CHAPTER 10

Before the Law

(Anti-)Corruption and the Politics of Anti-politics in Contemporary Brazil

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10.1. Corruption (in Brazil): Some Short Thoughts on Approaching a Moving Target

What is there (still) to say about corruption in Brazil? As the watershed year of 2020 turned to its last quarter, COVID-19 (mismanagement) had killed more than 150,000 people and threatened an economic fallout on top of the fallout that has been ravaging the country since (at least) 2016 (Ortega and Orsini, 2020; World Health Organization [WHO] 2020); a hard right populist government is in power and has been trying its best to unravel the fragile democracy that had cautiously been (re-)emerging during the last 30 years; and the judiciary has arisen as a powerful political force with its own agenda largely immune from democratic censure and institutional reform (Bianchi et al. 2020). The country is polarized as never before and one of the principal markers of this division is corruption: for one side of the divide, corruption has become a general cipher for everything that its adherents see as being wrong with the country, be it the way politics has traditionally been done, be it the way the democratic process has been working or be it

democratic politics itself. For on the other side, it is anti-corruption as articulated both in targeted high-profile investigations, especially against (former) members of reformist governments, now epitomized by the *Lava Jato* (Car Wash) investigation complex, and by a more general media-driven discourse that is seen to associate corruption with reformist (left) political projects and democratic politics in general (Nobre 2020).[1] This polarization goes back to the country-wide protests in 2013, followed by the highly contested and closely fought presidential election of 2014 and, later that same year, the start of the *Lava Jato* operation (Nunes and Melo 2019). While a deeper understanding of the Lava Jato complex will likely only emerge in the future, the basic contours of events are now quite well documented. Fernando Fontainha and Evelyn Cavalcanti in this collection focus on the role of law and its operators in the constitution and execution of the (anti-)corruption discourse (Fontainha and Cavalcanti 2020). AQ 51
Taking significant corruption investigations from the earlier *Mensalão* to the ongoing *Lava Jato* as their baseline, they look at how the justice system has (re-)configured both the political semantic and the legal quality of corruption, not least by incrementally (re-)defining context from administrative (institutional) to a criminal (individual) one. They add their voice to a host of other analyses that have sought to grapple with both technical-legal issues and, yet tentatively, with the

[1] The *Lava Jato* (Car Wash) operation, named after a car wash facility in Brasília, where the corruption scheme was originally uncovered, is an ongoing anti-corruption investigation led by the Brazilian Federal Prosecutor's Office and the Federal Police since 2014. In its narrow sense, it refers to a series of investigations against, initially, black-market money dealing which then uncovered a large-scale contractor cartel operating a fraud and bribery scheme at the state-owned oil corporation, Petrobras, involving political appointees in the company's board and management. In its wider repercussions, it uncovered a dense web of side payments involving nearly all political parties and a number of leading political actors, though it always cast its net wider than what it could actually substantiate, so that some public figures, such as and most prominently former president, Luiz Inácio Lula da Silva, ended up being associated with the investigation despite a less-than-convincing case against him. In its most abstract form, *Lava Jato* symbolizes the aggressive anti-corruption law faring with political overtones that has marked Brazilian politics since 2014. For a more detailed overview of the facts and legal issues surrounding *Lava Jato*, see, inter alia, Kerché and Ferres Júnior (2018) and Lagunes and Sejnar (2020).

wider political, social and economic repercussions (see, in particular, Chemim 2019; Kerché and Ferres Júnior 2018; Lagunes and Sejnar 2020; Veçoso 2019).

Hence, for more than half a decade, corruption has dominated not just Brazil's political discourse but also its actual politics, its economy and its society in general.[2] Except that it has not. For in spite of the omnipresence of what we have termed in this volume, 'discourses of corruption', there has not really been any wider conversation about how corruption has come about historically and structurally, what effects it actually has on the economy, on public administration and on the political process, how it relates to the broader political economy or how its quality and quantity compare with other places. In fact, if one leaves out (true or false) headlines about money-grabbing politicians and the just over 150 individuals actually convicted during six years of *Lava Jato*, very little seems to have changed not only in the perception and understanding of corruption in the general population but also, arguably, in the deeply entrenched practices targeted by anti-corruption (Engelmann 2020). Yet the country has changed profoundly during this period and now finds itself on a sliding scale, with an uncertain future (Bianchi et al. 2020). Fear and loathing may have been instilled in part of the political class as a result of the judiciary's gung-ho approach to criminal process and coercive detention. Yet this has so far not led to any credible political reform but has, instead, deeply destabilized the political system, with the paradoxical effect of simultaneously stifling political participation and demoralizing public administration while paving the way for an orchestrated power grab by far-right populists who had heretofore occupied the smallest of political fringes.

The history of how this (ongoing) process has come about in all its labyrinthine details will have to be written with the benefit of greater temporal distance. Yet what is clear even now is that the

[2] In the following, 'corruption' shall be used for the practices that are commonly described by that term, whereas 'anti-corruption' shall be a shorthand for both specific policies and legal instruments geared to curtailing corruption and prosecuting the corrupt as well for a general (ideological) disposition vis-à-vis corruption and its (presumed) causes and consequences.

role of corruption in it has been at once decisive and negligible. As a discourse that has successfully been turned into a set of political fighting words, the purpose of which was to utterly delegitimize those addressed by them, it has become one of the primary drivers of the profound transformations that have occurred since 2013. Yet, as a set of practices that has underwritten at least aspects of Brazilian politics or, indeed, of the Brazilian political economy in general, it has neither been fundamentally curtailed nor have its deeply embedded structures been systematically laid open. The reasons for this are at once complex and simple. They are complex because they involve a broad range of interconnected causalities, ranging from background conditions such as the postcolonial, patrimonial and corporatist legacies that have shaped the Brazilian political economy ever since the colonial period via the particular political and economic context of corporatist developmentalism under the Lula/Dilma governments and which culminated in the fallout of 2013–2014 to the inherent limitations of a predominantly judicial approach to corruption and the casuistic optic this necessarily involves (Souza 2017). This complex story can probably only be told with any degree of objectivity once the political dust has settled, which is unlikely to occur in the short term. It is, in any case, not a story in which most of the involved protagonists or of the interested audience seem to be particularly interested, which is the simple reason for why the omnipresence of anti-corruption discourse during the past half-decade or so has not led either to a new and more grounded understanding of corruption or to its structural curtailment.

This is, of course, a contestable assertion to make, as those more sympathetic to the logic of *Lava Jato* in a bona fide way and there have, alas, been all too many who have espoused it purely for the political leverage it provided them with (Proner et al. 2018; Sa e Silva 2020) would argue that the point of large-scale anti-corruption investigations is not, ultimately, the truth in its full splendour but rather a more modest 'naming and shaming' game which may only address the frontline symptoms of a wider ill but which, in doing so, may still lead to appreciable improvements (Ferraz and Finan 2018; Power and Taylor 2011; Prado and Carson 2016). This is, ultimately, one of the foundational logics of the international protection of human rights, and its incorporation into anti-corruption discourse is, so the

argument goes, just as appropriate. This bona fide anti-corruption perspective is, however, arguably one of the reasons why *Lava Jato* and the political process surrounding it has never actually had to grapple with the root causes and real-life effects of corruption. In the Brazilian case, this perspective is largely associated with the anti-corruption agenda articulated in the global good governance programme that has been mainstreamed into most multilateral (aid) processes and that is epitomized by civil society organizations such as Transparency International and their corruption indicator schemes (Gutterman 2019; Johnston 2017). It is accompanied by academic literature that frames (anti-)corruption as a technical (legal) issue and that tends to be premised on a host of (sometimes unacknowledged, more often unproblematized) assumptions about public administration and the rule of law, about the economic impact of corruption and about the rationality of actors and systems (Carson and Prado 2014). In conjunction, these expert voices constitute global anti-corruption discourse, which broadly follows the script of international human rights and divides the world into perpetrators and victims of corruption. The former are either states, notably those with low corruption scores as per any of the relevant indicators, or individuals who, however, in their majority tend to be (legally) state agents; the latter are usually a diffuse 'people' or 'ordinary folks' who are framed as passive victims of corrupt individuals working, by and large, for corrupt state bureaucracies.

This Manichaean narrative fits like a tailor-made glove onto the hand of a national judiciary that, at least in part, had for long been styling itself as a redemptive force defending 'society' (generally more so than 'the people') against a historically corrupt political machine (Lynch 2017). And, if less genuinely, it also provided a near perfect cover for those political forces that saw anti-corruption militancy as a way to not only dislodge a sitting (centre–left) government but also the reformist (aka social developmentalist) project it was associated with. The real story is, of course, more complex and more ambivalent as, inter alia, the *Lava Jatist* section of the judiciary, for all its immersion in the global anti-corruption discourse, always (also) operated with little disguised political sympathies (and antipathies) and always displayed the residual structural conservatism characteristic of its 'corporate' identity (Fortes 2019). It also never aligned frictionlessly

with the political forces determined to oust the (then) government and which ranged from the traditionally dominant centre–right (the so-called *Centrão*) to an emerging far-right populist movement with a strong base in fundamentalist Christian constituencies (Anderson 2019). Indeed, especially the *Centrão*, parts of which had, in fact, been in coalition with the Lula/Dilma governments and had, generally, shared in some form of power on both the local and the federal levels ever since the re-democratization in the mid-1980s, was actually even more exposed to corruption allegations than their centre–left counterparts (Kerché and Ferres Júnior 2018). And in some measure, *Lava Jato* did target some of its leading figures, though with a marked lack of zealousness and unevenly distributed prosecutions. It still tainted parts of the *Centrão* sufficiently to wreck its electoral outcome in the 2018 elections and it created a generalized climate of anxiety among establishment politicians. Yet this came at the price of a rather idiosyncratic interpretation of the rule of law by the *Lava Jatist* judiciary, which progressively skirted procedural safeguards and evidentiary rules in order to apply with maximum efficiency what effectively amounted to coercive detention for high-ranking corruption suspects in order to elicit either confessions or plea bargains in exchange for incriminatory evidence of other suspects. It also tended to hand down exceedingly harsh prison sentences clearly aimed at eliminating particular political actors once and for all, not least Lula himself, who, despite—or, indeed, because of—his continuing popularity was made into a generalized scapegoat for *Lava Jato* and corruption as such (Proner et al. 2018). This has overall resulted in less-than-solid convictions with a fair number having been quashed, suspended or sent for retrial by the Supreme Court (STF). Most importantly, however, it has created a unique window of opportunity for the rise of a populist right that is still reshaping Brazil's political landscape.

However, neither the deeply ambivalent reality of *Lava Jato* nor its far-reaching political consequences have altered the strange complementarity of global anti-corruption discourse and local anti-corruption law faring. Its basic premise that a whole political class, and with it a whole set of political practices, is corrupt and that this corruption is the (only) defining feature of its politics has stuck on the international as much as on the national level. So have the evident blind spots of

this particular version of anti-corruption discourse, notably relating to the role of the judiciary itself as well as the stark asymmetry of focus between public (state) and private (corporate) actors. While the latter, too, have been investigated and (occasionally) convicted, the role of the private sector as a constitutive element of public sector corruption has been systematically played down to the point that anti-corruption discourse has acquired a plainly libertarian spin that pits an inherently corrupt state against an inherently efficient and clean market (Green 2016). This, too, fits the global turn to the rule of law, the trend for placing any and all public administration under general suspicion and the reframing of judiciaries as guardians of the market—and, therefore, state—functionality vis-à-vis the unruly political branches of government (Hoffmann 2016).

The ongoing documentation and analysis of these interconnected processes represent the jigsaw pieces, the gradual combination of which will eventually reveal the bigger picture of *Lava Jato*'s unfolding, operation and legacies. Yet for that bigger picture to even approach some sort of truthfulness (or merely a convincingly high degree of plausibility), the background assumptions that orient the way the pieces are put together must (first) be thematized. For it is these background assumptions—about, inter alia, corruption, the rule of law, public administration, 'normal' politics and 'the economy'—that provide the ideal types which, in turn, inform the mental images according to which the bigger picture is constructed. The (relative) accuracy of these mental images vis-à-vis the social reality they purport to represent is, therefore, crucial to determining whether the jigsaw pieces are arranged according to their actual shape and connection points, or whether they are forcibly joined together so as to form an artificial and implausible picture which is then superimposed upon that social reality.

10.2. Zooming Out and Looking Beyond: (Anti-)Corruption as/in *Weberian* Modernity

The following brief and exploratory argument is premised on the contention that such distorted world-building is more often than not the case and that this is no accident. For the background assumptions that inform how corruption is represented in and by anti-corruption

discourse tend to be neither neutral nor context sensitive but, instead, evoke a very particular image of the modern state, modern society and, indeed, modernity itself. That image, which will here be called *Weberian*, dominates global anti-corruption discourse and represents a pure ideal type that is largely divested of connections with the concrete reality of states and their societies, whether in the Global North (aka 'the West'), upon which it is meant to be premised, or the Global South, which tends to be stylized as its (deficient) other.[3] This contention gives rise to a number of hypotheses which will be briefly explored in the following: first, there is a fundamental disconnect between how corruption is *represented* in anti-corruption discourse and how it is *understood* in the particular contexts in which it takes place. For everyone involved in or subject to (so-called) corrupt practices will have some understanding, more or less rationalized, of the underlying 'schemes' and of how to operate, comply with or, indeed, subvert them (Haller 2005). Yet such 'practical' understandings are, by and large, not the way in which corruption is represented in anti-corruption discourse, which offers a comprehensive (*Weberian*) imagery of how things should be but are, apparently, not. That *Weberian* imagery is, however, not presented in global anti-corruption discourse as a self-conscious ideal type—in the actual sense in which Weber used the concept (Haug et al. 2018; Weber 1949)—but as an approximation of real states and societies in the Global North. Indeed, it is no coincidence that the major good governance and (anti-)corruption indices are structured according to a North–South ranking which, in aggregate and despite token exceptions, differentiates first, 'the North' from 'the South' and, second, the local 'norths' from their respective local 'souths'.[4] The reason for this is, arguably, not that the frontline

[3] On the use of the concept of *Weberianism* as well as on the cardinal nomenclature (North/West and South), see more extensively Hoffmann (2020). In the present argument, the term *West* will be used to connote the Global North, whereas *South* will be used for the Global South; both West and South refer, however, to particular historical narratives (about the West and the South as well as about their relation) and are not here treated as fixed geographical social, cultural or economic positionalities.

[4] See, for instance, Transparency International's widely used Corruption Perception Index. Available at https://www.transparency.org/en/cpi (accessed on 27 July 2021).

global anti-corruption actors, such as Transparency International, would a priori act in bad faith or with evident bias, but that they share and replicate the *Weberian* background assumptions about how the modern world (ought to) works and that this shapes how they frame corruption narratives.

Post/decolonial critiques have, of course, long argued that global anti-corruption discourse, as, indeed, the good governance agenda in general, represents a form of epistemic Eurocentrism which, insofar as it is globally promoted and mainstreamed into multilateral (aid) processes, amounts to a neocolonial project that seeks to reaffirm the dominance of the North over the South (De Maria 2008; Kennedy 1999). Yet while there may be (some) truth in this narrative, it often leaves out the much more complex and ambivalent role global anti-corruption discourse plays within those places at which it is aimed (and which are often in the Global South). In the case of *Lava Jato*, for instance, even just a cursory and preliminary glance at the role global anti-corruption discourse has played on the domestic political stage reveals several layers of signification. Most superficially, it has been used as a varnish to simultaneously legitimize and obscure judicially driven lawfare as well as (party-)political manoeuvring against a (seemingly) electorally entrenched (centre)left governing coalition and its lead actors, with both the lawfare and the manoeuvring falling, by domestic standards, outside of 'normal' law and 'normal' politics (Kerché and Ferres Junior 2018). This legitimation function was, however, itself premised on a *Weberian* background narrative, represented by global anti-corruption discourse, which contrasted a (allegedly) thoroughly corrupted political system with the idealized imagery of good governance and the rule of law (allegedly) characteristic of (Global Northern) modernity. Some aspects of that narrative were explicitly mobilized by domestic anti-corruption actors, especially within the judiciary, such as when they showcased (higher) education and (anti-corruption) expertise acquired in the Global North or when they frequently referenced global anti-corruption indicators (Veçoso 2019).

Yet other aspects of that background story operated on a more diffuse level where it would be woven into rather disparate narratives about corruption in Brazil. For some, these were about the flawed protagonists of the (then) governing coalition who allegedly betrayed

progressive reformism modelled on Third-World developmentalism and European post-war welfarism. For others, it was the progressive agenda itself that represented an aberration of the (North) American variety of capitalism and liberal democracy. Corruption or, more specifically, the corruption of those political actors associated with the (then) government provided a common denominator for either perspective, notably by associating it to some kind of divergence with some (Northern aka *Weberian*) ideal type. 'Normal' law and 'normal' politics in Brazil could, thus, be framed as a permanent exception vis-à-vis the *Weberian* ideal, a move that inverted—and thereby obscured—the underlying reality that it was *Lava Jato* that was pushing the rule of law beyond the limit and into the exception. Insofar as that exceptionality—for instance, in relation to criminal procedure—clearly contradicted at least aspects of global anti-corruption discourse and its emphasis on due process and procedural safeguards, it needed to be obscured, for which, however, global anti-corruption discourse itself provided a readymade template (Neuenschwander and Giraldes 2018).

Anti-corruption discourse was, hence, mobilized for (at least) three distinct resignification exercises, notably of the (then) government as corrupt, of the reformist project of that government as, therefore, inherently implying corruption, and of that government and the project it stood for as not properly 'modern' (aka Global Northern) and, thus, as, again, essentially corrupt. It was then possible for both the *Lava Jatist* judiciary and for the (then) political opposition to, on that basis, claim for themselves the opposite position, notably of good faith actors working to at last lead the country into 'modernity' by ridding it of that quintessential anti-modern legacy of corruption. However, while it is clear that anti-corruption discourse has played a complex ideological function, it is equally clear that this was not the result of self-conscious plotting by global anti-corruption agents. To be sure, the latter did, to some degree, play along with the domestic anti-corruption game, be it by merely affording it credibility or by proactively inciting and assisting in the effort. In fact, at least some of these actors may well have had their own ulterior motives consonant with the post/decolonial narrative about imperialist ambitions and continuing (neo)colonial exploitation on part of the Global North (Fernandes 2018; Sanchez-Badin and Sanchez-Badin 2019). Yet that

alone cannot explain the way *Lava Jato* has unfolded or the diverse consequences it has produced.

Thus, the big(ger) picture requires, as already hinted, not just a *long-durée* perspective but also a fundamental shift away from the (*Weberian*) modern (aka 'clean')/non-modern (aka 'corrupt') dichotomy that remains implicit in anti-corruption discourse. In order to frame that shift, the concept of *Weberian* modernity and the role it plays in anti-corruption discourse have to be briefly looked at. The concept of *Weberianism* as a representation of Global Northern social, legal and administrative modernity is, of course, an idiosyncratic as well as a problematic choice, as Weber evidently represents but one aspect of Northern modernity's narrative about itself, and one that, in addition, has been much contested in terms of its historical accuracy and explanatory value (Eliaeson 2002; Joas and Knöbl 2009; Runciman 2002). Weber himself was, of course, highly circumspect of undue generalization and extrapolation and was also distinctly ambivalent about Northern modernity's connotation in the wider, global historical scheme of things (Bennett 2006; Krüger 1973). Indeed, the 'real' Weber is, arguably, much less an example of epistemic Eurocentrism than both his reputation in certain quarters and his stylization into the denominator of *Weberianism* would have it (Hall 2001). However, many of Weber's central categories, like the state, rational administration, the rule of law or instrumental rationality, have become canonical and form the dominant cognitive map of the modern world—apart and beyond Weber's own aspirations (Berman 1987; Schluchter 1981; Szelényi 2015).

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What is relevant here is that this *Weberian* image of the world in which corruption takes place lies at the heart of the West/non-West (aka North–South) dichotomy that forms the mental map of a world in which the compass' needle remains oriented to the North. It is from his particular understanding of the social, political, economic and legal history of the West/North that the (ideal-typical) conceptions of the building blocks of the modern world are derived. Hence, the *Weberian* semantic of such key terms as capitalism, statehood, political power, constitutional government, professional administration or, indeed (modern) law still informs what counts as good and not-so-good

governance (Thomas 2008). The shorthand contention here is, of course, that Northern modernity has tended to conceive these forces and effects entirely on the basis of its own self-observation which essentially projects a *Weberian* reading of its particular historical trajectory and social make-up as the universal, normal and only accurate way to describe the world (Chimni 2006; Comaroff and Comaroff 2012). *Weberianism*—and (again) not Weber—is, thus, one of the elements that constructs the North as 'the measure of the world' and the South as always divergent and deficient, secondary and subordinate.

As already hinted, a long and by now well-established tradition of post/decolonial critiques has laid the construction principles behind this epistemic North/South dualism open; it has examined its constitutive role for both Western identity and for its hegemony over the way the world is mapped out; and it has indicted the injustice of the subjection of the South and the epistemicide this has frequently implied (Grosfoguel 2007; Wallerstein 1997). However, the post/decolonial engagement has often ended up replicating the North/South dualism by focusing either exclusively on the difference of the South or on the role the suppression of that difference has played in and for the North. In both cases, the focus is on one side only so that the respective other fades into the background and becomes largely inconsequential to its opposite on the compass card. In relation to corruption (research) this has, arguably, meant that critiques of (*Weberian*) anti-corruption discourse in this vein have often ended up rejecting any epistemic basis for engaging with (actual) corruption, so that, at least some of the time, local counter-narratives then simply substitute global corruption discourse. Such critiques are ultimately more concerned with affirming the incommensurability of North and South than with shifting the framework of reference for how such phenomena as corruption can be understood globally. Hence, the question of what both North and South look like once the *Weberian* veil is lifted is not even posed. Nor is the possibility seriously explored that the actual South could represent a more accurate and plausible account of the modern world, that is, of South and North alike, than the *Weberian* categories. As it is, the South all too often remains an abstract idea, a mere epistemic provocation, or a bloodless other—and as such seems to be stuck, either way, in its Eurocentric cliché.

To look beyond this cliché, it is necessary to try to reach the concrete South and to make it speak not just to but about the North. This requires an inversion of the epistemic horizon so that the actual South is opened up in order to provide, as, for instance, John and Jean Comaroff have aptly put it, a 'privileged insight into the workings of the world at large […so] that it is from here that our empirical grasp of its lineaments, and our theory-work in accounting for them, ought to be coming' (Comaroff and Comaroff 2012). It is an agenda articulated in various strands of 'Southern theory' as developed, for instance, by Raewyn Connel (*Southern* theory), Boaventura de Sousa Santos (epistemologies of the South), Gurminder K. Bhambra (connected sociologies), Sanjay Subrahmanyam (connected histories) or, indeed, William Twining (Southern voices; Bhambra 2014; Connell 2007; Subrahmanyam 1997; Sousa Santos 2014; Twining 2009). All have in common that they see the concrete South as much more than merely a theatre in which the effects of colonial and postcolonial violence can be observed (by and from the North). In fact, the contention of this inverted epistemology is that modernity only plays out in its fullest sense in the South, for it is here that North and South are conjoined in the hybrid, complex and contingent message that modernity always was—but that has been sanitized out of Northern consciousness.

To reach that real South, and, therefore, the real North, an agenda of epistemic *meridianization* is called for, which requires a de-*Weberization* of the fundamental terms and normative ideals by which modernity defines itself. For it is the stylized ideal types of the *Weberian* world that end up squeezing a much more complex and fuzzy 'reality'—of North and South alike—into a preordained and cognitively closed framework that renders an often under a complex or contradictory account of how things work 'on the ground'. Closely related to such a de-*Weberianization* is a necessary turn to an 'ethos of ethnography' which calls not only for a focus on the concrete causes, practices and effects of practices such as corruption 'on the ground' but also for an active deconstruction of the stratification of that ground into an epistemically privileged and normalized 'us' and an observed 'exotic other' (Berman 1997; Eslava and Pahuja 2012). Instead, a *meridionalizing* perspective has to start from the assumption of an

exotic 'us' and open itself to the concrete historical contingencies that have constituted the North as much as the South.

The epistemically privileged place from where to do this discerning and deciphering is the 'real' South, as it is here that modernity can, arguably, be observed in full play, including the complex interactions by which the *Weberian* categories are continuously manipulated, subverted, sidelined or re-signified (Comaroff and Comaroff 2006; Eslava 2015; Johns 2013). For only in this 'real' South have the *Weberian* categories never been fully naturalized and remain observable before a social and political background that far transcends them in complexity. Such a *meridional* optic, then, no longer serves to reproduce and reinforce the *Weberian* self-consciousness of the North by highlighting its divergence from the South, but it becomes a way of making visible the functional logics and deep structures hidden behind the *Weberian* imagery of modernity. What comes into view is, thus, not just a complementary version of modernity but a different one all-together, notably one in which the *Weberian* categories are but one of several layers of (self-)reflexivity (Kapoor 2004; Kradt 2002; Patel 2006). For the point is not to artificially take out the *Weberian* categories and replace them with equally artificial new or 'native' ones but to chart their complex and recursive interaction with Southern realities of which they are an irreducible element yet which resist being determined by or reduced to them.

The concept of corruption is at the heart of such a perspective shift as it embodies, like few other concepts, the (*Weberian*) North–South bias built into the (still) predominant discourse of modernity. On one level, it is inexorably linked to an imagery of sleaze, graft and personal(ist) social relations which are treated as cyphers for backwardness and non-modernity. On another level, entrenched practices of corruption are often analysed as direct effects of defective frameworks of governance which, in turn, are often linked, depending on viewpoint, to either residues of pre-capitalist (aka premodern) modes of social reproduction or, conversely, to the ugly underbelly of capitalist reproduction, with the South in both cases being seen as the main theatre in which these effects then play out (Kroeze et al. 2018). This discussion on the causes and consequences of corruption remains ongoing and builds on a growing literature that ranges from

macro-level, structural models to the ethnographic mapping of its inner workings 'on the ground'. This is not the place to review that discussion, or even to just reference its specifically Brazilian instantiation, which has produced a rich literature of its own. The (much) smaller point made here is that while that discussion already works at least in part within a *meridional* perspective in its attempt to describe and understand corruption in all its complexity and (thus) beyond the *Weberian* cliché, it has always been accompanied by an anti-corruption discourse that is fundamentally averse to that perspective shift and disconnected from the underlying realities it reveals. It is, instead, the product of the contemporary political economy and its functionality has to be understood in that context.

10.3. Zooming (Back) In: (Anti-)Corruption in the Contemporary Political Economy

Thus, functionality has to be seen in light of several paradigmatic transformations which that most *Weberian* of concepts the state has undergone over the post-war and post-Cold War era. In its present incarnation, it is often referred to as the 'regulatory state' (in the North) or as the 'new developmental state' (in the South) and it differs from its earlier, post-war self in that its main role is today deemed to be as a guarantor of the functionality of (increasingly global) markets and as an absorber of intermittent market failures (Alviar Garcia 2011; Levi-Faur 2012; Majone 1999; Scott 2004; Trubek 2008). As a consequence, these are markets and not the state that generate an ever-larger portion of the raw materials for social welfare and economic development, with the state merely providing necessary, and limited, regulatory and arbitral authority. AQ 54

This condition is exacerbated by another transformation that affects state capacity, notably the fact that many, if not all, policy issues faced by the contemporary state lie outside of its jurisdictional and fiscal remit. The reason for this is, of course, the series of internationalization and transnationalization processes commonly subsumed under the label of globalization, a process which has transformed individual states from the sovereign monads of Vattelian international law into nodes within overlapping normative networks (Bartelson 1995; Kingsbury

et al. 2005; Teubner and Fischer-Lescano 2004). States, in other words, now operate in an environment in which traditional state-based government no longer enjoys a monopoly but is complemented by international, transnational, private and hybrid regulatory regimes. As a result, stakeholders, including individuals, governments, private enterprises and organized civil society, are faced with a plurality of regulatory demands that are only partially transparent and accountable or amenable to participation and review. Hence, the contemporary state operates in a much-reduced policy space that structurally curtails its capacity to directly attend to the demands brought to it by its constituents, including in the area of social and economic policy (Hoffmann 2016).

This has, in turn, gone hand in hand with a general ascendancy of the rule of law as the main contemporary mode of good governance. Hence, as ever-more aspects of national and international political life have become legalized, judicial bodies have (been) turned into core instruments in the domestic and international policy process meant to enforce the principles underlying the idea of good governance, such as accountability, transparency, participation, human rights, and legal and administrative due process, against potentially recalcitrant domestic executives and legislatures. This trend to legalization and judicialization has significantly tightened the legal constraints placed on governments, for instance, in relation to fiscal policy. It has, thereby, produced a growing legitimacy crisis as judiciaries and legal experts often get the final say over policy while themselves being epistemically constrained by the particular legal horizon within which they operate.

Generally, the emphasis on the rule of law as the quintessential form of good governance has shifted the balance away from legislatures and executives towards judiciaries and the judicial review process (Kennedy 2013). Strong judiciaries arbitrating a messy political process on the basis of globally mainstreamed (*Weberian*) principles and fundamental rights imply, of course, a growing distrust of politics and the state as a space of political contestation. This shift also corresponded with a more differentiated view of the state as no longer merely an impediment to economic growth but as an important, indeed, necessary actor, provided legislative meddling and executive capture could be balanced

out by strong judiciaries and independent regulatory agencies. The rise of new institutional economics and the consequent 'chastening' of the neoliberal paradigm cemented this view of the state as a crucial device to enable market functionality and repair dysfunctionalities (Kennedy 2013). It entered the economic mainstream, and with it the programming of the international financial institutions, as of the mid to late 1990s and has since crystallized into a 'new developmentalism' in which the state is again seen in a proactive role as an enabler of markets and, thus, purportedly of growth (Sherman 2009; Trubek 2008).

The good governance agenda with its constitutive principles of transparency, accountability, participation, inclusiveness, responsiveness and, of course, the rule of law is meant to provide at once an ideal type for this new developmental state and a regulatory corset for its policymaking. Its terms exude a universalist appeal to the (*Weberian*) values underlying modern statehood in abstraction of geography and historical trajectory. Good governance is also seen by the multilateral financial institutions as a key instrument for rule of law promotion that is deemed neither legally formalized nor politically positioned. Critics have, of course, always pointed out that while the rise of good governance in global (development) discourse marks the shift away from macroeconomic structuralism to institutional design, it still plays to the neoliberal development paradigm by helping to shield the state from (re-)distributional politics by reshaping public administration into an instrument of technocratic (and market-friendly) governance and democracy into a strictly controlled mechanism for interest mediation (Gathii 1999).

Global anti-corruption discourse is a core element of this good governance agenda, and it functions not just as a constraint on what public administration can do but also as a template for how, typically ideal, public administration should be organized. Thus, unsurprisingly, *Weberian* model conforms, of course, with said technocratic ideal of a lean clerical state that should passively service market actors by, inter alia, providing (basic) infrastructure, legal certainty and, if needed, bailout capacity in case of market failure. As a consequence, all state intervention that transcends this minimalist model is framed, through anti-corruption discourse, as a priori suspicioun and subject to

heightened scrutiny. For that scrutiny to be most effective, it cannot be restricted to the usual forms of institutional (administrative) accountability but must, by anti-corruption's script, be capable of generating maximal scandalization by exponentially upscaling the political and personal risks of the involved public officials.

This, in turn, requires a whole gamut of measures that are aimed at deliberately irritating the ordinary functioning of public administration: to begin with, a dense and complex web of accountability requirements has to be imposed—either legally or in form of political demands—on all levels of public administration so as to create a veritable minefield through which it becomes nearly impossible to stir; then any and all contraventions, regardless of whether they are motivated by personal or political gain or are simply the result of institutional path dependencies, conflicting administrative regimes or systemic defects, must be framed as corruption with a capital 'C' and associated with an overall corruption narrative that links personal motivation with wider political 'schemes' or, indeed, economic or social policy as such; finally, such (C)orruption must then be reframed as not merely an administrative misdemeanour but as a criminal act of the utmost gravity and, thus, as triggering the full force of the criminal law; the latter's justification on the basis of deterrence and retribution gives added legitimacy to anti-corruption law faring and, with prison sentences often equivalent to those for manslaughter or murder—as in the case of *Lava Jato*—tends to produce maximal ostracism not just of the individuals involved but also of the political projects they are associated with.

It is important to reiterate that there is no simple causality between the script of global anti-corruption discourse and its implementation in the domestic sphere in the way described above. Local actors adapt the discourse, using it directly—as a script detailing the above measures within good governance frameworks and anti-corruption indicators—and indirectly—as an expression of *Weberian* modernity that can be diffusely counterposed to a 'corrupt' local reality—within a particular (local) social and political landscape. And it is no longer merely political actors who engage in the anti-corruption game but judiciaries have also, in many places, assumed so proactive a role that they have, perhaps ironically, perhaps expectedly, become political actors of their

own—a phenomenon for which *Lava Jato* is a prime example (Veçoso 2019). What is also unsurprising given the ideological backdrop to the good governance agenda is anti-corruption's predominant focus on the state and public administration. Even though there is, in global anti-corruption discourse, an attempt to also thematize the role of the private sector, the very definition of corruption and its a priori differentiation from, say, competition and anti-trust law implies that the 'problem' associated with corruption is not irregular or inefficient conduct by any economic actor, but the divergence of state agents from their prescribed *Weberian* roles (Johnston 1996).

Hence while, again in the case of *Lava Jato*, several (private) corporations were involved—and tentatively investigated—there was a stark contrast in the degree of public ostracism between public officials and corporate actors. Indeed, as a political signifier and in line with the good governance agenda, 'the private sector' as such retained its connotation as the 'clean and efficient' contrast to the 'corrupt' public sector, even though the main private sector culprits, the so-called *empreteiras*—large (private) construction and infrastructure firms—arguably had their business models fundamentally premised on public sector procurement and the 'corrupt' clientelist relations this implied (Costa et al. 2017). Nonetheless, in the political struggles that were triggered by *Lava Jato*, the rallying cry of both the *Centrão*—a primary recipient of corporate-side payments—and the populist (ultra) right was essentially to let the private sector fix a country in the thralls of public sector corruption (Saad-Filho and Boffo 2020). In some sense, the *Weberian* ideal type of rational administration has, thus, been transferred from the state to corporations, which have, counterfactually, emerged as the models for the efficient (and supposedly non-corrupt) use of resources—with anti-corruption discourse playing a fundamental role in this shift.

10.4. (Anti-)Corruption before the Law: Between Suspicion and Restoration

As was set out earlier, anti-corruption discourse has to be seen in the wider context of the shift towards good governance and the rule not so much *by* but *of* the law conceived of as an ideological and institutional

alternative to politics. This shift begins in the economies of the North with the beginning of the demise of classical post-war welfarism as of the early 1970s and it gradually recalibrates the legal relationship between society and the economy. For up to then, most of the so-called advanced industrialized economies had operated under different forms of corporatism and neo-corporatism, which was marked, inter alia, by a clos(er) integration of the state, societal organizations and economic actors with a view to generate growth and balance out different interest formations, not least through welfarist distributional schemes (Grant 1985). It was, arguably, through this corporatist framework that the (so-called) advanced economies became, in fact, (so-called) advanced not just in terms of economic growth and technological innovation but also in terms of the expansion of economic citizenship and the 'rise of the middle class'—a development foreseen but not yet fully appreciated by Weber though encapsulated in some of the conceptions that would crystallize into the *Weberian* imagery of the modern (aka Western) world.

One crucial element of these corporatist regimes was, of course, the relative subordination of the rule of law and an aversion to legal formalism in favour of 'goal-oriented planning and political action' involving both public and private actors (Kjær 2020). Corruption did not, therefore, figure highly on the political radar even though many corporatist arrangements implied the sort of public–private entanglement and 'deal-making' that under today's good governance premises would be looked at with suspicion. However, not only did today's strict anti-corruption scrutiny not exist then, but the corporatist period in Europe and North America is, by and large, still not reconstructed in terms of the role which practices that today are deemed as corrupt or at least corruption inducing likely played in it. While the neoliberal hardcore that helped promote the shift away from corporatism (and Keynesianism) to neoclassical economics and the (good) governance paradigm always did claim that the previous system had engendered corruption, the overall narrative of that shift tended to rather emphasize its alleged inefficiency as well as the demise of the post-war consensus and the rise of an economically more self-conscious Third World as evidenced in the series of economic crises that began in the early 1970s (Kennedy 2013).

Since the rise of neoliberalism and its particular (good) governance agenda, (neo)corporatist regimes have, however, been placed under generalized suspicion, including in the form of the developmentalism that has characterized reformist policy agendas in the contemporary Global South. The already mentioned 'new developmentalism' is a reflection of this, as it counterfactually combines a corporatist-developmentalist project with a regulatory environment shaped by the market-oriented good governance paradigm. This is the predicament in which, for instance, the reformist governments of Lula and Dilma found themselves in as of the early 2000s. Hence, there was, on the one hand, strong demand for not just public-sector investment but also the overall 'modernization' of the economy through proactive state intervention, all with a view to generate sustained growth and, on that basis, provide the resources for expanded welfare policies, resulting in social 'modernization'; on the other hand, Brazil, as virtually all other global Southern economies, though especially the select group of emerging markets to which Brazil belonged, was expected to adhere to good governance and the other normative ideals deemed constitutive of the neoliberal world order (Coutinho 2010). The Lula/Dilma governments sought to navigate these demands by trying, to a certain extent, to implement both agendas in parallel. Hence, existing corporatist structures were utilized, expanded and rationalized, while the rule of law was held high and an already powerful judiciary was given ever more competencies, including over the investigation and prosecution of corruption (Figueiredo 2016).

Lava Jato, was, then, the result of a confluence of external and internal impulses which came together around the concept of anti-corruption. While traditional (party) political actors as well as wider societal trends played an important role in generating the environment in which it could take off, it was primarily the (*Lava Jatist*) judiciary—meaning the Federal Prosecutor's Office as well as (some of) the first and second instance judges—in conjunction with the Federal Police that took the powers they had been granted and quite literally ran with them. They did so with speed and single-minded determination that surprised and until relatively recently overpowered the traditional political system and its actors. In the process, they bent the law to their purpose, sidelining procedural safeguards and

well-established legal principles, disdainful of critique and entrenched behind an exceptionally thick wall of institutional independence and autonomy. It acted plainly politically, though it framed its politics in the language of the law of anti-corruption, which provided a semantic bracket around everything that was done. In contrast to other places that have seen political law faring, the Brazilian case stands out in that its primary driving force was the judiciary itself; in that sense, it can be seen as having taken the logic of neoliberal good governance one step further, namely by not only empowering itself in the name of anti-corruption but also by actively disempowering the other branches of government, most notably executive and public administration. This process was, among others, enabled by a dialectic of what Duncan Kennedy has termed a hermeneutic of suspicion and restoration which allowed the involved actors to advance concrete interests and simultaneously obscure these under the cloak of 'the law' (Kennedy 2020). By attacking their (legal) opponents for allegedly abusing the law for their own ulterior purposes—by, for instance, seeking to mobilize human rights, such as due process or habeas corpus rights, against apparent ultra vires acts by the police or public prosecutors in the context of corruption investigations—they employed a hermeneutic of suspicion. Yet they simultaneously engaged in a hermeneutic of restoration whereby anti-corruption lawfare was represented as a necessary reassertion of the rule of law in the face of a political system gone entirely overboard. Yet it is no coincidence that that reassertion came at a moment when the governing side of that political system pursued a developmentalist and welfarist path, and modes of governance no longer deemed 'good' enough for the market and its local representatives.

Ultimately, then, anti-corruption and corruption are two rather different things. The former is an aspect of the contemporary political economy, a discourse in the wake of a (good governance) agenda that serves as an instrument for reasserting the hegemony of the North, not primarily in a geopolitical sense, as its local adaptations are as important as international or transnational influences, but rather in an epistemic sense. For what matters is what this figurative North stands for (in anti-corruption discourse), notably a *Weberian* image of modernity that can be used to justify and reinforce existing power

arrangements, dominant economic models and social stratifications. As such, it plays the classically ideological role of advancing particular political interests while purporting to do something else, namely uncovering corruption. Except that what is thereby uncovered has little to do with the real root causes of the practices that are associated with corruption, for the simple reason that the *Weberian* modernity that underwrites anti-corruption provides a woefully under the complex account of the actual modern world. For that world, it is contended here, has always been more Southern in its deep fabric, that is, it has been more ambivalent, entangled, multi-layered, hybrid and complex than the *Weberian* account admits. And for that reason, different questions have to be asked about corruption—questions to do with the deep foundations of society, with the structural properties and social forces that produce a reality that includes 'corruption'. And these questions have to be asked everywhere, in the North and South alike, though with a *meridional* mindset which will imply that the North sheds its *Weberian* myths and begins to also see itself as a South. Then it might (just) be possible to gain some real knowledge about corruption in the (modern) world.

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