Lava Jato in Perspective: An interview with Sergio Moro

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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.
Sérgio Fernando Moro obtained his Bachelor of Law degree at Maringa State University and his Doctor of Jurisprudence degree at the Federal University of Paraná. He obtained additional training through a special program at the Harvard Law School, and in 2018, received an honorary degree from the University of Notre Dame.

Moro began serving as a federal judge in 1996. Prior to his involvement in Lava Jato, he tried multiple money-laundering cases, and served as an auxiliary judge in the Mensalão case. In 2004, he published an article about Italy’s wide-reaching Clean Hands investigation into political corruption. The article offers some insights into Moro’s thinking: an independent judiciary, the loss of legitimacy by the political establishment, and public support for the investigation are some of the factors that he describes as crucial in the fight against corruption.

However, as with Lava Jato, Clean Hands is not without controversy—a fact that Moro himself recognizes. “Incidentally,” he writes, “Clean Hands has been criticized, especially ten years after the fact. Ten suspects committed suicide. Silvio Berlusconi, a media tycoon and one of

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4 Phillips, “Brazil’s New Hero.”
the suspects being investigated, serves as Prime Minister of Italy.” The long-term benefits of Clean Hands remain the subject of debate. In 2004, only a quarter of Italian voters said that corruption had fallen since the beginning of the investigation.

As to the controversy surrounding Lava Jato, some have expressed due-process concerns. There are also those who question Moro’s impartiality as a judge, pointing to the investigation’s apparent focus on the Workers Party. This last issue stands out considering Moro’s decision to join Jair Bolsonaro’s administration as minister of justice.

One defense of Moro’s decision to join the new president’s team is that he will now be in a unique position to contribute to the anti-corruption effort. Moro has long expressed the need for the other branches of the Brazilian government to do more to promote integrity in public life, and he will now be in a position to move the executive branch toward that goal. In his own words, “The prospect of implementing strong policies against corruption and organized crime, while respecting the constitution, the law and rights, brought me to reach this decision.”

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6 The quote was translated by Lagunes. The original statement reads: “Por certo, tem ela os seus críticos, especialmente após dez anos. Dez suspeitos cometeram suicídio. Silvio Berlusconi, magnata da mídia e um dos investigados, hoje ocupa o cargo de primeiro-ministro da Itália.”


However, by accepting a political appointment Moro has raised new and serious questions. Moro oversaw the conviction of former President Luiz Inacio “Lula” da Silva,\textsuperscript{14} who pollsters estimate would have defeated Bolsonaro had he been allowed to run.\textsuperscript{15} Thus, even among those who accept the merits of Lula’s criminal conviction,\textsuperscript{16} there are some who would prefer that Moro avoid becoming politically entangled.

Another concern with Moro’s decision is that he is essentially taking the abundance of good will associated with his name and handing it to a politician who a number of commentators describe as exhibiting authoritarian tendencies.\textsuperscript{17} For these and other reasons, time will tell whether Moro’s decision to join the incoming administration was a mistake.

In any case, the interview shared here took place on December 10, 2017—that is, several months before Bolsonaro had a clear path to the presidency. The recorded exchange captures some insights into Moro’s thinking about Lava Jato, starting with what he suggests made the investigation possible.

\textbf{Paul Lagunes:} So, I think probably the question I’d like to understand—because I think for me it’s not just about Brazil, for me it’s about how do we use Brazil as an example for other


countries—and what I’d like to try to understand is this: How does a society find another Sergio Moro? How does a society find in itself somebody who’s willing to break the corrupt equilibrium, the status quo? The status quo was one where people were not standing up as openly, as directly, as personally against corruption. So, what are your thoughts on this subject? What made you the exception, and somebody who was willing to break with the status quo?

Sergio Moro: Well, to be very honest, I think [that] what is happening in Brazil is a product of the development of our democracy. And it’s not a one-man job—it’s the work of the police, the prosecutors, public opinion…. Brazilian people went to the streets [in the past few years] to protest against corruption. Even in the Judiciary, it’s not only my job—it’s the work of the Appellate Court, of the Superior Courts in Brazil…. Maybe for circumstantial reasons, I became the face of this anticorruption movement, but it’s much bigger than me. There is no individual heroism or something like that. I think our institutions—Brazilian institutions—are becoming stronger. Why did this happen in Brazil? I think there are some preconditions which could explain it in part; for example, the recovery of our democracy in 1985. Since then, we have enjoyed freedom of the press, independence of the judiciary, the autonomy of our federal police and the independence of our public prosecutors…. And, in this case of the Lava Jato Operation, the investigators were able to find very strong evidence of corruption and this also helped to galvanize public support. For example, when they discovered that some top executives of Petrobras have millions of dollars in offshore accounts around the world. So, it was a process. But I think the main conditions were independence of the judiciary, freedom of the press, and, in time, the support of public opinion. Those were the main reasons why this happened here and not in other countries who may have similar levels of corruption….
PL: So, I appreciate that you’re suggesting that this is not a personal effort, that the Lava Jato Operation has been more than a personal effort, and it’s not just about one person or several people. You’re suggesting it’s the result of a larger structural change in Brazil. However, I imagine that anybody who would be in your position in another country would face some personal challenges, costs, risks—in terms of time, in terms of various sorts of pressures. So, if you were speaking to another judge—let’s say in Mexico or some other country—who might be in a similar position, what are some of the costs this judge should contemplate or should expect moving forward with a similar operation? What are some of the personal costs that judge should expect to experience?

SM: You need to keep the faith in the rule of law and in democracy. I have worked as a judge since 1996. I have had in the past a [number] of corruption cases. I worked hard on those cases […] but [on] some of [those] cases we did not obtain good results. I saw some corruption cases turn to dust […] because of complications in the procedure: appeals, cases which never reached an end. But as a judge, I kept my faith in the rule of law—that one day this could change, and despite […] these setbacks I never [ceased] to believe in this. I never [ceased] to work hard on these cases. Suddenly, things [started] to change—[perhaps as the result of] a new institutional environment. It is important to mention the Brazilian Supreme Court case in 2012, we call it here the Mensalão case. In this case, our Supreme Court delivered convictions against high officials in the former government. It convicted them because of corruption, so this sent a strong message. So, you have to be stubborn and keep your faith in the rule of law…. In a democracy, there is no obstacle which you cannot overcome.

PL: So, you’re saying there is no challenge that democracy cannot […] overcome?
SM: Exactly. It’s hard—and, of course, as I said, I think the Lava Jato Operation is a relative success because of our institutions, but there is a lot of personal effort placed by me, by the prosecutors, by the police, by the other judges, by civil society. It’s hard work. We suffered a lot of severe attacks from some people who do not [fully] understand our job, and, of course, from special interests who stand against any kind of efforts against corruption.

PL: So, if I summarize up until now, Judge Moro, I’m hearing what a judge in a similar position would need is a climate, an environment that is helpful, where you have a democracy, where you have popular support, a free press, an independent judiciary. You need a judge who is committed to the rule of law, you need a judge who is stubborn and is insistent….

SM: And you need some luck.

PL: And luck, ok. Now, I appreciate that you recognize that this has all been possible because of the efforts of many, but each one of these individuals needs to be willing to engage and fight corruption. So, I go back to a judge in a similar position that needs to consider the costs and benefits of engaging in anticorruption. What costs should he or she expect? Burdens or personal challenges? What should he or she expect?

SM: Well, when you have a criminal case against politicians, for example, one common defense used by those being charged is that the judge or the prosecutors are playing politics and sometimes there are people who believe this. This is very sad, because as I said, I did all my work based on the law and on evidence. But it happened in other cases too. For example, in the Mani Pulite [or Clean Hands] cases, the judges were called giudices rossos—red judges—because they had
stronger cases against the politicians on the right and not against agents of the Italian Communist Party. And that was not entirely true—because they also had cases against leaders of the Communist Party—but, it is true, they had more cases against the other parties who were in power. So, sometimes politicians try to manipulate the public opinion to turn the public opinion against the judge and prosecutors. This is very upsetting. You should expect this—this happened in Italy, this happened here—I think this will happen everywhere when you raise criminal charges against politicians. What is important is that you know that you’re doing the right thing based on the law and the evidence. That’s why it’s so important to have the cases open to the public scrutiny, so people can look at a case and see what you’re actually doing—that you’re not playing politics, that you’re basing your decisions on the law and on evidence. There may be some personal risks. I think in a certain way, the strong public support Lava Jato received from Brazilian people and also from the major part of our press works as a shield against personal threats. Of course, it’s not an absolute protection, but it helps against physical threats. I think these are the bigger costs, the individual costs for the judge. Of course, there is hard work, time that you could be with your family, or you could be a civil judge working easier cases—I’m not saying that they don’t have difficult cases, but not cases of this magnitude. So, everything has a price.

**PL:** You studied Mani Pulite. What interested you about Mani Pulite? Why did you choose to study it?

**SM:** I am a judge since 1996. In 2002, I came to Curitiba and I assumed the position of a federal judge of criminal courts, and I started to work only on criminal cases.

**PL:** Was that your choice?
SM: Yes, my choice—well, career choice. I had heard before about this big case in Italy against corruption—the Clean Hands Operation, the Mani Pulite Operation—and I started to look for more information about the case, what happened, what really happened. It was a natural interest for a criminal judge. Not only that, I tried to learn a lot about criminal enforcement in other countries. For example, here in Latin America we also have a great case involving the Fujimori-Montesinos dictatorship in Peru. I have some interest in cases in the United States, also.

PL: Which one in the United States do you find interesting?

SM: Well, not specifically about corruption, but for example, the investigations and the trials against the New York mafia in the 80s and 90s. They are very impressive. The cases against the leaders of the U.S. Cosa Nostra in New York. The John Gotti case, for example. Also, other cases in Italy. There is [the] very impressive work [by] Italian judges against Cosa Nostra in Sicily in the 80s, especially [by] Judges Giovanni Falcone and Paolo Borsellino. These cases have points in common with the enforcement of the law against corruption. In Sicily, for example, impunity was the rule for mafia leaders and this [changed thanks to] the great efforts of the Italian judges, prosecutors, and police officers. They changed the way things were done in Italy. They had this famous trial—the Maxiprocesso—where they made charges against more than 400 mafiosi in Italy, and the first strong cases against leaders of the mafia, of Cosa Nostra. This [demonstrates] that impunity can be broken. […]

PL: And if I had to summarize the main reason that these cases—particularly Mani Pulite—were of interest is that they showed that it could be done.
SM: Yes.

PL: So, combating organized crime in the form of corruption, it could be done. What has surprised you? So, you studied the Mani Pulite, now you’re going through the experience of Lava Jato. What has surprised you, good and bad?

SM: Mani Pulite teaches you other lessons. The judges, the prosecutors, the police worked very well. It was very intense during two or three years—1992 to 1994—and in 1994 it started to lose its power and they suffered a lot of setbacks, especially because of the efforts of the political class to approve laws that made their work harder. So, Mani Pulite certainly shows that the criminal justice system is necessary to overturn corruption.

PL: To use the system to combat corruption?

SM: Yes. It’s a necessary step, to have the judicial system work. [The] people who commit these kinds of crimes have to be punished. But [prosecution is] not a sufficient condition to win the battle [...] against corruption. You also need reforms, more general reforms, a law, to turn a country cleaner—and in Italy it seems that this has not happened. So, despite the great efforts of the criminal justice system, the political system struck back and undermined [the] expectations created by Mani Pulite that you would have less corruption in Italy.

PL: That was your expectation? Or do you think that was the expectation of the Italians?
SM: Yes, of the Italians, and of the world. Look at the case. Of course, I’m not saying that Mani Pulite was a bad thing; no, I’m saying that it was not enough. You need more commitment from the political class to make the necessary reforms.

PL: But again, what has surprised you? So, based on what you have learned about Mani Pulite—so the Mani Pulite case taught you that the political class would respond, so maybe that hasn’t surprised you…. But what has surprised you? What did you not expect, based on what you had studied, that has happened here? Maybe the length of time?

SM: It’s difficult to make this kind of evaluation, as I said things in Brazil—we don’t have a lot of support from our political class.

PL: Did that surprise you?

SM: No, but so far, I can say that they were not be able to approve anything very relevant against the investigations.

PL: So, you’re saying, though the political class has not been supportive, they have not yet passed things that challenge the anti-corruption effort. Does that surprise you?

SM: No. I always had the expectation, the hope, that they would not be able to do that. But it would be great to have more support from our political leadership. Maybe this could change in time, because I see here in Brazil that the civil society and the public opinion supports, in its
majority, the work. I think this, one day, should make a change in the way politics are done in Brazil. This will influence our politicians in time. Maybe it’s a question of time, I hope.

**PL:** Did the amount of popular support surprise you?

**SM:** Let me say that the whole case was a surprise for everybody who was involved, because the case started very small and then it started to grow and we never expected that we would reach this far. So, in certain ways of course the public support [was surprising]. I never thought in the beginning that we would find evidence of so many cases involving so many politicians or public agents in Brazil. The whole case was a surprise.

**PL:** So, it sounds like the size was surprising, and eventually also the size of the popular support was surprising.

**SM:** Yes, I think so. I think certainly it shows that Brazilian people are tired of corruption, and they know that it undermines the economy and democracy in Brazil. […] So, both are in certain ways surprising—the size of the case and the [amount of] public support that we could not [have] predict in the beginning. But I think the public support in a certain way was expected. I think it’s natural, when you [see] all this bad behavior and these wrongdoings, that people would not approve.

**PL:** So, there’s been support—I think the press coverage has sided with the public interest, so that has been a support I think for the Lava Jato efforts. I think, as you said, there’s been a good team of federal police, prosecutors, appellate courts, supreme court, and popular support.
SM: I think there are some keys to understanding the development of the case. First, some preconditions: the independence of the judiciary, the independence of the prosecutors, autonomy of the federal police…. And then some more concrete things: the creation of a task force by the police and by the public prosecutors was very important, because these cases are hard and you need resources to develop these cases. Having all the cases and the procedures open to the public was also very important. The people have the right to know about charges involving politicians or public employees, and having these cases open to the public helped to show that we were not playing politics, we were doing the right thing. Showing the evidence of the crimes to the public was very important. To have the international cooperation was very important.

PL: How did you see that? How have you experienced or observed that international cooperation?

SM: There is much more international cooperation now than ten years ago, for example, and some countries [who] in the past never cooperated or cooperated very little [are changing tactics]. Now they cooperate more. For example, in this case, we had great cooperation from Switzerland. Some of the criminals involved in the Lava Jato Operation used accounts in Switzerland, and in other countries also, to hide the product of their criminal activity, the proceeds. So, the cooperation from these countries was very important. It could be better but you could say that they helped a lot in the development of this case. We use also—we have this in Brazilian law—we use pretrial detentions. Some critics say it’s too much. I don’t think so, because of course prison should follow trial, but in exceptional circumstances our law—like the law of other countries—authorizes pretrial detentions. As we saw in this case, there was endemic corruption, or as we call it, systemic
corruption, and sometimes it was necessary to show that we were not kidding. We are being serious with this case, and sometimes you need this strong medicine against this systemic corruption.

**PL:** In terms of strong medicine, I see three forms of medicine that were used: one is the pretrial detentions, the other one is the plea bargains, and the other one might be the wiretapping.

**SM:** Yea, wiretapping not so much. The plea agreements were very important.

**PL:** So that’s my question. Of these three, could the case have reached where it is today—could it have succeeded the way it has—without these three? And which of these three has been most valuable to the success of the case?

**SM:** It’s hard to answer this question. I think the three of them were very important, but not only them. The practice of “following the money” in the investigation was very important also, the international cooperation was very important, the publicity that was given to the trials, to the evidence, was also very important. The plea agreements were important because sometimes you need information from inside to develop these cases. Sometimes only criminals can serve as witnesses of their wrongdoing, so you have to use a criminal against others. This is something very common in the United States, for example. In these corruption cases it was very important. Without it, probably the case would have stopped in the first executives of Petrobras who got caught in the investigation. With the cooperation of some of these criminals, it was possible to discover that it was not isolated crimes, but it was kind of a behavioral rule, this corruption practice in Petrobras contracts for example, and in our public administration.
**PL:** So, Judge Moro, my final question for you—and I do appreciate your time—is this: You’re doing what you’re doing because you see it as your obligation, as your duty, but I’d like to understand personally, what are some of the personal challenges and some of the personal benefits that you see and why do you feel personally that it is worth it for you to keep going?

**SM:** Well, I think the judge is only doing his work—delivering his decisions based on the law and evidence, and if you decide to become a judge it’s because you think this is important. If you have in a country a stronger commitment for the rule of law, this will benefit us all. So probably this is the main reason that you keep going. It’s hard work, it would be easier if you didn’t have systemic corruption—if you only had corruption as an isolated crime—but even in less corrupt countries these cases always involve a certain challenge because usually they involve the powerful people. But at the end of the day, what matters is what you stand for, and you stand for the rule of law.

**PL:** Maybe one last question. Which one book that has helped you, in any way? One book that comes to mind?

**SM:** A judge who is an example for everyone in the world is the Italian Judge Giovanni Falcone because of his impressive work. I particularly like reading about his life and work, and there is one book written by a US professor called Alexander Stille. The title is a little bit disturbing—“Excellent Cadavers”. The Italian mob, called the *Cosa Nostra*, killed a lot of politicians, judges, prosecutors, even unfortunately Giovanni Falcone himself. But it’s a very interesting book. I think he was responsible—he and his colleagues, like Paolo Borsellino—to break the rule of impunity for mafia bosses in Italy. Of course, [the] mafia is still there, but it does not have the same power as before. His work made a great difference. And there is something that also helps when you learn
about their work. The work in Brazil is hard, you have difficulties, but when you learn about the
story of Giovanni Falcone you see that wow, he had much more difficulties than you have now.