Lava Jato in Perspective: An Interview with Albert Fishlow

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Lava Jato or Operation Car Wash refers to Latin America’s largest known corruption scheme in living memory. Related events began unfolding in Brazil in March of 2014. Construction companies were colluding with employees of Brazil’s state-owned oil company to win public works contracts. The oil company’s employees took bribes, while politicians obtained kickbacks as personal gifts or campaign donations.

The relevant scholarship had warned that corruption could result in public works being constructed at inflated costs. However, such warnings were ignored, and so the people involved in the scheme managed to steal billions in state funds. Prosecutors further revealed that bribes paid by the region’s largest construction group extended to eleven other countries besides Brazil.

In spite of the continued interest among policy practitioners and academics, there are key questions about Lava Jato that remain unanswered. For instance, how did the construction company that led the corruption scheme choose the countries in which to do business? According to the international press, the scheme played a role in the 2014 World Cup, but was corruption also at work in the planning and execution of the 2016 Rio Olympics? Also, what is motivating some of the key actors fighting corruption in Brazil, and what can be done to avoid similar corruption scandals in the future?

To answer these and related questions, the Center on Global Economic Governance (CGEG) at Columbia University’s School of International & Public Affairs has collected a series of policy briefs on Lava Jato-related themes. This project is proudly cosponsored by the Center for Development Economics and Policy (CDEP), Columbia Global Center in Rio, and the Latin America Initiative at Rice University’s Baker Institute for Public Policy with the goal of shedding light on a complex problem that has affected the lives of millions.

Lava Jato in Perspective:
An interview with Albert Fishlow

Albert Fishlow is professor emeritus at the University of California, Berkeley and the School of International and Public Affairs at Columbia University. He is also the former director of the Columbia Institute of Latin American Studies (ILAS) and the Center for the Study of Brazil at Columbia.

Fishlow is a respected economist whose research explores Brazilian and Latin American development. He was Paul A. Volcker Senior Fellow for International Economics at the Council of Foreign Relations until June 30, 1999. Also, in 1999, he was awarded the National Order of the Southern Cross by the government of Brazil. Media outlets—from The New York Times to the Financial Times—have actively sought his expert opinion on Brazilian politics.

Fishlow’s perspective on Brazil can also be gathered from reading his numerous academic publications. Among them, Starting Over: Brazil Since 1985 (Brookings, 2011) is a book that recounts the political and economic history of Brazil since the 1980s. In an effort to place Lava Jato in broader context, some of that history is captured in this interview. The interview was conducted by Paul Lagunes in March of 2018.¹

¹ Some footnotes are added in an effort to assist readers who are less familiar with Brazilian politics.
**PL:** The first question is this: Broadly speaking, what are some of the forces or changes that made Lava Jato possible in Brazil?

**AF:** In the first instance, it has been the strength of the judicial system. That clearly was the case—and that also was true of the federal prosecutor. Nobody expected this process to occur in the fashion it did.

But that was the consequence, of two things. One was an economy able to engage in illegal payments to a variety of people; this resulted from high growth at the end of the Lula’s term. The preceding commodity boom was key. And that upside lasted, in the case of Brazil, longer [compared to other countries] because of petroleum. Petroleum only reached its peak in the end of 2011 and by that time the price of oil was $160/barrel. This meant enormous profitability.

The second thing that made Lava Jato possible was all the preparations for the Olympics and the World Cup. These involved large expenditures. [We] ultimately saw the construction companies making large profits and taking a percentage of these for themselves and granting part of it to others, principally within the Congress and public officials.

The political side was the sudden closeness of Dilma Rousseff’s electoral victory in 2014.\(^2\) This created within Congress an appetite for sharing while they still could. The fact that she was

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\(^2\) Dilma Rousseff is a Brazilian economist and politician who served as the country’s first female president from 2011 to 2016. Early on in her life, after the military took control, she joined a left-wing underground resistance group. In 1970 she was jailed and tortured for her activism. As to her career in public service, it began in 1986 when she worked as finance secretary for the city of Porto Alegre. Years later, in 2003, she was named minister of mines and energy by
vulnerable was relevant. The person who ultimately “did her in” was Eduardo Cunha, who was the speaker of the Câmara [or lower chamber of congress in Brazil]. He was very annoyed by the power of other politicians in the Senate—and particularly the Vice President at that time who became President subsequently upon her impeachment, Michel Temer. He was left out: that led him to actively undertake the impeachment process.

[During] the beginning of Dilma’s second term, Michel Temer was initially brought into a position of greater authority. He had long experience within Congress, had become head of the PMDB in São Paulo. At the outset, he tried working with Dilma. He was apparently given full responsibility

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3 Eduardo Cunha is a socially conservative Brazilian politician who was speaker of the lower house of Congress from February 2015 to May 2016. Before being arrested on corruption charges, when he was an active member of the Brazilian Democratic Movement Party (or, in Portuguese, Partido do Movimento Democrático Brasileiro), Cunha was known for his ruthless political tactics and ability to negotiate backroom deals. He is the person who orchestrated former president Dilma Rousseff’s impeachment. Cunha himself was also impeached when it was found that he held secret accounts in Switzerland. The once-powerful politician is spending time in prison for crimes associated with the Lava Jato investigation. For more information see: Simon Romero. "Leader’s Torture in the ’70s Stirs Ghosts in Brazil." The New York Times, August 4, 2012, sec. Americas. BBC. "Brazil Profile - Leaders". Online, 2016. (August 10): BBC. <https://bbc.in/2S1hTia>. CNN. "Dilma Rousseff Fast Facts". Online, 2017. (December 12): CNN. <https://cnn.it/2PJbyq7>.

4 After Dilma Rousseff was impeached, in May of 2016, then-vice president Michel Temer replaced her at the helm. He has long been an influential member of the Brazilian Democratic Movement Party (or, in Portuguese, Partido do Movimento Democrático Brasileiro). Temer was elected in 1987 to the first of several terms in the federal Chamber of Deputies and even served as its speaker over the course of three non-consecutive terms between 1997 and 2010. Then, in January of 2011, he joined Rousseff’s administration as vice president. In April of 2016, Rousseff offered a speech in which she accused Temer of conspiring to remove her from the presidency. As president, Temer has maintained low approval ratings, and these were only made worse in May of 2017 when an audiotape was released that implicated him in the Lava Jato scandal. However, he has avoided standing trial by securing support among Brazilian lawmakers. For more information see: Daniel Gallas. "Michel Temer: The Man Who Now Leads Brazil." BBC News May 12. 2016, sec. Latin America. <https://bbc.in/2PGkWLf>. Ernesto Londoño and Shasta Darlington. "Lula, Brazil’s Ex-President, Can Be Jailed, Court Rules." The New York Times, April 4, 2018, sec. Americas. <https://nyti.ms/2zJNH0V>. Reuters. "Facing Impeachment Vote in Brazil, Dilma Rousseff Accuses Vice President of Conspiracy." The New York Times, April 13. 2016, sec. Americas. <https://nyti.ms/2J7b76r>. Kate Samuelson. "Five Things to Know About Brazil’s New President, Michel Temer." Time, September 1. 2016, sec. World: Brazil. <https://ti.me/2c7OUpg>.
for bringing together a congressional group that would provide support for a policy of lessening federal expenditures while trying to continue to grow at high rates.

Finally, you have a demonstration of dissatisfaction at the base of her support, which shows up in June, 2013 with a brief uprising of all the unhappy people. There are marches slowing traffic, and sometimes generating violence. Dilma’s popularity, which had been high, rapidly descends. She calls for plebiscites and other actions to counter her lack of Congressional support. She relies on a few people to settle [the] matter. This leads her to rack up expenditures trying to make everyone much happier, as income growth suddenly slows. This, in turn, produces the hidden growing deficit that is the legal basis for her impeachment in 2016.

That is the picture that I see. There are other forces at work that date further back. Without the Mensalão in 2005,\(^5\) you would not have had judicial power suddenly so central. Chief Justice Barbosa at that time suddenly exerted much greater effort in bringing people charged with corruption to the fore.\(^6\) Suddenly the court mattered. [The Workers Party politician] José Dirceu—who was hopeful of being Lula’s successor—winds up being impeached by the Congress. That decision sets in motion a marked change in the way in which Brazilian courts had ruled. That precedent was decisive for the whole experience of Lava Jato.

\(^{5}\) Mensalão was a widely publicized corruption scheme in which coalition parties accepted large clandestine monthly payments (mensalão) in exchange for their support of Lula’s party, known as the Workers Party or PT. For more information see: The Economist. "What Is Brazil's 'Mensalão'?" The Economist, November 18. 2013b, sec. Explaining the world, daily. <https://econ.st/1kdwODK>.

**PL:** Already you’ve raised some major issues that merit attention. But first, as background information for those reading this interview: How many years have you been studying Brazil?

**AF:** It has been something of the order of 50 years.

**PL:** Have you ever seen anything like Lava Jato?

**AF:** One uprising, now largely forgotten, was in the period in 1967-68, when suddenly you had a rise of dissent within the Brazilian Congress to the military government. That led to an opposite result. The military decided to become much more dictatorial. Leading figures had to leave the country, Fernando Henrique Cardoso for example,⁷ and Dilma, herself were detained. Violence flourished, with corresponding military reaction. Ambassadors were kidnapped. I was there at the time, and saw this deepen. But the Supreme Court was irrelevant.

**PL:** In your 50 years of studying Brazil, how prominent has corruption been?

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⁷ Fernando Henrique Cardoso served as the President of the Federative Republic of Brazil from 1995 to 2003. For more information see: <https://bloom.bg/2yqiIc0>.
AF: There had always been the sense that Brazil was much less corrupt than other countries in the region. Brazil began its miracle years under the military, beginning in 1968 and lasting through 1972-73, where suddenly Brazil was again growing quite rapidly. With the miracle and growth of this magnitude, more than 10 percent a year, suddenly resources became more plentiful. Money was used to help build roads and bridges as well as made available resources to governors now designated by the military.

PL: So, there again, you see the problem of a boom that funds all these corruption schemes.

AF: For the first time, Brazil was able to attract large sums of money because it was expanding at this enormous rate. Commodity prices were going up, and it was a world that could not be beat. For the first time, Brazil began receiving loans from private foreign banks going to state owned activities. Profits flowed back, until suddenly, at the end of the 1970s, Brazil had to default. There was a debt crisis involving not only Latin America, but also Korea and Taiwan, and many others.

PL: Helping us further place things in perspective, earlier you mentioned that Brazil compared to other countries may have been less corrupt. A probing question, then a follow up. Which other countries have you studied closely in Latin America?
AF: Argentina, Venezuela, Chile, Peru—I had been, at that time, going throughout the region.

PL: If we list Brazil and a few other Latin American countries, how would you rank them based on your sense of their historical levels of corruption?

AF: In Brazil one always had the sense, even during the military government, that there were judicial decisions that were accepted by the military. The judiciary was honorable rather than corrupt. There was no new constitution formulated, but rather amendments occurring. As the process of military rule waned in the late 1970s and early 1980s, there were marches seeking direct election once more. The military abdicated six years before they had intended.

Even earlier, as resistance became more organized, there was willingness to allow captives from the left go free when ambassadors were returned. That was the case of Jose Dirceu.…

That is not to say there were not blatant instances of torture, which became widely known thereafter. But in Brazil, the military were not prosecuted, as part of the arrangement for them to leave civilly. In Argentina, Uruguay, and Chile murders were much more frequent and even public. Terror reigned. Children were adopted by government officials, when parents were killed. That also meant later trials of high-ranking military leaders when civilian governance resumed.
**PL:** If we focus on the question of abuse of power, your sense is that Brazil was not in the league of, say, Argentina, Uruguay, and Chile. On a related note, was the impression that Brazilian presidents usually lived modestly?

**AF:** Yes, there wasn’t a sense of personal corruption, or sending funds abroad, as with Pinochet himself. [That] the Brazilian military had power did not mean they altered their lives significantly. They even accepted single terms, rather than extending them, as became the case in Venezuela, Nicaragua, Cuba, and Ecuador.

**PL:** Now, one of things I’d like to circle back to is your comments about the Brazilian judiciary. The judiciary seems particularly important in making sense of Lava Jato. How have you seen the evolution of the judiciary in Brazil?

**AF:** The selection of the people into the judiciary has typically involved quality as a precondition. This is true both at lower levels as well as the higher courts. The Constitution of 1988 assured high salaries and separation from usual budgetary limitations. Note as well, the same is true of the
Ministério Público.\(^8\) Dilma extended the term of Rodrigo Janot.\(^9\) You have to remember that many of the justices on the Supreme Court who have been dealing with the problem of payoffs and the like were originally appointed by Lula and by Dilma.

You would well imagine that these justices would go ahead and vote the way they’re supposed to vote rather than the way they have. Instead, their opinions have been influenced by the evidence. In the case of other countries when you wind up with similarly sensitive cases, all you have to do is change the justice when necessary or change their numbers.…

**PL:** So, it’s a combination of independence and quality.

**AF:** Yes, members of the judiciary in Brazil have to go through law school, but typically many get a graduate degree abroad before they come back. Selection is by quality. They also have to compete in rigorous examinations to become members. Choice is by qualification, rather than by willingness to go along with what the executive wants.

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\(^8\) The *Ministerio Público Federal* (or MPF) is the Federal Public Prosecutor’s Office. As Aranha explains, “The Federal Prosecutor’s Office […] is a prosecutorial body, formally independent of the other three branches of government, with a guaranteed budget and career incentives set with almost no outside interference. It has the same prerogatives of the Judiciary, such as [permanent tenure in] office and irreducibility of earnings. The noteworthy autonomy and scope of the MPF are almost unlimited.” *See page 11 of:* Ana Luiza Aranha. "Accountability, Corruption and Local Government: Mapping the Control Steps." Belo Horizonte, Brazil: Universidade Federal de Minas Gerais, 2016.

\(^9\) Rodrigo Janot served as Brazil’s attorney general from 2013 to 2017, where he led investigations into Lava Jato and opened over one-hundred investigations at the Federal Supreme Court. Among his other roles, Janot was the general secretary of the federal Public Ministry from 2003 to 2005, and was promoted to assistant attorney general in 2003, after being promoted to regional prosecutor in 1993 and serving as a state prosecutor from 1984 to 1987. *Source: <https://www.as-coa.org/speakers/rodrigo-janot>.*
**PL:** And this applies also to the Ministério Público?

**AF:** The Ministério Público gained power with the new constitution in 1988. But even earlier in the 80s, you begin to see the Ministério Público emerge and [challenge] certain practices that had been accepted earlier.

**PL:** So, you see Lula and Dilma appoint people who, as part of a relatively functional system, are doing what they’re supposed to do. The judiciary is acting against corruption. There have been some points of controversy, of course. However, my reading of this is that, in spite of the controversies, overall, the judicial system is working as it should. Is that a fair assessment in your view?

**AF:** Yes, but it is shared by the view of the Brazilian public. They didn’t want Lava Jato to stop. They insist upon its continuity. With [Raquel] Dodge in charge,\(^\text{10}\) after appointment by Temer, she has been unrelenting, in combination with [the] Federal Police, to carry on aggressively. More

\(^{10}\) Raquel Dodge is Brazil’s current attorney general. She took over after Rodrigo Janot stepped down in 2017. *For more information see: <https://nyti.ms/2wGPAd3>.*
generally, when former Justice Joaquim Barbosa said he might enter the presidential race, he immediately shot up in public polling.

But the matter is complicated as well by the fact that [Jair] Bolsonaro has managed to achieve this lead in the polls. As a candidate, he is virtually assured to move on to the second round in the presidential elections. If he does, then the principal candidate he will have to face is unclear. Alckmin does not have national support. Ciro Gomes does not have the support of the PT, but the worst-case scenario for Brazil is having Ciro Gomes and Bolsonaro in the final vote. Neither are really able to deal with the problems facing the country.

In a way, it’s the period from 2018 to 2022 which is key for changing the rules about social security. It’s key for changing the rules of state and local participation with the federal government in tax revenue. It’s key in terms of a decision about Petrobas—whether it will continue to have the ability to participate in every contract, or whether that gets changed. You have a whole number of very serious issues that have to be dealt with. If they are not, there is a real problem.

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**PL:** Where there is not a problem, generally speaking, is the judiciary. Compared to other Latin American countries, your assessment is that its working?

**AF:** Yes.

**PL:** My other related concerned, if the PT or Workers Party was in power, then obviously corruption investigations would target those who were in the position to abuse that power. That said, I do recognize the loss of having one of the few solid parties in the system weakened. Can you reflect on the legacy of the PT, as you see it?

**AF:** The trouble with the PT is that the old leadership, Lula, Dilma, Palocci, Duarte, etc. thought the PT was going to be in power forever. They visualized Brazil as a quasi-dictatorship in which they were going to remake many of the rules and change the previous standards on behalf of the poor. That justified all decisions including the hidden deficit and budgetary decisions.

The principal candidate to the center-left is Marina Silva. She wants budgetary rules, but assurances of social and environmental progress. Her problem is relatively simple: if she is elected, she has no support in the Congress. It’s a case like Collor’s brief stay [in office].

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with virtually no support in the Congress and have to rely upon a coalition of other parties. Every time you need a collection of 28 different parties, who hold seats in the Câmara, it means a cabinet of 40 different people and very little generally gets done. Under Temer, you’ve got a small group from the PMDB that is personally close to him and makes the political decisions. You’ve got an independent economic group in the Ministry of Finance with Meirelles and the head of the Central Bank Ilan Goldfajn. These two alternative bases don’t really understand each other.

PL: If you could name one or two of the positive legacies of the PT, which would you pick? The left is not absent. In spite of Lava Jato, there is still a left in Brazilian politics. What are the one or two positive legacies?

AF: They made gains by dealing with social policies as a national priority. That led to reorganization and continued attention with expansion of the *Bolsa Família*. The way to deal with poverty is not through large subsidies. Bolsa Família works because it involves modest outlays of the order of 2.3% of GDP. More people have managed to be covered because of claims of injury and other difficulties which make the bill surge to 5%. That is done to assure continuing political support in the north and northeast. But even so, the subsidy is open and subject to political debate.

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13 *Bolsa Família* is Brazil’s famous conditional cash transfer program, which finds its roots in a social policy of the mid-1990s. *Bolsa Família* provides stipends to families that fall under a certain income threshold. Families that benefit from the program must guarantee that their children attend school and receive regular medical exams. *For more information see:* Fried, Brian J. “Distributive Politics and Conditional Cash Transfers: The Case of Brazil’s Bolsa Família.” *World Development*, 40.5 (2011): 1042-1053.
**PL:** If I understood correctly, earlier you were suggesting that the PT wanted to stay in power indefinitely. They had an ambition of holding monopoly over politics.

**AF:** Right. The whole question is how to regroup. There is no individual to replace Lula.

**PL:** If I can return to Dilma, this is not the deepest question, but it is relevant. I struggled with it before and during the impeachment, I debated whether she should be impeached or not. In retrospect, I don’t think it was sensible for her to be impeached. What’s your assessment?

**AF:** It’s a very good question. I confess to similar thoughts. Impeachment was supposed to resolve more difficult questions, as was the case with Collor. These problems had to do with BNDES, Petrobas, Minha Casa, Minha Vida, and social outlays more generally. In sum, requirements exceeded possibilities. Money was consciously overspent, but hidden from the public. She also may not have taken money herself, but she knew much more than she said. And I think the political system would have been unable to react positively, had she remained in power.
**PL:** If we can play out that thought experiment, if she stays in power, economically, given all the spending during her administration, where would Brazil be today?

**AF:** Brazil would be worse off. Instead of having a recovery of 1% in 2017 there would’ve been another large deficit. She responded to unemployment rather than incorporating the consequences of inflation rates that were consciously kept lower. The answer—and this is what the PT really believes—is to spend more, not less as the Temer government did. There would’ve been a decline in foreign reserves and the business cycle would have continued. Even when she tried to stabilize with Joaquim Levy in 2015, her support was half-hearted and short-lived.

On balance, I recognize that the constitutional basis on which she was impeached was not overwhelming. As noted earlier, the real reason she was impeached was Eduardo Cunha’s annoyance. What he wanted was assurance he would not fall into the Lava Jato trap. But she wouldn’t and probably couldn’t.

**PL:** Right now, given Brazil’s situation, how would you describe its prospects for the future?

**AF:** If Alckmin doesn’t win or there is not a shining new candidate there is trouble. If it comes down to a selection between Bolsonaro and Ciro, I really worry.