

Brazil Must Fight Corruption, But Preserve the Rule of Law

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Across Latin America, the past year has provided reasons for hope that the struggle against grand corruption and impunity is finally making progress. Prosecutors have gone after corrupt elites in Guatemala and Honduras, while political leaders in Mexico and Chile have also been under pressure for their links to corruption scandals. And in Brazil, the investigations into the corruption scandal at the state-owned oil giant Petrobras have led to charges against around 80 people, including high-ranking political figures like the [speaker](#) of the Lower Chamber and former President Collor de Mello, and a former treasurer of the ruling Worker's Party.

The investigation into the Petrobras scandal is being led by Brazil's Federal Police and by Public Ministry Prosecutor [Deltan Dallagnol](#), under the watchful eye of Judge Sergio Moro. And Judge Moro's tenacious attitude to pursuing graft stands in sharp contrast to a judicial system that has traditionally been slow and ineffective, especially in corruption cases: out of ten salient scandals between 1990 and 2010, 841 people were implicated, but [only 55 were convicted](#) . Yet Judge Moro's approach may actually be emblematic of a broader shift in the Brazilian judiciary, as corruption cases that are tried in courts have [been on the increase](#) over the past few years.

On the face of it, these convictions should be welcomed as a sign that justice is meted out against the corrupt and that the judiciary is playing its part in tackling grand corruption. Yet some critics have raised [legitimate concerns](#) about the arguably overzealous approach the authorities (not only the legislature and the executive, but also the judiciary) have taken in tackling corruption, in light of rule of law and human rights commitments.

For example, Judge Moro—relying substantially on plea bargains—has issued a string of warrants and sent several politicians and businesspeople to [jail](#) . However, there are concerns that this has been done at the expense of due process (see [here](#) and [here](#)). (Here it is worth pointing out that Brazilian laws bestow great power on federal judges like Mr Moro., who can successively oversee an investigation, approve key warrants, try the case, and impose a sentence without a jury.) There are also concerns about the proclivity of judges and the prosecution to employ pre-trial detention. (This concern is not unique to corruption cases, or to Brazil: The use of pre-trial detention in Latin America is [two to five times greater](#) than in the rest of the world.) If misused and/or abused, pre-trial detention could jeopardise the presumption of innocence and the liberty of movement, both of which are enshrined in most Latin American constitutions. Furthermore, according to the International Covenant on Civil and Political Rights (which has supra-legal status in Brazilian law), pre-trial detention should be a measure of last resort. [Research](#) has shown that judges may feel inclined to abuse pre-trial detention because of political pressures and media attention, which may explain why the prison population in Brazil and Latin America is sky-high. The more general question these observations raise is the extent to which Brazil (or any other country) should be willing to sacrifice the fundamental freedoms of its citizens and procedural protections for the accused in order to make progress in the fight against corruption.

On the up side, however, the Brazilian judiciary is one of a handful of Latin American court systems that is considered [truly independent](#)

, and the Brazilian judiciary has shown that it can police itself. Indeed, the judiciary has been [getting better on that score](#) . For example, while Brazil's high court (the Supreme Federal Tribunal) approved investigations into top politicians, it has also [overturned lower court decisions](#) and freed suspects held on pre-trial detention to be kept under house arrest. In another case, the Supreme Court [ruled](#) that Mr. Moro's jurisdiction was unsuitable to prosecute a Senator (also [here](#)). This is not to everyone's liking. Mr. Dallagnol himself has [criticized some of the court's rulings](#) .

I am not one for criticizing a vigorous anticorruption campaign; on the contrary. Galvanized by public support, Judge Moro and others have become the new flagbearers carrying the hope of many Brazilians. But some reflection is necessary on the way criminal justice is administered in Brazil to ensure that the commitment to end corruption is not carried out at the expense of the rule of law. The principles of fairness, equality, and justice are just as important as anticorruption to the long-term sustainability of Brazilian and Latin American democracies. Achieving the right balance between fighting corruption and respecting the rule of law can be difficult, particularly when there is widespread and understandable popular yearning for justice and an end to impunity. Especially in challenging conditions and times of crisis, the public demands drastic action and quick wins. Yet some collective reflection is needed on how justice is administered, and the type of factors (including media or political pressures) that can undermine the integrity and independence of judges and due process (see [here](#) and [here](#)), so that the laudable fight against grand corruption does not undermine core commitments to the rule of law.

[Some of the topics addressed in this blog post will be discussed in an upcoming conference on "Rule of Law Challenges in Latin America - Corruption and Judicial Independence", to be held in São Paulo, Brazil, on 18/19 April.]

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