PODER ECONÔMICO E ÉTICA EMPRESARIAL: INTERFACES ENTRE DEFESA DA CONCORRÊNCIA E COMBATE À CORRUPÇÃO

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Leitura Obrigatória:

KHAN, M. H. Determinants of Corruption in Developing Countries: the Limits of Conventional Economic Analysis. In ROSE-ACKERMAN, S. International Handbook on the Economics of Corruption, Volume One. 2006, Edward Elgar Publishing.

ROSE-ACKERMAN, S. Political Corruption and Democracy. Connecticut Journal of International Law. Vol. 14, N. 2, Fall 1999, pp. 363-378.

PRADO, M. M.; CARSON, L. Brazilian Anti-Corruption Legislation and Its Enforcement: Potential Lessons for Institutional Design.

Leitura Complementar:

SØREIDE, T. Democracy's Shortcomings in Anti-Corruption. December 2012, Working Paper, CMI Institute.

REINALDO, D.L.; SPAGNOLO. G; "Leniency, Collusion, Corruption, and Whistleblowing", Journal of Competition Law & Economics, Volume 13, Issue 4, 1 December 2017

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In the reaction paper that follows, I will highlight some of the instances where new digital technologies, such as smart government contracts using blockchain technology, could be implemented to help reduce opportunities to engage in corruption and increase accountability by improving transparency and traceability of public funds.

To begin with, Mushtaq H. Khan (2006) asserts that developing countries suffer from corruption more than developed nations, however he claims that not all developing countries experience the same types of corruption and explains that the effects of corruption are very different depending on the context. Khan (2006) delineates the four different types of corruption that occur in developing countries. Firstly, he describes 'neoclassical' corruption as public officials seeking bribes through harmful interventions such as allocation of rents, unnecessary red tape, excessive regulation. One suggestion Khan (2006) makes to prevent this is to improve transparency in the allocation of public resources. The second type of corruption that Khan (2006) puts forward is 'statist' corruption, which seeks bribes with potentially beneficial interventions such as rents and market restrictions that may "have a positive effect that may offset the negative economic effect of bribes or other rent-seeking costs" (p. 223). Restructuring of political systems is what is needed to deal with this issue because "[u]nless reforms can restructure political organizations, anti-corruption strategies by themselves will not achieve much" (p.227). The third type of corruption noted is political corruption and clientelism that seek to achieve political stabilization and typically involve off-budget transfers through corrupt transactions. Resources are transferred through informal patron-client networks to powerful groups in society with the goal of achieving "enough political stability for the growth of the capitalist sector to continue" (p.230). Finally, the fourth type of corruption, theft and primitive accumulation, is the most common and involves the abuse of public power for private gain such as expropriation of land and property rights. In-depth consideration on how to restructure political process is required when seeking to deter all these types of corruption. Digital technologies such as blockchain can provide some solutions because it cuts out a lot of unnecessary steps in transactions ("the middleman") and improves transparency and traceability of not only public funds but also actions of public officials.

Unfortunately, Khan (2006) notes that mass mobilisations against corruption have proven to do little good in the long run:

> "Political mobilization, democratization and demands for integrity will do little to reduce these types of corruption in most developing countries. In fact, developing countries that have attempted to root out corruption through public mobilization have uniformly failed to make a lasting dent in the problem." (p.240)

Often what happens is that mass protests oust corrupt governments, however incumbent governments are frequently just as corrupt. In these cases, shot-term reductions in corruption are the result of public pressure. The question then turns to how does society keep up public pressure on governments to act ethically? One option is to make government transactions visible to the public. This can be achieved through online digital contracts, smart government contracts, using blockchain technology, which also has the added benefit of decentralising power – a solution that would enable a restructure of centralized powers of the state.

Similarly, Susan Rose-Ackerman (1999) points out the flaws in democracy's electoral systems, campaign financing and buying political influence. I have long perceived the flaws in political systems in general and shall share my reflections in the following. Whether political systems are presidential or parliamentary, the problem is the same: they are built to divide and not to bring together a population. A further problem to add to this dynamic, is when parties get voted in and shortly after the electoral 'promises' they made prove to have been lies just to secure votes. We need to think of a new system, a complete renovation of politics.

What if there was a new approach to doing politics, in particular to the electoral system. Currently, each political party represents a set of values and these values are associated with the Left or Right of politics. But what happens if we got rid of the divide, between the Left and Right, are just focused on the values they represent and current-day issues? I can honestly say that there are times when I agree with values that the Left represent and times when I agree with values that the Right represents. So, why should I have to choose between sides? In my option, instead of voting for a political party or candidate, it would be more beneficial to think of a system in which people would vote for the values that are of current debate. In such a system, we would break down politics into smaller parts instead of looking at the whole

– the ideological divide. Let me give an example. Voters could award votes to certain projects or electoral promises. Instead of going to the ballot box and selecting a political party or presidential candidate to vote for, voters would, for example, award votes in favour of carbon emission reductions, abortion rights and pension reform, but award votes against works rights reform and against the legalisation of marijuana. This would completely change the way people vote. Instead of casting a vote to a political party or a political leader, voters would vote towards ideas or projects. Their votes could have a certain monetary value added to them, and portions of the federal budget would have to go to these projects and only these projects. Blockchain technology could be used to ensure that money only goes directly to the designated projects, just like how Denmark is trialling blockchain technology to transfer aid funds to African nations more transparently and efficiently, cutting out the middlemen and significantly reducing the misuse of funds. This would prevent parties from violating electoral promises and completely restructure how the political system functions – it would break down politics into smaller parts. This idea obviously requires a lot more thought and reflection but starting to talk about new ways to do politics is the important first step.

Now to turn to Prado and Carson's (2014) discussion on some of the institution lessons that can be learned from Brazil's reforms and institutions accountable for combatting corruption. The authors make reference to Power and Taylor's (2011) 'Web of Accountability Institutions' and highlight the institutional multiplicity involved in corruption accountability processes, which can both have advantages and disadvantages. Some identified advantages of institutional multiplicity are that it fosters *competition* between institutions, provides mechanism of *compensation* when one institution acts poorly, promotes *collaboration* of resources to perform tasks, and finally *complementarity* of different specialised skill sets can be shared between institutions. However, there are some perceived disadvantages of institutional multiplicity including institutional overlaps which can cause inefficient allocation of resources, competition between institutions can bring about unproductive tensions and corruption may be given more opportunities to flourish. Below is a diagram of their 'Web of Accountability Institutions' to give a clear representation of the interdependence between institutions:

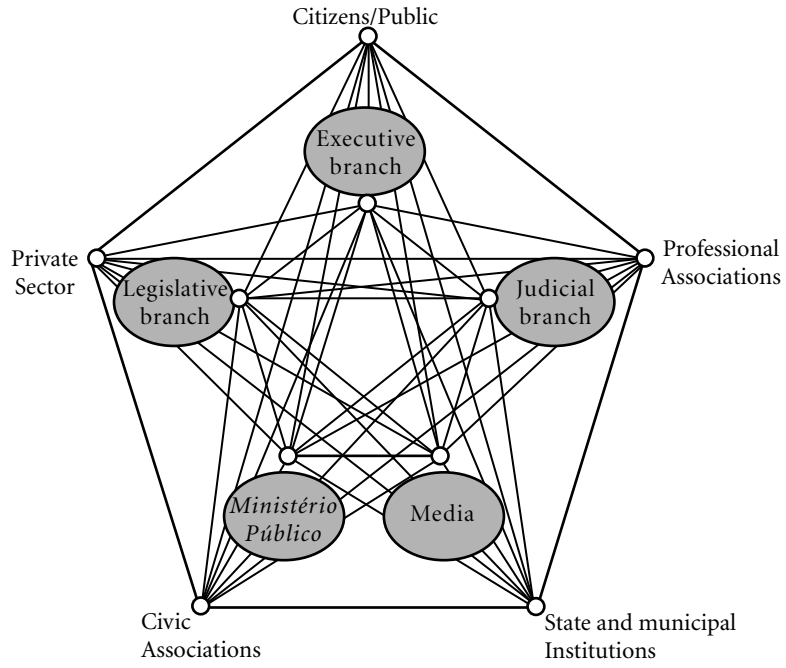

Figure 1. The Web of Accountability in Brazil

Source: Power and Taylor 2011

Further to this, Prado and Carson (2014) suggest some incentive-based reforms that can help to reduce corruption, namely "eliminating opportunities to engage in corruption… and increasing the risk of being punished" (p. 4) or, in other words, improving accountability. Blockchain can help to do both: reduce opportunities to engage in corruption and provide a mechanism to increase accountability. How? Let me explain. Corruption scandals like Operation Bloodsucker, whereby the TCU failed to identify a kickback scheme involving the fraudulent purchase of municipal ambulances and manipulation of the procurement process, could be avoided by using blockchain technology in all government procurement contracts. Smart government procurement contracts in blockchain would increase transparency and traceability of funds and ensure funds only went to the correct recipients. More research needs to be done on this, which will only be possible if governments allow trials using blockchain to be undertaken.

In a similar vein, Luz and Spagnolo (2017) present the intrinsic relationship between leniency, collusion, corruption and whistleblowing by providing a comparative analysis of antitrust legislation and leniency programs from the US, UK, Brazil, Mexico, EU, Germany and Italy. They assert that the main issue lies in "the simultaneous occurrence of *collusion* (bid

rigging) and *corruption* in *public procurement* (that is, the purchase of goods and services by governments and state-owned enterprises)" (p.732). According to the authors, public procurement amounts to 15-20 per cent of GDP in developed countries and cartels in public procurement, involving collusion and corruption, increases prices by at least 20 per cent. This severely abuses public funds and negatively affects the quality of public services and infrastructure (Luz and Spagnolo 2017). One solution that comes to mind, and the focus of my analysis in this reaction paper, is smart government contracts in blockchain. Such smart government contracts could be programmed so that all bidders in a tender would all have to approve the final price of the contract for the contract (and therefore the funds) to be awarded to the successful company. This information could be made accessible to the public which would increase transparency and trust. This system would help to reduce collusion and provide a strong incentive for companies and individuals to refrain from engaging in corrupt activities.

Finally, Tina Søreide (2012) describes various shortcomings in the fight against corruption that democracies face. She explains how political corruption in the form of monopolization of power and law enforcement, as well as manipulation of legal frameworks, is common in developing countries. Despite highlighting that there is little empirical evidence on what works in combatting corruption, Søreide (2012) claims that giving decisions-makers incentives to act honestly, such as political accountability mechanisms, can lower levels of corruption. She then lists the following five initiatives that have some positive impact on corruption awareness and reduction: governance indicators (i.e. Transparency International's Corruption Perceptions Index); international conventions for improved legal enforcement (i.e. UN Convention against Corruption); ethical codes of conduct (i.e ISO 26000); legal initiatives against cross-border bribery (i.e US Foreign Corrupt Practices Act); sector-specific transparency standards (i.e. Construction Transparency Initiative). However, it is noted that these initiatives rely too much on political will and therefore politicians and high-ranking civil servants continue to misuse power. Despite the multitude of international initiatives, "hardly any of them threaten corrupt decision-makers" (p.4).

Further to this, Søreide (2012) highlights the misinformed assumption that new laws will diminish engagement in corruption. According to her, "new rules will not make much

difference if not enforced and transparency will not bring changes unless the state reacts to what is being revealed" (p.5). In reality, new laws and regulation are only effective when compliance is upheld. Another attempt to curb corruption is sector-specific reform, such as procurement reform in the construction sector, however it is noted that manipulation of contracts continues regardless of reform efforts. Additionally, Søreide (2012) stresses democracy's failure at increasing accountability for corruption and asserts that developed countries are not necessarily reliable as they can benefit from developing nations, for example in the form of tax havens or *secrecy jurisdictions.* As the author states, "If it were more difficult to hide funds, political corruption would be much more difficult to hide" (p.10). One suggested remedy to help address governance failures is supporting civil society and journalists to put pressure on politics to demand change – I claim that social media has also played an important role. An additional solution, and a key research interest of mine, is the move towards smart government contract or e-contracts, which would hinder corrupt practices, increase traceability of funds and transparency. I shall elaborate on this point in my presentation.

<u>Some Conclusions:</u>

- Digital technologies can help to reduce corruption: social media (to keep corruption on the agenda), transparency websites such as #TchauQueridos that groups information on federal senators and deputies in simple and clear language, and smart government contracts in blockchain technology.
- Need to think small. Various small projects that work across different sectors can collaboratively reduce corruption across the board. One initiative to reduce political corruption will not be possible, we need multiple small initiatives that attack the various facades of corruption.

<u>Some Questions:</u>

1. Does social media help to enforce laws and make state react to what is being revealed?
2. How can we reduce manipulation of procurement contracts?
3. How to increase the likelihood of getting caught in engaging in corruption?
4. How can we convince government to regulate blockchain technology?
5. Is it possible to do mock trials with blockchain without formal regulation?