.

c) Qualification of the workforce.

d) Rate of technical progress of the economy.

The FIESP study's conclusion was that the average cost of corruption in Brazil is estimated at between 1.38% and 2.3% of the GDP, i.e., from R$41.5 billion to R$ 69.1billion (at 2008 prices).

The Control of Corruption Index (CCI) is another indicator that measures perceptions of corruption, produced annually by the World Bank since 1996 to more than 200 countries. Observing the same precautions in its analysis it is possible to realize that the CCI has qualitatively similar results to those obtained by PCI.



Source: http://info.worldbank.org/governance/wgi/index.asp

6 Conclusions and Suggestions

From the facts and data presented in this paper, the negative effects of corruption to a country in economic and institutional subjects are clearly demonstrated. Although it is a process difficult to measure, estimates show that the set of corrupt practices drains huge amounts of national resources. The economic argument alone justifies the continuous and efficient fight against corruption, but there are equally or more important factors that support the creation of national systems to combat corruption. Corruption undermines the institutions and living for too long with it depresses the soul of a people.

The interaction between Brazil and corrupt practices has historical roots, but the finding that the country has made significant progress in combating corruption is auspicious. Notably, since 1988, new institutional arrangements gave a huge increase in popular participation to Brazilian democracy, which is extremely beneficial to the fight against corruption.

As the United States, whose system of combating corruption has had significant changes and improvements in response to corruption scandals (e.g. Watergate crisis and the Swartwout episode), Brazil has also sought to improve their institutions and laws in order to make their fight against the corrupt more effective. In this particular task, we highlight the performance of the CGU, which has been an extremely agile institution in their responses to society. As the Brazilian institution in charge of dealing with international organizations about the anti-corruption conventions, the CGU centralizes the demands from them and has been a very prolific in the production of bills that improve the Brazilian legal system. The creation of CGU, no doubt, constituted one of the most important steps taken in the fight against corruption in Brazil in the last decade.

Some points should be highlighted, however, in order to have a realistic perception of the situation in Brazil in relation to corruption:

a) While the CGU has produced a number of bills on topics related to combating corruption, the appreciation of these issues by Congress, as a rule, has been extremely slow. Since that, in the period post 1988, the Brazilian legislative agenda has been dominated by the President in conjunction with

the leaders of the House and Senate, would be extremely healthy for the country to formulate a pact to promote structural reform in the fight against corruption by passing a series of bills that are still in Congress.

b) The United States fit the role as an inducer in the process of creating international norms against corruption. Brazil had to do (and is still doing) a series of modifications to its legislation to conform to the texts of international conventions against corruption.

c) While Brazilian institutions that fight corruption have improved their performances in recent years, this improvement did not find resonance in the Brazilian judicial system, which is extremely slow in condemning those involved in corruption. This builds on the Brazilian common sense of a strong feeling of impunity for the corrupt. Solving this problem requires a series of structural reforms, which should certainly include changes in laws (criminal, civil and procedural) to toughen the penalties and to reduce the number of possible procedural remedies for crimes related to corruption.

   The Ministry of Justice held in 2004 the first general diagnosis of the Brazilian Judiciary, which portrayed the situation in the Brazilian judicial system. The report of the Ministry of Justice shows that the Brazilian Courts received, in 2003, over 17.3 million cases and, in the same year, Brazil had a lawsuit for every 10 inhabitants. The production of the Brazilian judicial system was 12.5 million of processes, so that there was an accumulation equivalent to 38% of cases received during the period, in addition, each Brazilian judge ruled around 1,100 cases a year.

   The Brazilian numbers are high and depict courts congested by actions involving mainly the three levels of government. The report also showed that there was an inverse relationship between the development of the Brazilian states and the number of lawsuits per capita.

   It is also important to mention that the bottle neck of the Brazilian judiciary is located primarily in the lower courts, which received 86% of all cases of the year. The distribution of the judges, however, proves to be adequate to the distribution process, since 86% of them worked in a lower courts in 2003.

Regarding productivity, the relationship processes / judge realizes that the Superior Courts in Brazil had a performance above the national average. The Supreme Court had a rate nine times higher than the national average; the Superior Court has held six times the average number of cases and the Superior Labor Court 5.2 times. However, this high productivity has little impact on the final result, since the mentioned courts represent only 3.3% of cases judged in 2003.

The national average cost of the Brazilian judiciary in 2003 was R$ 1,848 per case decided. In addition, the report of the Ministry of Justice stated that there is no standardization in legal fees charged in the Brazilian states, which use different criteria to calculate them.

It is therefore absolutely clear the need for reform of the Brazilian judiciary, but a strong culture of Judicial Autonomy makes the process slow, which helps to increase the sense of frustration on the part of the public.

d) The Brazilian federalism is strongly asymmetric, with the predominance of the federal level in relation to state and local levels. The asymmetry has two perverse effects that work in favor of the crimes of corruption. First it concentrates public resources in the hands of the federal government, which makes the path between the resources and people who need them longer and thus increases the chances of corrupt practices in their application. A second effect of the asymmetry is the inhibition of the participation of state and local levels as elements of innovation of the practices in combat the corruption.
e) The presence of the state in the Brazilian economy is significant, with a high and growing tax burden and hundreds of programs to coordinate. This increases the potential for corruption. Reduce the presence of the state in sectors where the private sector could adequately serve the market and substantially improve the level of management of government programs are two of the most important steps in solving this problem.

Regarding to the United States, its system of combating corruption is certainly not perfect; however the numbers show that corruption is an incidental phenomenon in the country. It is a peculiar system, designed to meet the needs of the country, so there is no need to speak to replicate the American system. Some of its features, however, are

striking, and its inclusion is desirable in any country. Among these, the most striking is the rigor with which corruption cases are handled in U.S. In addition, the United States is very advanced in the treatment of conflicts of interest in the public sector, which contributes strongly to the country's achievements in fighting corruption.

In summary, although Brazil is improving the quality of its system to combat corruption, it is clear that there is still plenty to do in this gigantic task.

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