2

The Prevailing Elite Cartel Syndrome

It is a big fallacy to affirm that there are campaign donations in Brazil. In truth, they are true loans to be paid off at high interest rates when [politicians] are in their posts. No candidate in Brazil is elected by official donations alone. Declared campaign expenses correspond on average to one-third of what is effectively spent. The rest comes from illicit or undeclared resources.

—Former Petrobras executive Paulo Roberto Costa[1]

What the PT [Workers' Party] did from an electoral perspective is what is done systematically in Brazil.

—President Luiz Inácio Lula da Silva discussing the *Mensalão,* 2005[2]

What shape has corruption taken in Brazil? The country is somewhat puzzling because citizen experiences of petty corruption have been somewhat lower than their regional peers, even as the volume of high-level corruption scandals seems out of proportion. This pattern of simultaneously modest petty corruption and shockingly high grand political corruption closely resembles the syndrome that Michael Johnston (2005, 2014) called the "elite cartel" syndrome, in which networks of political and economic elites develop privileged relations that are protected through corruption.[3] The elite cartel perspective on how graft is distributed between grand and petty corruption is useful as a starting point for understanding the drivers of corruption, as well as the difficulties of reaching higher levels of integrity.

With regard to petty corruption, Brazil scored slightly better than most of its peers over the past two decades on Transparency International's Corruption Perceptions Index, and aside from spikes after the *Mensalão* and the eruption of the *Lava Jato* scandal, polls have consistently shown that since 1987 fewer than one in ten Brazilians considered corruption the country's most important problem (Da Ros 2019b; Senters, Weitz-Shapiro, and Winters 2019: 17). Petty corruption is not nonexistent, of course.[4] Police are especially distrusted: in a national victimization poll, more than 61 percent of those polled shared the belief that most police are tolerant of corruption by their colleagues (*Extra* 2013), and there are many examples of corrupt behavior by state police forces. But overall, available data suggests that corruption within the lower ranks of the bureaucracy is perceived as less of a problem than that of the political system: V-Dem, for example, scores public sector corruption within the civil service in Brazil as a less significant problem than corruption by the executive or legislative branches (Coppedge et al. 2020).[5] Cross-national surveys suggest petty corruption is better in Brazil than in most neighboring countries, and "whereas scores for grand corruption are only marginally better for Brazil than they are for most countries in South and Latin America, scores for petty corruption place the country among the group of least corrupt nations in the continent, close to Uruguay and Chile, and better than Costa Rica" (Da Ros 2019b: 238; Transparency International 2017).

Yet at the same time, the volume of high-level corruption scandals and the estimated costs of corruption are enormous. Fully four-fifths of Brazilians polled in 2017 saw the political system as the primary cause of corruption (Ipsos 2017). A 2012 study from the Federation of Industries of the State of São Paulo (FIESP) estimated corruption's cost at 1.38 percent to 2.3 percent of gross domestic product (GDP) (FIESP 2010). This estimate predates the emergence of the *Lava Jato* case, in which defendants estimated the routine cost of bribes at 3 percent of contracts by state-owned enterprises (SOEs) (PGR 2017). It is generally thought, meanwhile, that the SOEs involved in *Lava Jato* were less corrupt than many state and municipal governments, which suggests that the true cost of corruption nationwide may be significantly higher than previous estimates suggested.[6]

Cross-national expert surveys by Yuen Yuen Ang (2020) show a similar pattern, consistent with the elite cartel syndrome. Ang measures perceptions of corruption along two dimensions: elite or nonelite;

theft or exchange. This generates four categories of corruption: petty theft (nonelite, theft); speed money (nonelite, exchanges); grand theft (elite, theft); and access money (elite, exchanges).[7] Ang's surveys of experts across fifteen countries demonstrate that Brazil ranks particularly poorly with regard to the elite forms of corruption: sixth worst in terms of grand theft, with a score 9 percent worse than the sample average; and fifth worst on access money, with a score 14 percent worse than the sample average.[8] This is particularly intriguing because Brazil scores well on petty theft and speed money, placing just behind the advanced developed economies in the sample.

This chapter analyzes the roots of the particular Brazilian variant of the elite cartel syndrome, which is useful for understanding the challenges the country has faced in diminishing corruption. We begin by describing the perilous combination of factors that often seem to jointly contribute to patterns of grand corruption. Then, we analyze four high-profile corruption scandals that offer a window into how the perilous combination has played out over the past two decades. Finally, we take a step back to look at overall patterns of grand corruption, emphasizing ties between politicians, businesspeople, civil servants, and money launderers; recurrent patterns of elite impunity; the high levels of wrongdoing visible among members of all political parties; and the collusive behavior between political elites that have made accountability holding unlikely.

The Perilous Combination

At its core, the syndrome of an elite cartel, in Johnston's (2005) words, or elite forms of corruption such as grand theft and access money, per Ang (2020), have been reinforced in postauthoritarian Brazil by the combination of coalitional presidentialism in a highly fragmented party system, a large developmental state with oligopolistic and intricately intertwined firm structures, and a loosely regulated and opaque yet highly concentrated campaign finance system. This is not to say that any of these factors on their own is determinative of corruption, only that their interaction helps to explain the prevailing modalities of corruption over the past generation. Similarly, this does not mean that other forms of corruption do not exist in Brazil—they obviously do. The elite cartel forms of corruption, however, have been the most prevalent form since redemocratization in the 1980s.[9] Each of these enabling factors merits a brief definition:

- *Coalitional presidentialism* is the "strategy of directly elected minority presidents to build stable majority support in fragmented legislatures, specifically via the coordination of two or more legislative parties by the president" (Chaisty, Cheeseman, and Power 2018: 14). Central to understanding the logic of coalitional presidentialism is the fact that no president's party since 1989 in Brazil has held more than one-fifth of congressional seats; minority presidents must thus seek out a relatively large number of coalition partners and entice them to join a governing coalition using a variety of stratagems (Mainwaring, Power, and Bizzarro 2017). The country has been governed by coalitional presidentialism since the return to democracy in 1985: the system helps to resolve the unique challenges posed by a presidential system mixed with an extremely and increasingly fragmented multiparty legislature and federalism (Abranches 1988, 2018).
- The *developmental state* refers to the idea that the state can serve as an engine of long-term development, by consciously altering investment conditions, tackling market failures, and addressing coordination problems (Haggard 2018; Taylor 2020). The ties between the "state" and the "market" have long been stronger in Brazil than in many of its neighbors, and policymakers deviated significantly from the Washington Consensus of the 1990s, despite a series of reforms (Montero 2014: 100). The developmental state that was inherited from the authoritarian regime has persisted over time at a significant scale: the state consumes more than 10 percent of real GDP per capita in Brazil, by contrast to just over 4 percent in Chile, with a unique institutional combination of a state development bank, a strong state presence in business and finance, five large SOEs that are among the largest companies in the Brazilian economy, and a form of networked capitalism built around state participation and influence in a variety of ostensibly private sector firms (Musacchio and Lazzarini 2014; Lazzarini 2010; Taylor 2020).[10]
- *Campaign finance* in Brazil is governed by a complex set of institutions, including both electoral courts and criminal statutes. But its contribution to the syndrome of corruption is perhaps driven less by these institutions than by the emergent effects of electoral rules that drive party fragmentation, increase the costs of electoral campaigns, and complicate enforcement of campaign finance laws. For most of the examined period, both private

> individuals and businesses could make contributions to candidates that were not limited in amount, but were restricted as a proportion of an individual's income or a company's revenue, respectively. This led to an extreme concentration of donors, whereby a few hundred wealthy individuals and large companies with close relations to the government were responsible for the largest share of campaign contributions (Mancuso 2015; Mancuso and Speck 2015; Carazza 2018). Significant portions of these donations were irregular, unregistered with electoral officials, and known by the term *caixa dois,* a so-called second register, referring to the fact that they came from a second, off-the-books, illicit source.

Again, none of these factors on their own is sufficient to explain Brazilian corruption, and it is difficult to prove that the relationship between the three factors is causal rather than simply correlational (Limongi and Figueiredo 2017: 81). For example, neither a developmental state nor a large state is necessarily a predictor of corruption, as Japan and Norway demonstrate; nor is a proportionally small state necessarily a bulwark against corruption, as Mexico and even Chile in their recent scandals have demonstrated (Gerring and Thacker 2005; Persson and Rothstein 2015). Coalitional presidentialism exists in a variety of other countries, and does not always and everywhere lead to the types of scandals seen in recent Brazilian history. Some of them, such as Uruguay, in fact, have had greater success in keeping corruption in check. Expensive political campaigns, likewise, need not lead to corruption per se. In short, in isolation these three factors do not explain corruption, but together they may lead to a perilous combination by generating a series of overlapping incentives for actors in, or close to, the political system.

Among these incentives, the rules governing the Brazilian electoral system play a fundamental role by contributing to significant party fragmentation. The effective number of political parties represented in Congress has increased from 7.1 in 1998 to 13.2 in 2014, and to 16.4 in 2018, the last two being the first- and second-highest scores ever recorded globally (M. A. Melo 2016; Gallagher 2017).[11] Increasing fragmentation has been driven by open list proportional representation (OLPR) electoral rules in large and high-magnitude districts;[12] by the possibility of multiparty electoral coalitions, which benefit small parties; by the ready availability of public campaign funding for parties, which incentivizes party formation; by a high court decision

overturning performance thresholds for parties; and by a judicial ban on party switching, except to found new political parties (Samuels 2001; Ames 1995; Marchetti 2008; Marchetti and Cortez 2009).

Because there are so many candidates and representatives per district, the costs to voters of monitoring and punishing corrupt elected representatives are steep (Kunicová and Rose-Ackerman 2005; Tavits 2007). In the electoral realm, voters are only weakly connected to politicians. The information that voters can compile about candidates is fragmented and sparse (Ames, Baker, and Rennó 2008). Studies show that fewer than one-fifth of voters are able to correctly place parties on an ideological scale (Carreirão 2007; Montero 2014: 91). And even though most voters claim in the abstract to wish to punish corrupt politicians, in practice they fail to do so when given the chance (Boas, Hidalgo, and Melo 2019).

Furthermore, large numbers of candidates induce intraparty competition and lead to political campaigns that are highly individualized and extremely costly (Ames 2001). As a result, most political parties in Brazil "are catch-all or cartel organizations that work primarily to ensure access to the resources they consider vital to their survival, most of which reside in the federal bureaucracy" (Da Ros 2019b: 244; Krause, Rebello, and da Silva 2015).

While elections are generally perceived to be transparent and clean, overseen by technically proficient electoral courts, the same cannot be said for the supervision of campaign finance.[13] Contributions are highly concentrated in a few donors: in the 2010 elections, the contributions of the fifteen largest donors accounted for roughly a third of all contributions (Mancuso 2015); in 2014, 33 wealthy individuals and 450 companies accounted for three-fourths of all contributions for both presidential and congressional elections (Carazza 2018: 47). Business sectors that are more oligopolistic and conduct business with the government are more likely to donate more (Taylor 2020; Carazza 2018; Mancuso 2015; Mancuso and Speck 2015). And there has been little effective action by the electoral courts to curtail off-the-books contributions by firms seeking political favors: much electoral corruption appears to be less the result of a desire to skirt official campaign donation rules (since these are in fact quite lenient), but instead an effort to make contributions using money that has been acquired illicitly.

The combination of many candidates for office with a highly concentrated set of donors leads to adverse selection: the candidates who do best in this realm either obtain access to generous contribu-

tors, or are willing to resort to illegal campaign finance, or both (Da Ros 2019a; Reis 2013; Kang 2002). Recent scandals suggest that at least as much has been spent off the books—via *caixa dois*—in electoral campaigns as has been spent on the official electoral court registers. One particularly brash corporate donor, Odebrecht, admitted to an 8:1 ratio of illicit to licit campaign spending over a decade and a half. Off-the-books financing responds to a different set of demands than on-the-books contributions; it tends to lead to more particularistic access to government services and policymakers, in a self-reinforcing cycle. Based only on on-the-books donations, Taylor C. Boas, F. Daniel Hidalgo, and Neal P. Richardson (2014) found that firms that specialized in contracts with the federal administration received at least fourteen times in contracts what they contributed to the election of winning incumbents in Congress. Perversely, access to generous donors may be pivotal for politicians' survival even in the face of corruption accusations. Scholars have found, notably, that "campaign spending attenuates the negative effect of corruption scandals on politician's electoral success," so that "over a certain threshold of campaign spending, incumbents involved in scandals can still win elections" (Jucá, Melo, and Rennó 2016: 3, 5). If campaign finance helps to overcome the possibility of electoral sanctions for wrongdoing, wrongdoers are more likely to remain in the system, heightening the challenges for an already overburdened judiciary.[14]

Although corporations were banned from making corporate campaign donations as of the 2016 elections, this is unlikely to significantly change the overall incentives in the system since individuals can still legally contribute up to 2 percent of their income each year, and little has been done to curb illegal *caixa dois* donations. Indeed, a long tradition of defective regulatory enforcement has fostered the emergence of cultures of collective deviance at major firms such as Odebrecht, institutionalizing corruption, rationalizing its use, and socializing informal rules and informal interpretations about how and when corruption could be legitimate (Valarini and Pohlmann 2019: 10). Off-the-books campaign finance is a classic example of this problem: because "everyone does it," campaign finance violations are seen as somehow less problematic than other corruption violations. Under these conditions, it seems unlikely that banning legal corporate contributions will, by itself, change the practice of funneling illegal contributions outside the formal channels.

Since 1990, the president's party has never held more than a fifth of seats in the lower house, forcing the chief executive to build

a multiparty coalition to pass any legislation (Mainwaring, Power, and Bizzarro 2017). The largest party in Congress in 2019, the Workers' Party (PT), had only 53 out of the 513 available seats, slightly over 10 percent. The increasing fragmentation of the party system has forced most presidents to rely on oversized coalitions that, in many cases, are quite unstable. Even though they have increased over time, coalitions have typically incorporated nearly six parties for most of the past two decades, and have lasted, on average, approximately one year before being restructured (Carreirão 2014; Da Ros 2019b; A. dos Santos Almeida 2018). Ideology has declined as the organizing principle of the party system since the early 2000s and, therefore, as the central principle guiding the coalitions that presidents have been able to cobble together (Zucco 2009; Lucas and Samuels 2010; Carreirão 2014; Da Ros 2019b). The corollary is that, over the past decades, political parties mushroomed within an increasingly less ideological political spectrum, suggesting that most were motivated predominantly by the perks of office. Unsurprisingly, most of the massive party switching that occurred in Brazil since redemocratization was from parties that did not hold any positions in the cabinet toward those that did (C. R. Melo 2004).

The toolkit of coalitional presidentialism provides a central organizing logic to this fissiparous system, including the formal institutional powers of the presidency (e.g., decree powers) and also the powers of the purse and of appointment (Chaisty, Cheeseman, and Power 2018). It has long been the case that legislators were able to exchange legislative votes for a wide range of pork-denominated currencies in negotiations with an executive dependent on unstable and shifting coalitions (Geddes and Ribeiro Neto 1992; Chaisty, Cheeseman, and Power 2018). One way to do so has been through horse-trading over all manner of appointments in the federal bureaucracy, as well as in state-owned enterprises such as Petrobras and the Banco do Brasil. The numbers of political appointees are high by international standards, with roughly 22,000 potential appointees in the federal government, and 14,000 in the state of São Paulo alone (Portal da Transparência Estadual 2016). Of the federal slots, approximately 1,200 federal appointees are freely nominated by the president, with few required technical qualifications, and the president has great influence over the remaining appointments. Even when they are not political appointees, furthermore, senior civil servants may need *padrinhos* (political sponsors) if they are to prosper in their careers. Consequently, the distribution of positions to allies within the federal administration

and the numerous state-owned enterprises plays a key role in the formation of the governing coalition (Amorim Neto 2002; Lopez, Bugarin, and Bugarin 2014; Lopez and Praça 2015). Needless to say, probity is not necessarily high on the list of priorities for many of these appointees, especially when considering how best to repay debts to their "generous" political benefactors. Meanwhile, the scope of potential budgetary resources made available by the developmental state apparatus is ample: a single Petrobras directorate involved in the *Lava Jato* case alone had a budget larger than nineteen of the twenty-seven cabinet ministries at the time (Dallagnol 2017a: 112).

Historical Cases of Grand Corruption in Brazil

Throughout the contemporary democratic era, corruption scandals have been a recurring theme of political life across all presidential administrations, without exception (Power and Taylor 2011: 2). They have been driven to a great extent by the perilous combination of weakly regulated campaign finance, the large and complex developmental state, and the extremely fragmented coalitional presidential system described in the previous section. The prominent scandals of the 1990s, 2000s, and 2010s share many attributes, including not only the same patterns but also, amazingly and infuriatingly, many of the same actors (Fleischer 1997; Carazza 2018; Praça 2011, 2013). Exemplifying this pattern during the past three decades are a variety of scandals, including the *PC Farias* scandal that led to President Fernando Collor de Mello's 1992 impeachment; the budget scandal of 1993; the reelection scandal of 1997; the *Mensalão* scandal of 2005; and the *Sanguessugas* scandal of 2006. These and other scandals involving the executive and legislative branches are described in the Appendix.

Indeed, given their steady recurrence, many of these scandals may be thought of simply as windows into one long, continuous process of state appropriation by corrupt actors. Likewise, many of the resulting accountability efforts resemble a single investigation that, over time, connects more pieces of the puzzle of grand corruption, linking various facts, individuals, organizations, and patterns of behavior. These patterns of corruption have recurred despite a multiplicity of reforms described in the next chapter. With a few exceptions, all these scandals also share another common trait: the absence of accountability before the courts (Taylor 2011; Da Ros 2019b).

Below, we analyze four major cases launched by the Federal Police before the *Lava Jato* case, with the goal of demonstrating how grand corruption functions in elite cartel fashion, the manner by which the perilous combination plays out, and how these patterns have replicated themselves over time in the absence of credible accountability. We chose these four cases—*Banestado, Mensalão, Satiagraha,* and *Castelo de Areia*[15]—for further analysis for four interrelated reasons.

First, they illustrate the multiple ties between state-owned enterprises, political elites, money launderers, and the private sector described above, highlighting that the interactions between political and economic elites revealed in *Lava Jato* were hardly unique to that case. Quite the contrary. As a matter of fact, with a few exceptions, all these cases had similar potential to lead to the sanctions eventually enforced by *Lava Jato,* even though they ultimately fell short. They are, in this sense, largely negative cases that help us understand how and why *Lava Jato* was such an exception to the rule when it began to enforce sanctions. These cases thus serve as control cases and help us avoid the problem of selecting on the dependent variable of success, while also beginning to understand the causes of *Lava Jato*'s relative initial success.

Second and related, these scandals help to illustrate the enormous hurdles to imposing legal sanctions for wrongdoing in Brazil, as well as the lessons—legal and otherwise—that accountability agencies such as the police and the federal prosecutors' office have learned over the course of the past two decades.[16]

Third, all these cases have either led to or resulted from criminal investigations. The existence of a criminal investigation provides greater detail about corruption, with more concrete details on the individuals, organizations, and practices that have structured corrupt practices. However, it may also lead to an inevitable temporal bias that readers should be aware of. As these cases and the ones in the Appendix highlight, Brazil seems to have increasingly transitioned from "political" to "police" corruption scandals over the past three decades. The locus of investigations and the sanctions imposed shifted increasingly from Congress to the criminal justice system (including the police, prosecutors' offices, and the courts). That is, scandals have resulted increasingly from the workings—quite literally—of "police patrols" and decreasingly from the efforts to set off "fire alarms" through congressional oversight. Similarly, sanctions increasingly moved to the judicial arena. This evolution of the locus of account-

ability draws attention to the empowerment of legal accountability agencies over the past decades in Brazil, described in Chapter 3, as well as to the decreasing control political elites seem to have had over the onset, pace, and consequences of most political scandals, at least for a time. Once pivotal in the 1980s and 1990s, congressional investigations have grown less important since the mid-2000s, and increasingly appear to be used to sidetrack the efforts of legal accountability agencies. Attempts to limit investigations have kept pace, moving away from efforts to influence Congress and, instead, toward efforts to influence the high courts and prosecutors, control the appointment of the prosecutor-general, and influence the Ministry of Justice, which oversees the Federal Police. Our case selection reflects and captures these important changes in accountability in Brazil over the past three decades.

Fourth, the cases below also embody an important, if frequently unheralded, change in the patterns of legal accountability that emerged in Brazil over the late 1990s and early 2000s. Although the patterns of political corruption have remained quite similar since the José Sarney presidency in the 1980s, the manner by which corruption has been confronted by legal actors has changed qualitatively, especially after passage of the 1998 Anti–Money Laundering Law, which generated increased institutional capacity within the judicial system, with the emergence of specialized courts, prosecutorial task forces, and investigations of financial crimes. As Chapter 3 highlights, legal accountability in Brazil evolved from tackling corruption proper to targeting the gains from corruption through the enforcement of money laundering laws. This strategy was referred to as the "financial asphyxiation" of criminal organizations (Secretaria Nacional de Justiça 2012: 20). Our first case is the *Banestado* case, which marks the first step in this significant transformation of the accountability process.

Banestado

On the face of it, the *Banestado* case was a simple case of money laundering by illegal foreign exchange traders known colloquially as *doleiros*. *Doleiros* are some of the many *malandros* (rascals or rogues) that make up the folkloric tapestry of the Brazilian underworld (DaMatta 1979), and, for many years, especially in the hyperinflationary period, they played a central and often necessary function in the economy by facilitating foreign exchange transactions. With passage of the new Anti–Money Laundering Law in 1998, many hitherto

borderline activities became clearly illicit, and federal law enforcement agencies were given new tools to target *doleiros* and their offshore activities. The *Banestado* case was a first major step toward dismantling these *doleiro* networks, demonstrating the scale of their offshore activities and the degree to which seemingly reputable firms and politicians were using offshore accounts. It was also an early exemplar of the use of illicit funds and murky channels by politicians and business executives, as well as a case on which many leading law enforcement authorities first cut their teeth.

At the core of the *Banestado* case was the finding that enormous volumes of money were being sent abroad to offshore bank accounts, via a then legal channel known as the CC-5 account. The so-called CC-5 accounts were named after the Central Bank regulation that established them in 1969, Carta Circular 5 (CC-5). Reference to the massive amounts being transferred through these accounts became public as early as 1997 in a congressional committee of investigation (*CPI dos Precatórios*), but it took two other such congressional inquiries (*CPI dos Bancos* in 1999 and, ultimately, *CPI do Banestado* in 2003) for this black box to be more clearly ventilated.[17] The 2003 congressional investigation suggested that over US$130 billion had been sent through CC-5 accounts during the period 1996–2002, including US$20 billion through the Banco do Estado do Paraná (known as Banestado), which was owned until October 2000 by the Paraná state government, and then was privatized.

CC-5 accounts were created so that foreign residents of Brazil could move currency into and out of the country at a time when foreign exchange operations were highly regulated, but the government needed foreign investment.[18] More than half of the transfers from 1996 to 2002, however, may have been illegal funds resulting from money laundering or tax evasion, often processed through the accounts of unwitting third parties, known colloquially as *laranjas* (Beirangê 2015). Money sent through the CC-5 ended up in many remote locations, including Switzerland, France, Italy, the Isle of Man, and the Cayman Islands. One money launderer—Alberto Youssef—admitted in a 2004 plea bargain to having paid bribes to the director of international operations at Banestado to facilitate US$5 billion in offshore transactions (Gois 2014). Youssef would reappear in later scandals, first as a suspected facilitator of illicit payments in the *Mensalão* case, and then as a crucial piece in the giant *Lava Jato* puzzle (Justiça Federal 2014).[19]

Perhaps the most important outcome of *Banestado* was that congressional investigators forced the Central Bank to reveal more than

400,000 transactions that had been made via CC-5 accounts between 1996 and 2002, overcoming judicial protections of bank secrecy. These revelations tore back an enormous veil. Although nobody could clearly discern which transfers were legal and which involved illegal funds or illegal transfers, CC-5 account holders were found to include major media groups (TV Globo, RBS, Grupo Abril, SBT); banks (e.g., Banco Araucária, owned by a prominent political family, the Bornhausens); retailers (including Brazil's largest, Casas Bahia); and construction firms (including Odebrecht, Andrade Gutierrez, OAS, Queiroz Galvão, and Camargo Corrêa). Furthermore, the CC-5 accounts linked up to a variety of offshore accounts that police alleged were tied to more than 100 political figures, among whom the most frequently cited were Partido da Social Democracia Brasileira (PSDB) treasurer Ricardo Sérgio de Oliveira; Senators José Serra (PSDB–São Paulo), Jorge Bornhausen (Partido da Frente Liberal [PFL]–Santa Catarina), and Ney Suassuna (Movimento Democrático Brasileiro [MDB]–Paraíba); Governor Jaime Lerner (PFL-Paraná); Mayors Celso Pitta (Partido Trabalhista Brasileiro [PTB]–São Paulo) and Paulo Maluf (Partido Progressista [PP]–São Paulo); and Deputies José Janene (PP-Paraná) and Wigberto Tartuce (PP–Distrito Federal) (*Istoé Dinheiro* 2003; Justiça Federal 2014; *O Estado de S. Paulo* 2003; Silveira 2004; *Consultor Jurídico* 2004).

Of all the revelations in the course of the investigation, one of the most explosive was that Senator Bornhausen's family bank, Banco Araucária, was serving as a conduit for transferring money abroad to Banestado's offices in New York, and that Bornhausen and his brother were the offshore beneficiaries of multiple transfers from other offshore accounts. These revelations led the Central Bank to close down Banco Araucária in March 2001. Even before these allegations emerged, the relationship between Bornhausen's PFL party and President Fernando Henrique Cardoso's PSDB had begun to fray, but the Araucária revelations placed enormous additional stress on a coalition that was already in dire straits as the end of Cardoso's second term approached. The PFL, which hitherto had been a faithful supporter of Cardoso's reforms, began to block key votes in Congress. As quickly as it could, the Federal Police called back its investigators from New York, and shut down the investigation. If there was any doubt about the message that was being sent, the police forensic accountant who had done the most to investigate the CC-5 accounts was transferred to the automobile registration department, where he spent his days on the floor of the Federal Police garage,

verifying the chassis numbers under the bottoms of cars (R. Valente 2013: 119–130).

The *Banestado* case is a classic example of the murkiness of scandal in a country with weak accountability institutions and a collusive elite. It produced great smoke and even some fire, but the 2003 congressional investigation at the heart of the case failed to produce a final public report due to internal discord between the committee president and the committee's rapporteur. Additionally, Rubens Valente (2013: 137) suggests that the opposition Workers' Party may also have been less active than it otherwise might have been in pushing the congressional inquiry because it threatened to expose irregularities committed by the party in the municipality of Santo André.

In the judiciary, the results were not much more promising than they had been in Congress. However, several prosecutorial innovations proved important in the case, and were emulated in later cases. In 2003, the Ministério Público Federal (MPF) founded one of the—if not *the*—very first task forces ever to be established in a grand corruption case, and one that would become an actual case study in task force manuals produced by the Brazilian federal prosecutors' office (Paludo 2011: 91–114). The task force's investigations, led by federal prosecutors Carlos Fernando Lima and Vladimir Aras (who would later become key players in *Lava Jato*), resulted in several additional investigations. These include *Operação Farol da Colina* in 2004, which arrested dozens of individuals in seven Brazilian states, and other follow-up investigations of the money trail lasting until September 2007, when the task force was dissolved (Paludo 2011: 112).[20] *Banestado* also marked the first time a plea bargain agreement was signed in a corruption investigation in Brazil. The 2004 plea was signed precisely with *doleiro* Alberto Youssef, who, as noted above, would become a recurring figure in various subsequent scandals.

The so-called CC-5 task force led to the filing of more than 680 charges, resulting in 97 convictions for money laundering offenses (MPF 2017). Still, only relatively small fish were netted, predominantly *doleiros* and other financial operators (I. Lopes 2014). Furthermore, despite the relatively large number of convictions, only thirteen individuals were actually jailed after conviction, due to the lenient rules governing the statute of limitations on money laundering crimes (Dallagnol 2017a: 24–25). Partly because of the murkiness of the facts, partly because investigators—both congressmen and prosecutors—did not push energetically for accountability, *Banestado* offered only an

early hint of how the illicit links between politics and business worked in Brazil. None of the political figures alleged to have been involved in the case were ever convicted. Further, on the basis of the convictions obtained, it was impossible to make many claims about the veracity of alleged links between businessmen and politicians.

Nonetheless, because it was one of the first major demonstrations of the extent to which massive volumes of money were being moved out of the country, because some of the prosecutors and judges would later become key players in the *Lava Jato* investigations,[21] because some of the criminals netted by the operation were also netted in later scandals, and because the case demonstrated the difficulty of overcoming a bias toward impunity, *Banestado* was a significant watershed in a movement toward improved accountability. Even though the case did not lead to much engagement by the public and the media, the authorities involved learned many useful lessons, such as the importance of creating multiagency task forces in complex investigations, building institutional capacity to ensure effective cross-agency cooperation, the need for international cooperation in investigating financial crimes, and the need for improved criminal statutes such as clearer rules on plea bargaining and lengthier *prescrição de penas* (roughly, statutes of limitation) in corruption cases.

Mensalão

Although it seems quaint in retrospect, the *Mensalão* scandal was a historical milestone, irrefutably demonstrating the dark operational underbelly of coalitional presidentialism, including the transactional nature of relations between politicians and business executives in the pursuit of campaign funds. It also was important because it broke a precedent of presumed impunity for high-ranking political and business figures, twenty-five of whom were sent to jail beginning in 2013. The scandal was relatively small in terms of the numbers of federal politicians involved: fifteen, two of whom were subsequently absolved on the basis of insufficient evidence. But the convictions confirmed that long-standing rumors of scandalous political behavior were not just a figment of the public imagination. This was perhaps an underappreciated contribution in a setting where widespread allegations were seldom verified.

The case first began to emerge in March 2005, when a businessman working with the state-owned Correios postal service filmed himself paying a small bribe to a postal appointee. The appointee

happened to be the political "godson" of Congressman Roberto Jefferson, president of the PTB, a recurrent junior partner in various government coalitions since 1988, including the coalition of President Luiz Inácio Lula da Silva when the scandal emerged.[22] Feeling that he had been abandoned to the baying hounds of the press corps by the administration of Luiz Inácio Lula da Silva, in early June Jefferson blew open the case in a bombastic interview to the *Folha de S. Paulo* newspaper. Jefferson admitted that several political parties (including his own) were receiving regular bribes, which he dubbed a *mensalão* (large monthly allowance), directly from PT party treasurer Delúbio Soares and businessman Marcos Valério. According to a subsequent congressional inquiry (*CPI dos Correios*[23]), the payments were made between 2003 and the beginning of 2005, and were used to pay off parties that had joined the government coalition, to bribe individual deputies who switched parties, and to buy votes on specific legislation (UOL Notícias 2012). Prosecutors would later note that, in the ten days prior to important congressional votes, large amounts of cash were withdrawn from suspect accounts (MPF 2013; Montambeault and Ducatenzeiler 2014).

The practice, however, was hardly new, nor was it a novelty introduced by the PT. Cases of direct payouts to politicians to advance important votes in Congress had been cited in the press earlier, as in the reelection scandal of 1997, when congressmen allegedly received cash to vote in favor of the constitutional amendment that allowed President Cardoso—and everyone in an executive office since then—to run for reelection. Likewise, some of the same actors who played central roles in *Mensalão* had also appeared earlier in the so-called *Mensalão Tucano,* a scandal that erupted when the governor of Minas Gerais, Eduardo Azeredo, of Cardoso's PSDB, was accused of receiving illegal campaign contributions for his reelection run in 1998. In fact, in the indictment, the prosecutor-general argued that the "*modus operandi* of the criminal facts investigated [in the *Mensalão*] had its origin in the campaign . . . for State Governor of the State of Minas Gerais in the year of 1998" (PGR 2007: 4).

The incumbent PT used the money from illicit campaign contributions to pay off debts incurred by the party and by its coalition partners. Subsequent testimony by PT campaign publicist Duda Mendonça noted that he alone had received more than R$10 million[24] in an offshore account in the Bahamas. Most damaging to the Lula administration, Jefferson—a raconteur whose colorful tales engaged the public's attention—alleged that he had spoken with Lula and several ministers about the payments. The president's chief of staff, José

Dirceu, was forced to resign, and was replaced by Dilma Rousseff, a change with lasting historical reverberations.

Prosecutors filed charges in August 2007, in what would become the landmark *Ação Penal* 470, decided by the Supreme Federal Tribunal (STF) six years later, in late 2013. Prosecutors demonstrated that the Lula administration had paid bribes to members of Congress to ensure they remained in the governing coalition. Dirceu was convicted of having worked with Marcos Valério, the owner of two advertising agencies, to launder money: businesspeople would falsely contract Valério's firms to provide services; Valério would pass these illegal contributions on to the PT, including via foreign accounts, and then he would obtain loans from the BMG, Banco Rural, and the Banco do Brasil to cover his financial tracks (Galli 2007). Most remarkably, several bigwigs in the PT—including party president José Genoíno, secretary general Sílvio Pereira, and treasurer Delúbio Soares—were found to have cosigned the fraudulent bank loan documents, contributing to their subsequent convictions on racketeering, corruption, and money laundering charges. Also convicted were several bank executives, Valério's partners and staff, and another eight members of Congress in addition to Genoíno and Dirceu.[25]

Investigations concluded that the public sector was a key source of the illegal campaign funds, which either came out of state-owned enterprises or took advantage of state shareholdings in private sector firms. Visanet, a private sector clearing system for credit cards, made payments of R$74 million at the behest of state-owned Banco do Brasil (which controlled 32 percent of Visanet's shares). Valério's firms won rich public sector contracts from the postal service and the Chamber of Deputies, the latter controlled by Chamber president João Paulo Cunha (PT-SP), who was convicted for receiving R$50,000 in bribes for his efforts. The congressional inquiry raised questions about contracts between Valério and the Labor Ministry, the Sports Ministry, the Federal University of Rio Grande do Sul, and state-owned Eletronorte and Instituto de Resseguros Brasil (IRB), but ultimately did not press forward on any further action against those state entities.[26] Investigations also found suspect private sector contracts: payments by Usiminas and Cosipa, for example; and payments of more than R$150 million by Telemig and Amazônia Celular, controlled by prominent banker Daniel Dantas's Opportunity bank (CPMI 2006: 582–751; Valente 2013: 199). The congressional inquiry recommended further investigation of Usiminas and Cosipa (CPMI 2006: 654), and that Dantas be indicted for influence trafficking, tax evasion, and corruption (CPMI 2006: 654), but prosecutors ultimately decided not to pursue either trail.[27]

The *Mensalão* case was a watershed for a number of reasons. It contributed to eroding the otherwise quite compelling image of the PT as an outsider in the political establishment. Contrary to the image it projected of itself until then, the PT had not behaved very differently from other political parties with regard to campaign finance or the management of its governing coalition (Assunção 2014). Perhaps because it seemed such a shift from the PT's original hopeful promise, the party's fall from grace was a political drama that kept the public engaged for various years, ultimately peaking in the *Lava Jato* case. The prison terms meted out to politicians and business executives, similarly, were a remarkable break from past tolerance of elite wrongdoing (Michener and Pereira 2016). Equally important was the enhanced role of the courts, and the STF in particular: televised coverage of the supreme court hearings was played daily around the country. The public was introduced to a new and complex legal vocabulary—*dosimetria da pena, embargos declaratórios, embargos infringentes*—and STF justices became more recognizable than many politicians. Although the case dragged on for an eternity, with final judgment only in late 2013, the *Mensalão* trial offered the hopeful promise of a new era of legal accountability. It also provided concrete evidence of the complex interplay within the perilous combination of coalitional presidentialism, the developmental state, and campaign finance.

Satiagraha

Operation *Satiagraha* was a natural outgrowth of the *Mensalão* scandal, as police investigators followed the trail of the money used in that case, and particularly, money from the two telephone companies—Telemig and Amazônia Celular—that had placed large contracts with Marcos Valério's firms. After four years of investigation, *Satiagraha* hit home in a big way, with the July 2008 arrests of two important businessmen, Naji Nahas and Daniel Dantas, on accusations of corruption, fraud, and tax evasion. Dantas's Opportunity bank, which controlled the two telephone companies, was alleged to have used offshore accounts to make corrupt payments, while Nahas was alleged to have laundered money out of the country.

Dantas and Nahas were major players on either side of a major business conflict that had arisen out of the privatizations of the 1990s. Dantas's Opportunity had played a big role in the privatizations, participating in the purchase of mining giant Vale, as well as energy producer CEMIG (Companhia Energética de Minas Gerais). This helped bring Dantas to the attention of Citibank, and Opportu-

nity would later partner with Citibank, Telecom Italia, and the pension funds of various state-owned enterprises to buy Tele Centro Sul, the regional phone company that became known as Brasil Telecom. Dantas also emerged from the privatizations with partial ownership of Telemig Celular, Amazônia Celular, a sanitation company known as Sanepar, and the company administering Brazil's largest port, Santos Brasil. By 2000, however, he was in open battle with his partners in many of these ventures: Telecom Italia in Brasil Telecom, the Canadian firm TIW in Telemig Celular, and the pension funds of state-owned companies, which had holdings in all three phone companies: Brasil Telecom, Telemig, and Amazonia Celular.

Over the course of the next few years, Dantas's resentment against what he saw as the political manipulation of the pension funds against his interests led to a range of bizarre and allegedly illicit actions that spanned the public and private sectors. Brasil Telecom—which Dantas ultimately controlled through Opportunity[28]—hired Kroll, a US investigative company. Kroll allegedly tapped the phone lines of numerous executives at Telecom Italia, as well as government officials, in an operation that went public in a banner headline at the *Folha de S. Paulo* in 2004, leading to a police investigation (Operation *Chacal*) that was litigated in both US and Brazilian courts (Aith 2004). One of the targets of the wiretaps was Naji Nahas, who was hired by Telecom Italia to negotiate with Dantas. Both Dantas and Nahas were simultaneously working channels in Brasília in an effort to influence the pension funds, the Banco do Brasil, and the telecom regulatory body, Anatel. Kroll allegedly tapped the phones of the communications minister Luiz Gushiken and Banco do Brasil president Cassio Casseb, at least in part because in 2003 they had pushed the pension funds of five state-owned companies who were shareholders in Brasil Telecom to change the shareholder agreements that gave Dantas de facto control of the company (Aith 2004).[29]

In 2004, citing the reputational risks of continuing to work with Dantas, Citibank broke off its relationship with Opportunity. Yet despite a series of escalating wiretaps and hacking scandals between Brasil Telecom and Telecom Italia, in April 2005 the two companies reached an agreement, and in 2007 the state pension funds bought out Telecom Italia's shares in Brasil Telecom.

Dantas then attempted to sell Brasil Telecom to Oi,[30] which would have created a monopoly that violated much of the regulatory legislation governing the telecom market. By this point, Dantas was locked in a serious dispute with the pension funds. In an effort to influence the government on regulatory matters and in the dispute with the

pension funds, Dantas hired a former PT congressman, Luiz Eduardo Greenhalgh (UOL Notícias 2009).[31] Greenhalgh, a trusted longtime lawyer for the PT, was helped along by a mysterious figure referred to by Dantas (caught on police wiretaps) as the "Architect." The Federal Police concluded this was João Vaccari Neto, PT party treasurer. By 2008, the obstacles to a deal with Oi had been overcome: President Lula issued a decree that permitted the previously prohibited purchase of one telephone company by another, Anatel withdrew its objections, and the BNDES (Banco Nacional de Desenvolvimento Econômico e Social) and Banco do Brasil provided financing for the deal. Oi paid R$5.8 billion for Brasil Telecom, creating a huge national monopoly worth R$29 billion (R. Valente 2013: 140–325).

The questionable tactics used by Dantas, Opportunity, Brasil Telecom, and its partners helped to convince police and prosecutors to deepen their investigations, and provided them with evidence later used against Dantas. In 2007, as a consequence of the *Mensalão* investigations, prosecutors received permission to search Opportunity's corporate server. Although they did not find information related to the *Mensalão,* they did find evidence of financial crimes (Michael 2008). These included the possibility that residents of Brazil were shareholders in the Opportunity Fund in the Cayman Islands, which was not permitted by law, and could lead to criminal penalties if these shareholders had participated in the privatization process. Simultaneously, word of the *Satiagraha* investigation had leaked out, and Dantas allegedly asked one of his former executives to try to neutralize the federal police investigations. The executive hired a fixer, who met with Federal Police agents and, in a sting, was recorded offering a bribe to quash the operation (R. Valente 2013: 281).

Fearing further interference in the investigation, police and prosecutors moved to arrest the alleged wrongdoers. In an unprecedented scene, former São Paulo mayor Celso Pitta was filmed as he was dragged off to jail in handcuffs and pajamas. Dantas and Nahas were each arrested at home, filmed in their handcuffs as they were thrust in the back of police SUVs.

These scenes shocked justices on the high court, members of Congress from various parties (including the opposition PSDB), and the defendants' attorneys, who complained of the "spectacularization" of crime fighting (Coelho 2013: 170). In what would become a landmark case, the chief justice of the STF, Gilmar Mendes, twice overturned decisions by trial court judge Fausto Martin De Sanctis that jailed Dantas, sparking public debate between lawyers supportive of Mendes and judges and prosecutors supportive of De Sanctis (Milício 2008). Dantas

was first arrested on the morning of July 9, 2008. Mendes ordered him released from prison at 11:30 P.M. that night, and he left prison at 5:30 A.M. on July 10. At 2:30 P.M. on that day, he was arrested a second time under orders from De Sanctis, who justified his decision on the basis of new evidence that had been acquired by later search warrants. The move angered Mendes, who again ordered Dantas to be released from jail and allegedly moved to punish De Sanctis, sending copies of his decision to the Corregedoria (internal affairs) of the National Council of Justice and the regional appeals court that sat above De Sanctis's trial court, recommending an investigation into the judge's behavior for having disrespected a high court decision (Coelho 2013: 193).

Mendes's request to investigate De Sanctis sparked a wave of controversy and resulted in one of the most profound crises to date between lower and higher courts (Da Ros 2013). Over the following days, De Sanctis received public expressions of support from more than 100 of his colleagues, from judges on the regional appeals court, from federal prosecutors, and from various legal associations, many of whom explicitly criticized Mendes for having suggested inquiries into De Sanctis's behavior and for his decisions to release Dantas twice (Coelho 2013: 193–196). As senior prosecutor Douglas Fischer noted on a popular legal blog, Dantas's lawyers had requested habeas protection against the investigation and their motions had been rejected in the third regional appeals court (TRF3), in the Supreme Tribunal of Justice (STJ), and in the STF. When Dantas was placed under temporary arrest, on the basis of newly collected evidence, his lawyers jumped the judicial hierarchy and went straight to the STF with their habeas request, where the injunction of a single justice, Gilmar Mendes, saved Dantas from prison time. Fischer noted that this was reminiscent of George Orwell's *Animal Farm,* where "all animals are equal, but some animals are more equal than others" (Fischer 2008). In November 2008, justices at the STF coalesced around the chief justice's earlier decision and decided in a 9–1 vote to confirm Mendes's injunction, highlighting the alleged "disrespect" of the STF by De Sanctis's second decision to imprison Dantas (Coelho 2013: 200; R. Valente 2013: 375).

Brazilians have a slang phrase, *acabou em pizza* ("it ended up in pizza"), to describe a process that gets so gummed up that it goes nowhere. Despite having collected thirty-nine volumes of police evidence over four years, the *Satiagraha* case is perhaps the epitome of ending up in pizza, with so many dramatic story lines leading to stalemate that it is hard even to know where to assign blame (Matsuura 2009). The Federal Police concluded their final report on the

case in April 2009, in no uncertain terms: "We are facing an organized criminal group . . . [whose] leader is Daniel Valente Dantas" (R. Valente 2013: 389). The Justice Ministry blocked more than US$2 billion in accounts linked to the case, primarily in the United States (*Consultor Jurídico* 2009). Yet the Federal Police agent heading the investigation, Protógenes Queiroz, was himself investigated on orders of Justice Minister Tarso Genro, and hastily transferred away from investigative work and into the police academy. Queiroz successfully ran for Congress for the Partido Comunista do Brasil (PC do B) in 2010, but then lost in 2014 and fled to Switzerland in 2015 after the STF upheld his conviction on charges of violating secrecy provisions during the *Satiagraha* case. Along the way, Queiroz lobbed accusations that Dantas had paid off the prosecutor-general, Roberto Gurgel, and his wife (Canário 2014a). Dantas responded with a libel suit; meanwhile, Dantas was charged with bribing another Federal Police agent and sentenced by De Sanctis to ten years in jail and a R$12 million fine (*Consultor Jurídico* 2008).

Dantas pushed back hard on his accusers, targeting journalists with lawsuits seeking damages, and subjecting judges to disciplinary suits. Judge Fausto De Sanctis faced twenty disciplinary hearings in the National Judicial Council (CNJ) at the request of Dantas's lawyers, and, although these hearings subsequently cleared De Sanctis of any wrongdoing, they were a costly distraction (Konchinski 2016). STF Justice Mendes was criticized for his close links to Dantas's lawyers: his wife worked in the office of one prominent Dantas lawyer, Sérgio Bermudes, and records emerged of out-of-session meetings between Mendes and Dantas's counsel (R. Valente 2013: 362–368). Adding drama, Mendes alleged that his office had been wiretapped, and, although these allegations were never substantiated, they led to histrionic headlines and several high-level meetings between Mendes and the executive branch (Beirangê 2015). Meanwhile, Mendes reached an agreement with Chamber president Michel Temer, Senate president José Sarney, and President Lula to propose legislation limiting wiretaps and the so-called abuse of authority (R. Valente 2013: 380–382).

In light of the many twists and turns in the case, it was not terribly far off plot when a panel of the STJ, Brazil's second-highest court, annulled the case in 2011. In a decision that was later upheld by the STF, a judge on the STJ, Arnaldo Esteves Lima, argued that the evidence in the case had been illegally transcribed, and therefore was inadmissible (*O Globo* 2017b). The fact that investigators had enlisted the help of members of Brazil's intelligence agency, the Agência Brasileira de Inteligência (ABIN), to assist with transcrip-

tion without proper prior authorization nullified the evidence (Canário 2014b). The Federal Police admitted that seventy-five agents from the ABIN had joined the investigation over the space of four months, but because they had not participated in wiretapping or conducting police investigations, neither police nor lower court judges overseeing the case had believed there was anything untoward about their cooperation (De Sanctis 2017).[32]

There were at least four important outcomes of the case. First, it resulted in greater constraints on police operations. Perhaps because of the difficulty of obtaining any kind of judicial sanction of corruption, police had been turning to the media to publicly televise arrests, and to impose a second-best reputational sanction on alleged wrongdoers (Arantes 2011). Even though public engagement was surely not as prominent as it had been in the *Mensalão* case, it played an important role. A mounting public backlash against media coverage of police actions coincided with a series of complaints about how filming handcuffed defendants deprived them of the presumption of innocence (Coelho 2013).[33] Police overreach, such as threats to arrest members of the press and erroneous apprehensions, contributed to the backlash (*Consultor Jurídico* 2008; Coelho 2013; Marona and Barbosa 2018).

Second, the high court made it clear that it would set a high bar for prosecutors and police to effectively demonstrate money laundering, and that any prosecutions were subject to reversal by a hostile high court (*Consultor Jurídico* 2010). Even when well substantiated, allegations of bribery, such as those against Dantas—who allegedly conspired with his firm's executives to bribe federal agents—would be insufficient to justify incarceration without convincing proof of direct involvement by the defendant. Senior judges signaled that they would uphold strict evidentiary standards: for example, the high courts invalidated evidence collected on a hard drive at Opportunity's headquarters, alleging that, because the search warrant was for the third floor and the drive was found on the twenty-eighth floor, the evidence on the drive was improperly seized (L. Borges 2014). Although Judge De Sanctis issued a new warrant in that case, the high courts then found that because the ABIN had been involved in transcribing the wiretaps, the evidence was tainted, and the "fruit of the poisonous tree" argument ultimately led to the case being thrown out (De Sanctis 2017). All of the evidence collected over the course of several years was discarded; a special appeal of this decision by the prosecutor-general was rejected on procedural grounds by the STF in 2012. *Satiagraha* was a stark lesson on the limits of judicial tolerance for certain police investigatory practices, as well as the high bar set for successful

prosecution of elites. As Judge De Sanctis said soon after the case concluded, "It seems that soon we will ask defendants for permission to convict them" (R. Valente 2013: 436).

Third, and more positively, the case contributed to carving out a principle of wide publicity of court decisions and legal evidence. Many elements of the case were made public, albeit with small exceptions such as evidence obtained when bank and tax secrecy provisions were temporarily lifted by a judge (Matsuura 2009). Such publicity was a significant change after decades in which the principle of judicial secrecy was often invoked by powerful defendants. Greater transparency increased public pressure on the courts. At the end of the day, though, *Satiagraha* proved yet again the difficulty of effectively tackling corruption in a capricious judicial system that seemed designed to protect political and economic elites.

Fourth, in retrospect, *Satiagraha* marked another qualitative turning point in accountability dynamics. Institutional capacity at the federal level had been steadily increasing since the late 1990s and early 2000s, particularly within the Federal Police, but its efforts had predominantly targeted state and local political elites up until *Satiagraha* (Arantes 2011). *Satiagraha* in many ways marks the end of a pattern of national scandals initiated by political elites or the media. Most scandals until then had been the by-product of a breakdown in negotiations within the governing coalition in Congress (e.g., Balán 2011). Both *Banestado* and *Mensalão,* for instance, started with congressional investigations and only subsequently moved to legal accountability agencies. *Satiagraha* was one of the first instances where accountability agencies like the Federal Police took the first shot at tackling grand corruption at the federal level. The timing, pace, and content of anticorruption efforts since *Satiagraha* have increasingly changed hands from the political elite to accountability bureaucrats. Fire alarms have been replaced by police patrols. This transition generated more uncertainty about the political dynamics of corruption scandals. It perhaps should not come as a surprise, then, that *Satiagraha* also led to significant backlash from the political, legal, and media establishments.

Castelo de Areia

The *Castelo de Areia* (Sandcastle) operation began in 2008, and by 2009 had uncovered evidence of alleged payments by executives at the Camargo Corrêa construction firm to politicians. In many ways, this case served as a direct precursor to *Lava Jato,* providing an

inkling of the links between construction companies and politicians, as well as of the use of offshore firms to camouflage transactions. As *Lava Jato* prosecutor Deltan Dallagnol suggested years later, if *Castelo de Areia* had not been dismissed on procedural grounds at the high courts, the *Castelo de Areia* case might well have developed into an investigation on the scale of *Lava Jato* (W. Nunes and Bächtold 2017).

Four Camargo Corrêa executives were arrested and placed in preventive detention in March 2009. Drawing on data collected by Brazil's financial intelligence unit (Conselho de Controle de Atividades Financeiras, COAF), prosecutors led by Karen Louise Jeanette Kahn filed charges against three Camargo Corrêa executives and four *doleiros* for financial crimes and procurement fraud.[34] As in *Satiagraha,* the case was overseen by trial judge Fausto De Sanctis, in São Paulo. The investigation raised suspicions about a possible cartel among construction firms in big public works and of collusion between Camargo Corrêa and its ostensible competitor Andrade Gutierrez, although these allegations were never prosecuted (*Consultor Jurídico* 2009c). Also significant was the discovery of possible overpricing in several major construction projects, including the Abreu e Lima oil refinery—an early hint of a possible link between major construction firms and state-owned oil company Petrobras (*Consultor Jurídico* 2009b).

Prosecutors found that a Uruguayan firm was used to move money out of the country to banks in Switzerland, Germany, Israel, and the Cayman Islands (*Consultor Jurídico* 2009b). Kurt Paul Pickel, a Swiss-Brazilian businessman who had been accused by an anonymous tipster of illicit foreign exchange transactions, was overheard on police wiretaps plotting payments with Camargo Corrêa executive Pietro Giavina Bianchi. Pen drives seized from company executives listed politicians who had received bribes, using animals' names as code to hide their true identities (Justiça Federal 2009: 5; W. Nunes and Bächtold 2017).

Although the executives would admit to making contributions to some parties, and although emails were found with discussion of contributions to other parties, these contributions were never prosecuted, and it is not clear whether the contributions were made through licit or illicit channels (*O Globo* 2009).[35] Meanwhile, the Tribunal de Contas da União (the federal accounting tribunal, TCU), which should have investigated any bid rigging, came under a cloud of suspicion when the son of one of its ministers was alleged to be Camargo Corrêa's fixer in Brasília: FIESP director Luiz Henrique

Maia Bezerra, son of former senator and TCU minister Valmir Campelo Bezerra, was mentioned in the wiretaps as Camargo Corrêa's intermediary on campaign donations (Éboli 2009; Justiça Federal 2009). Further clouding the picture, a list of politicians found at the home of one Camargo Corrêa executive included members of the TCU (*Consultor Jurídico* 2009b).

Pushback against the operation was immediate. A group of senior politicians, mostly from the opposition—PSDB president Sérgio Guerra, Democratas[36] (DEM) president Rodrigo Maia, Partido Popular Socialista[37] (PPS) president Roberto Freire, and DEM Senator José Agripino Maia, whose name had emerged in the case because of campaign contributions from Camargo Corrêa—met with the president of the STJ, Cesar Asfor Rocha, to request that the Federal Police be subjected to external control. The politicians complained of the excessive "exposure" of defendants by the police, and the political nature of the investigations, echoing much of the criticism in *Satiagraha* (*Consultor Jurídico* 2009d).

The entire operation was shut down in January 2010 by an injunction from Asfor Rocha, in response to habeas corpus petitions by defense lawyer Antônio Cláudio Mariz de Oliveira (Haidar 2011). Trial court judge De Sanctis was well aware of the high court's skepticism of the evidence, and spent several pages of his decision explaining why society's freedom from organized crime and crimes against the financial system needed to be balanced against the defendants' rights to privacy. He emphasized that the techniques used by the police were in accordance with those permitted under various international treaties, as well as with previous STF jurisprudence (Justiça Federal 2009: 32–35). But after lengthy debate, a panel of judges on the second-highest court, the STJ, voted unanimously against De Sanctis's decision, arguing that he should not have authorized wiretaps on the basis of an anonymous tip. While many legal systems find similar problems with basing a case around anonymous tips, what was unique here was the decision to throw out all of the associated case materials rather than simply the tainted evidence. With that, all of the criminal cases associated with the operation were annulled (Beirangê 2015).

In 2011, trial court judge De Sanctis was promoted to the regional appeals court. At the last moment, however, he was shuffled from the court's criminal appeals chamber, where his experience would be most relevant, to the chamber dealing with pension cases (De Sanctis 2017). This upward promotion—and the surprise transfer to a pension court—was widely interpreted in legal circles as an effort to

muzzle, and then punish, De Sanctis. More recently, in 2019, former STJ judge Asfor Rocha (now retired) was targeted by investigators in the *Lava Jato* case for his earlier decisions annulling *Castelo de Areia.* This investigation was driven by a plea bargain agreement signed by former finance minister Antonio Palocci, who alleged that Asfor Rocha received payments abroad for his decision (J. Marques 2019; Ortega and Macedo 2019). The investigation against Asfor Rocha was suspended in May 2021. Whether or not his decision was corrupt, *Castelo de Areia* reaffirmed the empathy of the highest courts for members of the political and economic elite. It also showed that allegations of corruption cut across the party system, as well as across all branches of government in Brasília.

Patterns of Wrongdoing in the Political Arena

The cases above demonstrate several common characteristics. As Matthew M. Taylor (2020: 150–151) notes with regard to *Lava Jato,* the cases found ample evidence of cooperation between four types of actors who, in principle, should have little legitimate reason to cooperate: politicians; prominent private sector businessmen; public employees at state-owned firms and civil servants within the federal bureaucracy; and a variety of shady external operators, who made the schemes function, whether by helping to launder payments within Brazil, by making offshore payments, or by negotiating bribes on behalf of private sector firms.

Second, punishment was almost always meted out only to the operators, *doleiros,* and fixers in the scheme. Political elites remained above the fray. The calculus about who was likely to be punished has changed over time: perhaps because of the experience of significant jail sentences for operators in the *Mensalão* case such as Marcos Valério, *doleiros* like Alberto Youssef moved to cooperate more quickly in *Lava Jato,* leading to the unprecedented arrest and incarceration of many business executives in that case. With few exceptions, however, legal accountability has not reached economic and political elites involved in these scandals.

These scandals also had many repeat actors, appearing across widely different cases, as data from Taylor (2020), further elaborated on here, demonstrates. Brazil had 1,499 discrete federal officeholders between the 2002 and 2014 elections, holding 2,349 distinct electoral slots in the Chamber, Senate, and state gubernatorial mansions, as well as ministerial postings in the presidential cabinet.[38] While the slow pace

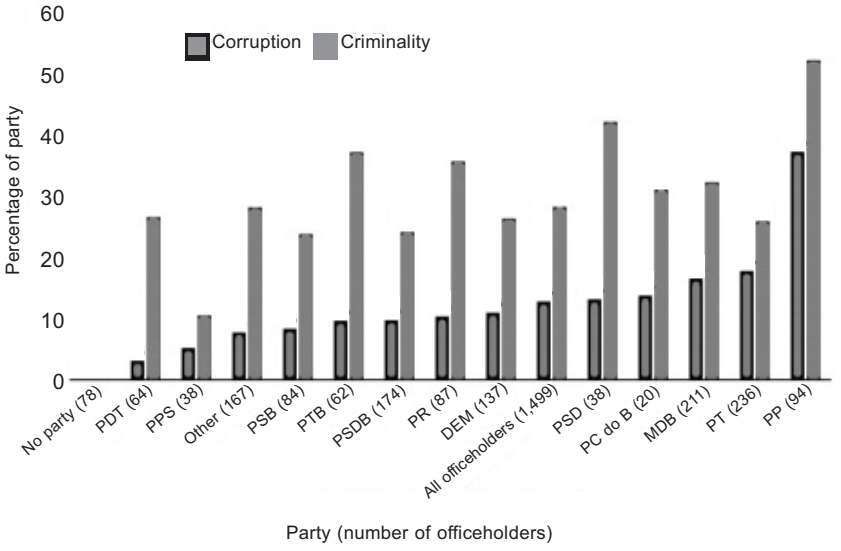
of the courts and the high degree of impunity means that data on judicial convictions is almost nonexistent, we use a proxy for criminality compiled by Taylor (2020) in legal cases that have been brought against these officeholders.[39] Figure 2.1 demonstrates this proxy measure of criminality for these nearly 1,500 officeholders, grouped by party size within the universe of officeholders.

Although false claims against politicians, of course, are possible, the proxy is a realistic if imperfect indicator of criminal behavior, in part because the relative strength of defamation provisions and the relative power of officeholders vis-à-vis police and prosecutors suggest that charges brought haphazardly would likely lead to significant costs. The criminality indicator in Figure 2.1 illustrates that of the nearly 1,500 politicians in office during this period, 28 percent faced an investigation or indictment in federal courts for any type of crime, including crimes as varied as tax evasion and homicide.[40] The corruption indicator in Figure 2.1 refers to the proportion of officials from each party who were allegedly implicated in five major corruption cases: any one of the four cases discussed in this chapter and the *Lava Jato* case. Nearly 13 percent of the politicians in the sample are being investigated or have been indicted on criminal grounds in any one of these five cases (and some were implicated in more than one of these five cases).

There are at least three implications of the data in Figure 2.1 regarding the likelihood that politicians will move to curb corruption or improve accountability.

First, the ubiquity of wrongdoing. Criminality and corruption appear to significantly affect all political parties, with roughly three of every ten politicians under suspicion, meaning that the pattern is likely not a case of a few bad apples, but rather a systemic one. Political corruption at the federal level follows a logic closely attuned to the perilous combination between loose campaign finance enforcement, coalitional presidentialism, and a developmental state with vast and diversified resources. As the epigraphs on the opening page of this chapter illustrate, democracy has not done away with avarice, but it has brought a particularly pernicious form of systemic corruption: campaign finance abuse, on a large scale and with the intention of tilting the playing field in favor of incumbents. The willingness of clean politicians to fight corruption may be undercut by the fact that intercoalitional financial transfers can be significant, so calling out wrongdoing by coalition allies may undermine a candidate's own sources of campaign finance. Worse yet, even clean politicians could end up accused of having received illegal contributions, as these are

Figure 2.1 Federal Politicians Investigated or Indicted for Corruption or Criminality, 2002–2016 (in percent)



Sources: Compiled by the authors; Taylor (2020: 150–151).

Notes: PR includes members of the former Liberal Party (PL) and Partido da Reedificação da Ordem Nacional (PRONA); DEM includes PFL; Partido Progressista (PP) includes Partido Progressista Brasileiro (PPB). Party is the last party identification claimed by the politician at election time, up through the 2014 elections.

frequently transferred among candidates and the party directorates within the same party or electoral coalition, further diminishing the incentives for sounding the alarm. The normalization of illegality means that there is little incentive to fight corruption, and many otherwise clean politicians adopt a passive free-rider strategy, rather than stepping into the arduous task of corralling a coalition to combat corruption. On the flip side, a rational but corrupt politician knows that acting opportunistically to break up the network would mean forgoing future returns from years of past exchanges, and that the risk of detection and punishment is minimal, in any case.

Second, the weakness of opposition parties as anticorruption enforcers. Although politicians in the incumbent Workers' Party coalition had a slightly higher propensity of being implicated, parties such as the PSDB and DEM who were in opposition for all of the years in this period, 2002–2016, also had relatively high levels of politicians implicated in corruption cases (10 and 11 percent, respectively),

which may have altered their incentives to push for robust anti-corruption efforts. As the *Banestado* case illustrates, when the PT was in opposition, it may have been more passive than it otherwise might have been because it feared the investigation could reach its municipal administrations; similarly, the PSDB may have been more acquiescent during the Lula and Rousseff years because several of its most prominent members were potential targets in cases such as *Satiagraha* and *Castelo de Areia*. Likewise, because most scandals touched on political parties that served as coalition partners to *both* the PT and the PSDB, these presidential parties were possibly unwilling to dig deeper into the cases that could damage their shared allies. This weak mutual oversight often carried over into accountability institutions, such as Congress and the TCU accounting tribunal, where parties and their nominees often worked together to avoid public oversight or sanction, rather than competing to increase accountability. Said another way, politicians appear to have reached a tacit agreement to compete electorally, but collude corruptly: politicians are aware of their peers' wrongdoing, but remain mum for fear of upsetting the apple cart. This leads to an unusual form of political dominance: rather than one-party rule, à la Communist China or Mexico under the PRI, Brazil faces multiparty collusion, at least when it comes to political corruption. We return to this point in the next chapter.

Third, the incredible weakness of the accountability process for politicians further undermines the likelihood that politicians will act against their colleagues. Of the 423 officials who were under investigation or indictment, as of 2015, only 16 had been convicted, and only 8 (one-half of 1 percent of all officials) actually served jail time (Bretas 2015). These figures align with other studies: for example, Luciano Da Ros and Matthew M. Taylor (2019) found that fewer than 6 percent of criminal cases in the high court were decided against criminal defendants and fewer than 1 percent led to conviction. Somewhere between 10 and 13 percent of criminal cases heard in the STF are tossed out due to the statute of limitations; another 10 percent have led to absolution (J. Falcão et al. 2017; Gomes Neto and Carvalho 2021). The remainder of cases largely linger. Convictions, even of the most partial sort, are reached in only 3 percent of cases (Gomes Neto and Carvalho 2021). Pivotal here is the impact of the original jurisdiction of the high courts—known alternately as the *foro por prerrogativa de função, foro privilegiado,* or *foro especial*—whereby federal officeholders can be prosecuted for their crimes only before the STF. This is a form of protection from prosecution whose

specific rules have carefully been recalibrated to preserve political elites, in ways discussed in the next chapter.

With this logic in mind, then, the natural next question is, What changed in the 2000s to upset the applecart? Why did so many corruption cases begin to emerge, with such destabilizing effect? The answer lies less with the democratic political process proper—elections, or checks and balances between the elected branches—than with the manner in which democracy empowered the bureaucratic agencies charged with tackling corruption. Bureaucratic capacity, in other words, expanded enormously over the past generation in Brazil. In the next chapter, we look at how the accountability system works, its flaws and shortcomings, and how improvements over a generation of reform transformed the treatment of corruption.

Notes

1. Netto (2016: 64). Here and throughout the book, all translations are by the authors.

2. *Folha de S. Paulo* 2005.

3. Johnston (2005) discusses four syndromes of corruption that encapsulate most country experiences: influence markets, common to advanced democracies, where abuses "revolve around specific outcomes" (5); elite cartels, where networks of political and economic elites are able to form "cartels" that are defended through corruption; "oligarchs and clans" in fragile states, where personal networks are more important than institutions; and "official moguls" in nondemocratic regimes, where a few individuals can act with almost complete impunity.

4. Indeed, we both have personal experience of petty corruption by police and fixers at the motor vehicles department, and there are regular tales of avarice by bureaucrats of all types.

5. The comparison is made possible by rescaling three variables from V-Dem: public sector corruption; executive corruption index; and legislature corrupt activities. The rescaled scores on a 0–1 scale are, respectively, 0.31; 0.52; and 0.94.

6. Our focus here is on the federal level. All indications are that corruption at the state and municipal levels is probably much worse (Da Ros 2014; Macaulay 2011; Senters, Weitz-Shapiro, and Winters 2019; C. Ferraz and Finan 2011). In his plea bargain in *Lava Jato,* for example, former Transpetro CEO Sérgio Machado noted that the "political cost" of bribes was 3 percent at the federal level, 5 to 10 percent at the state level, and 10 to 30 percent at the municipal level (Dallagnol 2017a: 49).

7. *Petty theft* is when "street-level bureaucrats privately pocket illegal fees"; *speed money* is payments made to speed up public services or to avoid penalties; *grand theft* is when "top officials illegally siphon public funds," "create ghost payroll," or "collude to embezzle funds"; and *access money* is when "businesses directly pay massive bribes for deals" (Y. Y. Ang 2020: 28).

8. The survey was conducted in 2017 and 2018. The fifteen countries include countries from low-income (Bangladesh, Ghana, India, Indonesia, Nigeria),

middle-income (Brazil, China, Russia, South Africa, Thailand), and high-income groups (Japan, Singapore, South Korea, Taiwan, and the United States).

9. Likewise, this does not imply that corruption did not exist prior to the return of democracy in Brazil. Quite the opposite: corruption involving construction companies abounded during the previous military regime (Campos 2014). The fundamental difference is that corruption has now come to light.

10. From a conceptual standpoint, it is worth noting that the central issue with regard to corruption is not government size, but instead the role that the government is being asked to play, and the manner by which that role can be co-opted by specific actors such as firms and business leaders.

11. The effective number of parliamentary parties is an index of party fragmentation adjusted by taking into account the number of representatives per party (Laakso and Taagepera 1979).

12. On the difficulties posed by open list proportional representation with regard to corruption see, for example, Chang (2005). As Treisman (2007: 23) notes, however, the effect of electoral systems is not yet conclusively established: "Although the effects might exist, the evidence for them is fragile."

13. Brazil does quite well in the Institute for Democracy and Electoral Assistance (IDEA) political finance regulation database (Casas-Zamora 2016). But enforcement is another matter (Sadek 1995; Fleischer and Barreto 2009; Speck 2012). It is also worth noting that although the voting process is generally quite transparent, in some districts there are still opportunities for political machines to monitor voter choices (Praça 2018: 22).

14. The system in some ways is even more perverse because election to office means that politicians are afforded the original jurisdiction of the Supreme Federal Tribunal. One indication of the reality of this perverse system is that it is not all that unusual, for example, for a senator accused of wrongdoing to drop out of the Senate race and instead run for the Chamber of Deputies, which typically requires fewer votes (e.g., Aécio Neves of the PSDB and Gleisi Hoffman of the PT in the 2018 election). Running for the Chamber rather than the Senate permits the politician to maintain a foothold in Congress and preferential treatment in the high court at a much lower cost.

15. The names of these cases are shorthand, drawn from the names used by either judicial officials, police, or the press. As such, the names often refer to investigations and indictments across a range of different courts, rather than a single case file.

16. We may be reasonably criticized for at least two reasons: for analyzing only high-profile cases, and for analyzing cases in which the absence of convictions means that no definitive truth has been established. The problem of analyzing only the cases under the proverbial lamppost is a recurring one for corruption researchers. Yet there are few convincing ways to resolve this problem, and, in the Brazilian case, the problem is further exacerbated by the fact that because of judicial inoperancy and the practical impunity it facilitates, even the cases directly under the lamppost are often only vaguely illuminated. We do not have a magic wand to wave at this problem and we therefore accept the criticism, use the cases that have been best illuminated, and move on. The problem of using cases that may never lead to conviction is also a difficult one. Failure to convict could be a consequence of false accusations or faulty evidence. But in contemporary Brazil, failure to convict is just as likely an outcome of judicial inoperancy. For this reason, we caution against drawing conclusions here about legal culpability, and we have been careful to cite only information that is already in the public record. But these corruption scandals nonetheless enable us

to paint—using a potentially incomplete and imperfect empirical database of allegations, evidence, indictments, and, in rare cases, convictions—the links between a critical mass of allegedly corrupt practices and the political system. Ultimately, it is worth remembering that prosecution and conviction rates "are as likely to reflect the zeal, competence, and integrity of the police and judiciary, or the political priority placed on fighting corruption, as they are to capture the true scale of the phenomenon" (Treisman 2007: 216).

17. A congressional investigation (*CPI dos Precatórios* of 1997) led to the discovery that nearly all illicit funds in that investigation were being funneled out of the country either through banks in Foz do Iguaçú or through CC-5 accounts (Senado Federal 1997: 159–161). Later, in 1999, an investigation into CC-5 accounts enabled a federal prosecutor, Celso Três, to obtain access to the account ownership information (Valente 2013: 119–120). Interestingly, the investigation—which took place in the city of Cascavel, state of Paraná—was overseen by Sérgio Moro in one of his first positions as a federal judge. That year, another congressional inquiry by the Brazilian Senate (*CPI dos Bancos*) revealed investigations by the Receita Federal (Federal Revenue Service) involving 413 individuals and 345 businesses concerning possible fiscal irregularities in CC-5 accounts amounting to R$14.5 billion between 1996 and 1998 (Senado Federal 1999: 520).

18. The CC-5 regulation has been regularly rewritten various times, with a general trend since the 1990s toward tightening use of such accounts. The CC-5 accounts were eventually abolished in 2005 (Wolffenbüttel 2007).

19. Youssef was believed to be the true owner of the Bônus-Banval trading company, which was used to make payments to Pedro Henry (PP-MT), Pedro Corrêa (PP-PE), and José Janene (PP-PR) in the *Mensalão* case (Gois 2014).

20. Other investigations led by the task force included *Zero Absoluto* (2004), *Ilha da Fantasia* (2005), *TNT* (2005), *Hawala* (2006), *Pôr do Sol* (2006), and *Zapata* (2006).

21. Four of the six prosecutors on *Banestado,* Judge Sérgio Moro, and some federal police officers participated in both cases (Dallagnol 2017a: 69). Federal Police officer Érika Marena worked on the CC-5 task force starting in 2006 (Paludo 2011: 112).

22. Apart from the Lula administration, the PTB was also a member of the governing coalition during the Collor, Cardoso, and Temer administrations (Amorim Neto 2019). More recently, the party allied itself with President Bolsonaro (Bragon 2020).

23. This CPI recommended the *cassação* (expulsion) of eighteen deputies, but only three were removed by Congress: Dirceu (who had returned to his legislative seat after resigning from the presidential cabinet), Jefferson (PTB-RJ), and Pedro Corrêa (PP-PE) (*R7 Notícias* 2009; BBC Brasil 2013; CPMI 2006).

24. Here and throughout, R$ refers to the Brazilian currency, the real, which has been in circulation since 1994. In the year the *Mensalão* emerged, the exchange rate oscillated between R$2.2 and R$2.75 to the US dollar.

25. Bispo Rodrigues (PL-RJ), Pedro Corrêa (PP-PE), Pedro Henry (PP-MT), Roberto Jefferson (PTB-RJ), Romeu Queiroz (PTB-MG), Valdemar Costa Neto (PR-SP), João Paulo Cunha (PT-SP), José Genoino (PT-SP), José Borba (MDB-PR), and José Dirceu (PT-SP). José Janene (PP) died before his case went to trial.

26. The inquiry was headed by Senator Delcídio Amaral, who was later jailed in the *Lava Jato* case.

27. Perhaps most remarkable from the perspective of the logistics of the corruption revealed by the *Mensalão* scandal was the fact that the Federal Police

found more than 80,000 false tax receipts at Valério's offices, including some that were used to bill services to Visanet, Eletronorte, and the Labor Ministry.

28. Officially, as R. Valente (2013: 242) points out, Dantas did not own any bank, but, through family members and trusted executives, he was the controlling figure at Opportunity.

29. The pension funds were Sistel, Telos, Funcef, Petros, and Previ.

30. Oi, a private company, was created out of the former state company Telemar.

31. Greenhalgh was suspected by police of being the link between Dantas and corrupt legislators, but they did not find enough evidence to convince a judge to authorize his arrest.

32. ABIN was headed at the time by Paulo Lacerda, who had been the director general of the Federal Police until 2006 and would be forced to resign from ABIN in 2008 following the events of *Satiagraha* (L. Souza 2008).

33. By the time of the *Lava Jato* investigation, police and judges were extremely cautious about using handcuffs. Judge Moro rebuked the Federal Police when they handcuffed former Rio governor Sérgio Cabral as he was being transferred to prison, and he issued a specific order to police prohibiting handcuffs when former president Lula was conveyed to prison.

34. *Doleiros:* Kurt Paul Pickel, Maristela Brunet, José Diney Matos, and Jadair Fernandes de Almeida. Executives: Pietro Francesco Giavina Bianchi, Dárcio Brunato, and Fernando Dias Gomes.

35. The PT, PTB, and PV were alleged to have received legal contributions, and the PSDB, DEM, PPS, PP, PSB, PDT, and MDB were alleged to have received illegal payments.

36. The PFL changed its name to Democratas in 2007.

37. In 2019, the PPS changed its name to Cidadania.

38. Because the Senate is elected on a one-third then two-thirds rotation, the database of officeholders also includes senators elected in 1998, but serving the second half of their eight-year terms as of 2002. Although they are not, strictly speaking, federal officeholders, governors frequently cycle in and out of federal office and the presidential cabinet, and play an important role in policymaking, so they are included here. *Suplentes* are not included. There is considerable movement in and out of the cabinet, which can expand and contract at the president's whim, but all ministers who served more than a provisional role are included.

39. This database was created by combing through dozens of media reports on indictments and allegations, as well as the high court website. This has a precedent in the study of corruption in the United States: databases on criminal convictions for corruption based on annual reports by the US Department of Justice, Public Integrity Section, have been widely used in research in the United States as proxies for corruption, particularly at the subnational level (Alt and Lassen 2014; Gradel and Simpson 2015). Of course, any such proxy may be imperfect and can be criticized for its aggregate and often imprecise nature (Cordis and Milyo 2016). But in the absence of more compelling data, this proxy serves as an indirect measure of the extent of the problem.

40. Although they are not formally a part of the federal court system, we include here the STJ and the STF since they serve as appeals courts above the federal trial and appeals courts.