POLICY BRIEFS ON LAVA JATO

Sunlight is the Best Disinfectant:
Investigative Journalism in the Age of Lava Jato

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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.

ABOUT THE POLICY BRIEF CONTRIBUTORS

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Abstract

From the beginning, in the process of reporting on Lava Jato, the Brazilian press facilitated public access to information at a level unprecedented in Brazilian history. Journalists thus contributed to the great public support that has been essential to continuing official investigations into major corruption allegations. Some critics have, however, suggested that such voracious news coverage has actually harmed investigative journalism; concerns are expressed about the use of anonymous sources who leaked investigation details that should have remained secret, and critics question whether journalists can remain unbiased in their reporting. This is a valuable reminder that holding the powerful accountable also requires accountability for those who are investigating, publicizing, and passing judgment. However, it is beyond dispute that journalism has played and continues to play a key role as an important mechanism of control on corruption.
In 2005, it took the press 11 days to find out that the Attorney General of Brazil had indicted 40 government officials as part of the “Mensalão Scandal,” which radically shook the foundation of the administration of Luiz Inácio Lula da Silva. Today, that story is told with incredulity in the corridors of the Brazilian Supreme Court, an unfathomable delay in the era of Lava Jato.

News about the Lava Jato scandal has travelled much faster. When, in 2015, the Attorney General asked for the removal of Eduardo Cunha, the president of the lower chamber of Congress, the news took less than twenty minutes to hit Brazilian headlines. In 2017, the Supreme Court sought to delay releasing the names of dozens of top Brazilian politicians implicated in Odebrecht’s plea bargain, including eight ministers, 24 senators, 39 deputies, and the presidents of both houses of Congress, until after Easter. Two days before the holiday, however, a reporter found the investigation details in the Court’s online system, and O Estado de S. Paulo published them.¹ Notably, both of these incidents during the Lava Jato investigations involved not leaks, but rather information that was publicly available.

The contrast with the earlier scandal is stark, and it helps to illustrate two important characteristics of the Lava Jato scandal that affected the role of the press during the investigations. First, with Lava Jato, the state organized a large-scale investigation of public officials, not just private actors. Second, the public officials in charge of the investigation—including police, prosecutors in Curitiba and Brasilia, and Sérgio Moro, the judge overseeing Lava Jato—made considerable information related to the case available to the press and public with little delay. This had rarely been seen in a country that left the grip of military dictatorship only thirty years before.

In "Transparency in Government," Joseph Stiglitz notes that governments are the gatekeepers of information that affects society’s judgment about those same governments. This dynamic creates incentives for public officials to maintain secrecy and to obscure access to information. To counteract this perverse incentive structure and better control abuses, Stiglitz recommends an institutional framework that makes information public. While the publicity of lawsuits is guaranteed by the Brazilian Constitution of 1988—ratified after the military dictatorship—Brazil’s fledgling culture of transparency was put to its most demanding test during Lava Jato. By institutionalizing transparency in this framing document, Brazilian officials were able to foster an environment of openness that influenced public perception of political parties and government officials, especially during the Lava Jato investigations. In addition, the unprecedented access to information about powerful people in Brazil facilitated by the press helped to generate and maintain public support for continuing the investigations. An April 2018 Data Folha poll found that 84% of Brazilians believed that the investigation should continue.

Not surprisingly, newspapers raced one another to report on the dramatic events of the investigations, which eventually jailed top business people and political leaders across Brazil. Before Lava Jato, the biggest media outlets already had investigative teams and reporters dedicated to covering the Judiciary branch. During Lava Jato, however, smaller media outlets with more limited reach developed their own investigative teams as well. Even Brazil’s Supreme Court was forced to adapt, eventually renovating its press room in Brasília to accommodate an increasing number of reporters.

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A search of the archives of *O Estado de S. Paulo,* one of the longest-running newspapers in Brazil, illustrates the extensive coverage of the scandal. In 2014, the year the investigation started, the term “Lava Jato” appeared on the newspaper’s front page 48 times, and the term “Petrobras” (the label preferred in the early stages of the scandal) appeared 158 times. The following year, “Lava Jato” appeared 65 times on the front page. By 2016, it had appeared 200 times. For comparison, consider that the word “impeachment” appeared only 118 times that year, which was the same year that President Dilma Rousseff was impeached by the Brazilian Congress. Widening the search to include the whole newspaper, rather than just the front page, reveals that “Lava Jato” was mentioned an average of seven times a day throughout 2016 and 2017. Similarly, in the archives of *O Globo,* nearly 13,000 pages mentioned the term “Lava Jato” between 2014 and 2018, peaking in 2016 with 3,996 pages.

From the beginning of Lava Jato, the press made use of the constitutionally-mandated transparency by publishing information released by authorities to the public and tracking the outcomes of what was investigated: was this or that plea bargain moving a case forward? Who was convicted, and who in the end was proven innocent? Journalists also began to analyze and cross-check the data obtained by the official investigation and monitor the authorities involved in the proceedings. They even developed their own proprietary databases to organize and publish judicial material associated with the opening of an inquiry, warrant outcomes, and judicial decisions. Ultimately, decoding Lava Jato took large teams of reporters with advanced analytical abilities and the capacity to comb through enormous volumes of public data—from banking accounts to phone conversations—to make sense of the information shared by officials.

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5 *Acervo, O Estado de S. Paulo,* https://acervo.estadao.com.br/
Some critics of the Lava Jato coverage have asserted that reporters’ voracious search for breaking news about the case actually harmed true investigative journalism. Andreza Matais, a columnist for *O Estado de S. Paulo* who has received national and international awards for investigative journalism, recently said that Lava Jato led “journalists to depend on documents produced by public officials, to the detriment of producing their own [content].”\(^7\) However, this overlooks the fact that, through their reporting, journalists provided the public with an impressive amount of information that would have been much harder and slower to access otherwise. For example, as officials used warrants to access and share vast amounts of raw information from phone calls and private documents, journalists did the time-intensive work of combing through this information and distilling key findings for a public audience.

Perhaps a more valid concern is that the public appetite for Lava Jato coverage eventually led journalists to rely on sources who had exclusive access to plea bargain negotiations and investigations that were legally supposed to be kept secret until finalized; in other words, journalists began to rely on leaks. While this is common in investigative journalism, during Lava Jato this practice came under particular scrutiny. A great number of headlines in Brazil during Lava Jato reflected leaked information that should have been protected by judicial secrecy. This secrecy is intended both to protect the investigation itself, which can be jeopardized if the information becomes public at an inopportune moment, and to shield those being investigated from undue exposure. (At the same time, it is important to note that much of what critics have called leaks was, in fact, information made public by the judges. While it is worthwhile to discuss the implications of making such evidence public, these are not technically leaks).

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When the state, which possesses the power to punish its citizens, moves against citizens who hold high positions of political and economic power, leaks might benefit either side depending on when they are revealed. For example, publicizing a plea bargain which has potential negative implications for important politicians can be leveraged to influence negotiations by generating public pressure on a suspect or, conversely, on an official, to accept the agreement. In these moments journalists as watchdogs face a dilemma: on the one hand, providing access to private information is a way to ensure that critical components of the investigation reach the public. On the other hand, reporters may have difficulty maintaining adequate critical distance from sources who may themselves be biased.

Maintaining this independence is essential in order for the press to play their watchdog role. In a 2002 study comparing indices of press freedom with indices of corruption collected by the International Country Risk Guide (ICRG), Brunetti and Weder show how press independence represents "an important check against corruption." In the case of Lava Jato, nearly universal access to public information created a hyper-competitive environment that bolstered the existing culture of journalistic independence in Brazil. This conclusion mirrors the findings of Gentzkow, Glaeser, and Goldin, who developed a model which compares the coverage of a scandal from the early 1870s with one from the 1920s to analyze the power of the press from the perspective of market competition. Their analysis led these researchers to conclude that a more competitive media marketplace in the latter case reduced journalistic bias. During Lava Jato, a competitive environment meant that, along with fighting to sustain the public’s attention, reporters also had to compete for their trust by demonstrating journalistic integrity characterized by an unbiased, critical perspective. This dynamic

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8 Ibid.
helped to keep the media accountable and enabled journalists to play a key role as an "external control mechanism on corruption" during the struggle for an open and accountable government in Brazil.¹⁰

Lava Jato is a valuable reminder that holding the powerful accountable also means holding accountable those who are investigating, publicizing, and passing judgment. Stiglitz proposes "reporting on the reporting process itself" as a way to expose the process to public scrutiny, minimize abuses, and defend the competitive press.¹¹ In Brazil, such a proposal was implemented through the Congresso Internacional de Jornalismo Investigativo, hosted annually by Associação Brasileira de Jornalismo Investigativo (Abraji),¹² the largest conference of journalists in Latin America. Since the beginning of Lava Jato in 2014, the Congresso has hosted an annual panel dedicated to covering the investigations during which reporters involved in the case lead discussions on common challenges and particularly important stories.

In Brazil, the free press has helped to create a public space in which policies can be discussed, investigations improved, and authorities held accountable. The lessons learned from the Lava Jato coverage—in particular, the critical importance of access to information and the necessity of holding accountable both the investigated and investigator—can contribute to a more accountable and open society in Brazil. In this way, coverage of Lava Jato proves true the adage that “sunlight is the best disinfectant.”

¹² Associação Brasileira de Jornalismo Investigativo (Abraji), http://www.abraji.org.br/