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Systemic Corruption in Brazil: An Autopsy of the Odebrecht Case

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Abstract

Brazil has a myriad of corruption scandals in its recent history. Nonetheless, research on the organizational level of corruption is underdeveloped. The paradigm of individual deviance related to wealth grabs hardly applies to the 'active corruption' of the bribe giver, as seen in recent cases exposed by Operation Car Wash. The holding Odebrecht S.A is at the heart of these scandals. In these cases of bribery, most of the bribe givers are high-ranking, well-educated, and well-paid managers. They are highly connected with public agents and their actions are in line with the company's goals. We perform an autopsy of the Odebrecht Case and briefly outline what mechanisms and factors on corporate level bolstered a pattern of endemic systemic corruption in the construction sector in Brazil. Our purpose is to contribute to the bigger discussion of corporate crime without overlooking criminological and polity's perspective but providing an approach from the sociology of organizations. We analyze strengths and weaknesses of regulative institutions and the environmental conditions under which the Brazilian construction company-operated and interacted both with its competitors and with public institutions. Based on the judicial documents about Odebrecht and its employees, we reconstruct the factors and mechanisms that are central to organizational deviance and provide an overview of the consequences for the company.

Keywords

Odebrecht, active corruption, organizational deviance, car wash, corporate crime

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During the nineties, the global diffusion of regulatory agencies (described by Jordana et al., 2011, de Rugy & Warren, 2009, Braithwaite, 2008) also took place in Brazil. Furthermore, in the last two decades, a myriad of laws to counter corruption passed and changes in the normative landscape accompanied by independent prosecutors gradually enabled the detection and prosecution of big corruption scandals. At a crossroads between the economic and political field, regulation and law enforcement agencies that have not disclosed a persistent pattern of cronyism may not be deep-seated enough to prevent sustainable practices from repeating themselves. In this article, we will briefly outline what mechanisms and factors on corporate level bolstered a pattern of endemic systemic corruption in the construction sector in Brazil. We are concentrating on graft by Odebrecht and its interface with contractors, competitors, and partners.

Our purpose with this article is to contribute to the bigger discussion of corporate crime in a systemic corruption context without overlooking criminological and polity's perspective, but providing an approach from the sociology of organizations with the empiric data that has been made available. Strengths and weaknesses of regulative institutions and the environmental conditions under which the Brazilian construction company operated and interacted both with its competitors and with public institutions will be outlined in the first section. In the second section, based on the judicial documents about Odebrecht and its employees, we reconstruct the factors and mechanisms which are central to organizational

deviance. As sources, we rely on eight criminal cases ruled by 13th Federal Court of Curitiba between March 8, 2016 and February 19, 2019. Fourteen employees of the company were tried, some of which in multiple actions, and convicted, most of which for active corruption and money laundering (Criminal trials: 5036528-23.2015.404.7000, 5022179-78.2016.4.04.7000, 5054932-88.2016.404.7000, 5015608-57.2017.404.7000, 5021365-32.2017.404.7000, 5035263-15.2017.404.7000, 5017409-71.2018.404.7000, 5023942-46.2018.404.7000 all from the 13th Federal Court of Curitiba, sentenced between March 8, 2016 and February 19, 2019). In the third part of the article, we will address the aftermath of the corporate crimes uncovered and consequences to the organization at internal and external levels.

State of the Art

Although corruption scandals in Brazil are frequent and severe, research on the organizational level of corruption is underdeveloped. Only a few studies in Brazilian literature are dealing with corruption and corporate crime as well as with the fight against it (Wood Jr. & Da Costas, 2012). The majority of native literature is addressing corruption from a political science perspective on country level (Morris & Blake, 2010; Filgueiras, 2009; Chaves, 2013) and argue in a culturalist perspective to explain the phenomenon, attributing it to historical-cultural events and macro-institutional factors (Morris & Blake, 2010). Its roots would be associated with the Iberian colonization and Catholic Catechization (Dealy, 1992) in the southern hemispheres (Filgueiras, 2009; Morris & Blake, 2010), Portuguese cordiality, the colonial administration and heritage of patronage and patrimonialism (Holanda, 1936; Faoro, 2001).

In the international literature, the analysis is very often based on reflections of the Brazilian society, the perception of corruption and the role of information (Weitz & Winters,

2017; Winters & Weitz, 2013, 2014; Aklin, 2014; Fischer, 2014). If and how the detection of corrupt practices has a significant influence on the voting behavior, is one of the key questions in recent political science studies (e.g., Winters & Weitz, 2015; Aklin, 2014; Fischer, 2014). Apart from using perception and experience-based surveys as sources of investigation, data gathered through the content analysis of court records, audit reports or other documents on corruption can be more reliable (see Melo, 2013; Ferraz & Finan, 2011; Brollo, 2013). By analyzing audit reports on the municipal level, Ferraz and Finan (2011), with a clear-cut research design, argued that corruption remains a widespread and substantial problem in municipal governments.

More generally, criminological research on corruption usually grapples with the idea of “bad apples” and the complementary role of “rotten barrels.” Individual characteristics, such as greed for personal gain, lack of self-control, and deviant personality traits, often account for the emergence of corrupt behavior. However, if we take the basic supply-and-demand model of corruption as a starting point, the paradigm of individual deviance hardly applies to the ‘active corruption’ of the bribe giver, as opposed to the bribe taker. In cases of international bribery, most of the bribe givers are high-ranking, well-educated, and well-paid managers. They commit crime at high personal risks and without being primarily oriented toward a wealth grab. Until the crime is revealed, illegal actions could be understood as useful to the organization. This is what Luhmann (1964, 1995) called ‘useful illegality’; a behavior that violates the terms of membership but is conceivable as a beneficial action in light of the organization’s purpose.

The Autopsy of the Odebrecht Case

The marriage between construction companies and the state had its “honey-moon” during the military regime, even though one of the arguments behind 1964’s military coup

was the fight against corruption (Campos, 2012). At the wake of democracy, in 1985, this relationship still had not changed. One of the first corruption scandals involving Odebrecht's name was revealed in 1987 when a journalist anticipated the result of the bidding for the construction of the North-South Railroad, a work budgeted at the time at 2.5 billion dollars. Instead of holding the lowest price bid over the lots, a group of 18 contractors, including Odebrecht, Queiroz Galvão, Camargo Corrêa, and Andrade Gutierrez, organized themselves into a cartel and defined the winners. The investigation that followed never reached any conclusion and ended up filed a year later (Gaspar, 2016). Fernando Collor was elected president in 1990 with the slogan “marahajara hunter”, yet his promises were unfulfilled and he became the first popularly elected Latin American head of state to be impeached for corruption. Despite changes of government, that intertwine between businessmen and the state remained overall the same. Until Car Wash Operation. The operation disentangled part of the complex web of systemic state-capture by focusing on a specific group, construction companies, interacting with public officials on behalf of their economic interests.

Such operation owes its name to its original object of investigation: a money laundering office run from a car wash and gas station in Brasilia, the political capital of Brazil. From there, phase zero, the investigation followed from financial operators to the beneficiaries of the bribes they laundered. Quickly, what started small in April 2014 grew to become a taskforce inside the Public Ministry, expanded in manpower and intel to dig and uncover a corruption scheme at Petrobras, where construction company-men engaged in a cash-for-contracts scheme with the directors of the public enterprise mediated by political parties and politicians, who oversaw appointing the directors of the state company. In late 2014, in an operation entitled *Final Judgement*, more than 300 Police Officers served warrants across the country and 17 executives investigated for bribe-giving were arrested.

So far, according to the Federal Prosecutor's Office, more than 1.300 warrants (search and seizure) have been issued and more than 300 preemptive or temporary detentions have been determined. There have been 244 convictions against 159 people for crimes such as corruption, money laundering, crimes against the financial system, forming a criminal organization, among others. The amount to be reimbursed (including fines) could come up to around R\$ 40 billion. (MPF, 2019). Because the Operation did not emerge from thin air, organizational deviance studies could benefit from the study of institutional changes behind it. The Brazilian Constitution of 1988 granted independence to the Prosecutor's Office to act (investigate and prosecute) in spite of, and frequently against, other branches of the state. Alongside, it strengthened the Federal Courts of Auditors, responsible for examining public accounts and overseeing bids (Galdino, Oliveira, & Galf, 2018). In 1992 Brazil passed the Administrative Improbity Law (8.429/92), in 1993 the Bidding Law (8.666/93) and in 1998 an Anti-Money Laundering Law (9.613/98).

In 2003, the Office of the Comptroller General (CGU) and the National Strategy against Corruption and Money Laundering (ENCCLA) were created. The early 2010s did not fall short of legislative increments either. In 2011, came an Antitrust Law (12.529/11) and an Information Access Law (12.587/11), providing the means to demand public organs regarding their obligation to disclose information such as salaries, contracts, and costs. The following year saw the expansion of the Anti-Money Laundering Law (12.683/12), connecting this illicit also with corrupt activities. Brazil had a surge in public protests in 2013 and shortly after two bills were approved: an Anticorruption Law (12.846/13) concerning corporate misconduct and the Organized Crime Law (12.850/13), augmenting investigative methods and means of obtaining evidence (among such investigative methods, lawful interceptions and *Colaborações Premiadas* (literally "rewarded collaborations", roughly translated to a plea

bargain, but with essential differences and aspects of whistleblowing). At the Supreme Court level, responses were also coherent with a prosecutorial strategy of corruption: in 2016 ministers ruled to allow the execution of a defendant's sentence after criminal conviction by an appellate court, reviewing their previous position (STF, 2016), and in 2018 they restricted the privileged forum of congressman (Schreiber, 2018).

If institutional changes regarding procedures, human resources, ethical standards and the rule of law culminated in Car Wash operation, this process has only accelerated since then. Car Wash operation took Brazil by storm. From 2014 to 2019, only this case has had more than 61 phases. Several other operations have started since then, employing similar methods of investigation. In 2015, there was an increase of 32% in a number of Federal Police investigative operations in comparison with the previous year. The Attorney General's Office (AGU) and the Office of the Comptroller General (CGU) have been through extensive structuring and specialization (PGF, 2016) and are currently better suited to address corruption issues and negotiate with organizations (CGU, 2015). The Federal and State Prosecutor's Office are working more closely and seeking international support. Between 2014 and 2017, they submitted 172 requests of cooperation to 38 countries and were the recipient to 119 requests from 29 countries (these numbers have currently increased, MPF, 2019). Several of them, due to Odebrecht's disclosure of illicit activities in 27 foreign countries, highlighted in their Plea Agreement with the FCPA. Recent developments, however, demonstrate part of the criminal activities remain to be uncovered and tried "raising questions about whether Odebrecht has been fully candid with authorities and about the political will of some prosecutors to pursue cases" (Chavkin, 2019).

Breaking the Rules: Weakness and Strengths of Regulative Institutions

From an institutional perspective, formal structures are important to organizations. They determine the field in which the organization operates at the same time they depend on it since posited rules are coupled with informal rules and how members interpret them. When applied to corruption research, our basic assumption is: the more the organizational field is prone to corruption, measured by the incentives in place, the more likely it is for an organization to get involved into corporate crime. Corporate misconduct inside Odebrecht, a construction company in Brazil, can only be understood if the environment it operated is reconstructed, which we will try to do in the following section.

The construction sector, alongside mining, oil & gas, is known to be among one of the most corrupt. This derives from, among other factors, the sheer volume of funds that go through it. The global construction market is currently worth around \$3,2 trillion and is expected to reach \$17,5 trillion as of 2030. Estimates of the cost of corruption vary between 10% to 30% (Mathews P., 2016). Part of the reasons listed for its susceptibility are the divisions into many individual phases, each incurring high risks of corruption: a) at inception and feasibility analysis (falsification of specifications, such as technical, environmental, time, cost and return on investment); b) at planning and organization (bid-rigging, bribery, cartel formation); c) at the execution phase (use of substandard materials); and d) at the closing phase (Shakantu, 2006, p. 43) The size, complexity, and uniqueness of projects; proneness of political involvement; high number of contractual links; ties with national interests; lack of due diligence checks and a culture of lack of transparency are problematic, to name a few (Stansbury, 2005).

In Brazil, most construction companies emerged between the 30s and 50s (Campos, 2012). Bribe paying was already in practice but consolidated itself during the dictatorship

(1964-1985). During that time, Congress, political parties, and civil society did not have as much power as today, public institutions and enforcement mechanism were loose, and therefore the bribery dynamics did not need to be very complex or stand out to escape from control. Construction companies handled primordially with the executive branch, ministers and state company presidents. This process shifted during the transition to democracy (the 80s and 90s) when they started reaching out to the newly empowered legislative for the approval of new bills, parliamentary amendments, provisional measures, and access to state companies' directories (positions nominated by the president).

In line with other infrastructure companies established in countries from the third wave of democratization, Odebrecht's interaction with the State (in the form of public agents, organizations or institutions) is at the core of its business plan as well as its deviant conduct. The birth of the company, founded in 1944 by Norberto Odebrecht in the State of Bahia, accompanies the paradigm of national-developmentalism and Brazil's early industrialization (Bresser-Pereira, 1982). With the foundation of Petrobras in 1953, Brazil's state-controlled biggest oil and gas company, the fate of both started to be sealed. Many infrastructure projects followed, such as pipeline Catu-Candeias in 1953, refinery Landulpho Alves in 1957, Petrobras Headquarters in Salvador, Bahia, in 1960. The project for the Petrobras Headquarters in Rio de Janeiro, in 1972, benchmarked the relationship between Odebrecht and the military regime, in the person of Ernesto Geisel, who was the president of Petrobras at the time and would later be head of the executive (1974-1979). By 1968, the founding father of the company, Norberto, published "What do we need?" the first of a series of books containing the Odebrecht Entrepreneurial Technology (OET), later systematized under a set of three booklets "Survival, Growth and Perpetuity" (Odebrecht, 2014). The institutional engineering worked well before 1971 Odebrecht was only the 19th biggest construction

company in Brazil, yet their relationship with Petrobras and Ernesto Geisel landed them two very important contracts that skyrocketed the company to the top: the Rio de Janeiro Galeão Airport and Angra's Nuclear Plant. In 1974, Odebrecht was elected construction company of the year. This helped solidify their status, pursue expansion and internationalization in the early 1980s when the holding company Odebrecht S.A was created. In 1991, Norberto Odebrecht stepped down of the group presidency to give way to his son, Emilio Odebrecht. By the year 2000, they had already made several acquisitions and consolidated their share of Braskem, alongside Petrobras, a new giant in the petrochemical business (Campos, 2012, p. 114)

Analyzing Corporate Crime and the offenders

Along with enforcement and preventive measures, we contend that behavior is also contingent on the incentives to which organizations and individuals are subjected. Companies faced with a dysfunctional commercial and tax structure might think it is easier to cut their effort short and strengthen their political networks in search of possible benefits (be it licit, such as lobbying for subsidies, or illicit, such as paying bribes). Returning to the "Group's Philosophical Concepts", among the pillars of OET is the "entrepreneurial task": identifying, winning, and satisfying the client – an ongoing and efficient process that ensures that challenges will be met with success (Odebrecht, 2014). For the sake of collective goals, joining and coordinating the cartel of construction companies was the key to many doors and, judged from an in-group member, perhaps the best course of action to guarantee the "survival, growth and perpetuity" of the company. The competitive pressure is the first of a set of empirical indicators concerning organizational deviance that will be studied in this section, which walks along with the particularities of the construction sector, previously outlined. Both

are environmental conditions expected to be positively related to proneness to corporate misconduct.

Documents from the Administrative Council for Economic Defense (CADE, 2015) show that meetings to discuss strategies for Petrobras bidding processes were already taking place in the late 90s with a small number of companies. From 2003/2004, the gatherings became a “Club” composed of nine companies (Camargo Corrêa S.A., Construtora Andrade Gutierrez S.A., Construtora Norberto Odebrecht S.A., Mendes Junior Trading Engenharia, MPE Montagens e Projetos Especiais S.A., Promon Engenharia Ltda., SOG Óleo e Gás, Techint Engenharia e Construção S.A., and UTC Engenharia S.A.), around the same time Petrobras’s new board of directors was appointed (CADE, 2015, p. 31). All the companies in the group, which would expand to 16 companies by 2006/2007 (with several others joining sporadically), had an informal agreement with Petrobras for participation in bidding processes aimed at contracting large industrial assembly services (Ibid., p. 34).

After 2004, the oil company’s investments in new projects reached 49.3 billion USD, suggesting how attractive partnerships with Petrobras could be to Odebrecht and its competitors (Petrobras, 2005). Stated clearly by one of the defendants, Rogério Araújo, when inquired on why there was a growing interest on Petrobras:

“Because Petrobras’ investment plans began to signal a large volume of investment, there were thousands of projects, so that you could have an idea during this period we received more than 1000 letters of invitation, so, I in Rio, I was looking for, Petrobras when updating a business plan I tried to understand what Petrobras was signaling, We have to visit several people, from the engineer to managers, technicians, and directors, to understand, and because I did this, this information was also information that all the other companies could

gather, suppliers and so on (interrogation before the 13th Federal Court of Curitiba on November 13, 2015).”

The speaker is an employee who worked at Constructor Norberto Odebrecht (CNO), the branch of the holding responsible for logistics, energy, urban development, and public and corporate construction. CNO was, due to its locus, where anticompetitive conduct and engagement in the cartel were concentrated within the holding. Preparing bids and submitting project proposals is a costly enterprise and the club-members managed to find an efficient system of equal opportunities, through fraud and bribery, to trespass the formal requirements. It is often assumed that the competitive pressure on an organization translates into interpretative and procedural rules of its staff, which encourage the circumvention of obstructive or cumbersome formal rules, this is consistent with other studies in the field (Ashforth & Anand, 2003; Campbell & Göritz, 2014).

By the analysis of the construction sector in Brazil, the annual PAIC/IBGE-Census of 2014 shows the existence of 62,345 active firms in the construction industry. If we only consider the companies with more than 500 employees, the number of entities shrinks considerably to 560 and by focusing only on enterprises specialized in infrastructure-construction, the number of entities further drops to 265. The number of Brazilian companies in the market for railway and road construction is just 117 and the number of companies working in other specialized areas such as oil and gas transport etc. is even lower, with just 68 companies. On the other hand, those construction works are mainly commissioned by the Brazilian government and state-owned companies. In that sense, the competition for the largest public projects and for the state-owned-enterprises projects is relatively high among the largest construction companies with the capacity for such construction projects. Again in the words of CNO’s Director of Business Development, Rogério Araújo, when questioned

about the benefits of getting hold of the details of projects before bidding was officially open: “I would go after this information to transmit inside the company (Odebrecht) and we prepared ourselves better, for when the competition came, come to be auctioned the project, if we had to seek a technological partner we were already preparing ourselves, finally, we prepared technically to be as competitive as possible” (interrogation before the 13th Federal Court of Curitiba on November 13, 2015).

Another empirical indicator of organizational crime are the benefits for the company, or the usefulness of the illegal conduct had it not been discovered. Taking their FCPA agreement, corporate misconduct by Odebrecht happened in more than one hundred projects in twelve countries, including Angola, Argentina, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique (From FCPA Criminal Docket Number 16-643). They estimate between 2001 and 2016 the company made and caused to be made approximately \$788 million in corrupt payments to foreign political parties, foreign officials and their representatives in countries in and outside Brazil, in order to secure an improper advantage to obtain and retain business. As a result of these corrupt payments, more than \$3,3 billions of profit for the company. At the court files, each criminal conduct investigated and charged refers to a different contract and the subsequent organizational benefit, but more than identifying the metrics of each one we should acknowledge how this pursuit of collective goals landed at individuals. The action orientation of Odebrecht’s top managers can be illustrated by one of the executives’ comment on bribery to secure contracts with Petrobras in nine countries that fetched around 25 million dollars to the company but “were worth it”, since the expected profit of the project amounted to 67 million dollars (13th Federal Court from Paraná, Case File n. 5017409-71.2018.4.04.7000/PR, Sentence, p. 34).

Organizational Deviance studies posit that unwritten rules and indirect incentives play a primordial role as the motivation behind the illegal practice from actors. Career and bonus system should be an indirect incentive to the deviant practices in the organization. In the Odebrecht case, we find a combination of both, because the dynamics of cash-for-contracts had its own level of complexity. Bloomberg Businessweek Cover Story in June 2017 entitled “No One Has Ever Made a Corruption Machine Like This One: There’s graft, and then there’s Odebrecht graft” argues the Division of Structured Operation was “perhaps the farthest-reaching, most efficient corruption machine in modern business” (Smith, Valle, & Schmidt, 2017). This structured unit within the organogram of the company was located at the border between formality and informality, mediating both realms in a rational way, consistent with the entrepreneurial vision from OET. If in other cases of corporate crime rationalization takes subtle shapes and demands other methods to provide empirical evidence, Odebrecht’s physical support unit facilitates the work of the analyst while searching for sources of legitimization within the organization.

With the establishment of the Division of Structured Operations (DSO), a financial structure created to operationalize and monitor the payment of bribes and manage “unrecorded funds” a common interpretative framework emerged. Through normalization and rationalization of the corrupt pattern, the DSO grew stable and prevented individuals from questioning the validity of universal norms/other normative orientations such as ethics. With it, a separate and off-the-book communication system was developed specifically for members of the DSO to communicate, track bribery using codenames/alias and passwords, and store files. A company called Draftsystem & Communication, owned by Paulo Soares, brother of Luiz Eduardo Soares, from DSO, developed the platform. The offices of the IT company were in the same building as Graco, where Olivio and Marcelo Rodrigues worked.

According to Vinicius Borin, an employee who worked for Antigua Overseas Bank and indirectly performed services to Odebrecht, Luiz, Olivio, and Fernando had a share on Draftsystem.

Another assumption regarding organizational deviance is hierarchical pressure, or the adherence of high-ranking actors to deviant practices, be it through an active or passive involvement. This vertical support engenders informal action rules that enable collective misconduct to prevail over legitimate/moral/licit alternatives. When Marcelo Odebrecht, the third generation in the group's presidency, was arrested in June 2015 it is said he opened his front door to the policemen saying "I thought you were coming sooner". By then, other club-members such as Toyo Setal had already agreed on a leniency agreement and two of its executives signed plea bargains with the state prosecutors, Camargo Correa's executives as well. Despite being in provisional custody, Marcelo did not resign from his position immediately. Only after the Superior Court's ruling denying his provisional freedom, at the end of 2015, he stepped out of office. Until then, the company's strategy had been to deny the accusations, not so much hoping that the scandal would not affect them, but buying time to work on damage control.

Earlier that year, the top hierarchy authorized covering up and terminating the DSO in Brazil. Among the prospects was moving secret operation to the Dominican Republic, where, according to FCPA's statement of facts, Odebrecht maintained a well-established relationship and paid more than 92 million dollars in illegal commissions, to secure contracts that amounted to 163 million dollars, consistent with the trend that the corrupt payments were made to secure an improper advantage for Odebrecht to obtain and retain business. After Carwash began, Drousys was terminated and a mirror software called "Riadec" implemented to "continue to operate, close the accounts abroad and send the money back to companies

from the Group". However, for that to happen, the department's workforce needed to agree with Marcelo's advice of leaving.

The only two women who worked at Odebrecht and signed agreements with the Prosecutor's Office were based in DSO and were offered to flee from Brazil. They refused the proposal but travelled to Miami with part of the files needed by their superiors, Fernando Migliaccio and Luiz Eduardo Soares, who had been working from abroad. As this part of the story started to uncover in early 2016, the company's orientation in regards to the social control agents entered the third phase: coming clean. This new paradigm can be found in the institutional confession to the public "A compromise with Brazil" (Odebrecht, 2016). Meanwhile, negotiations around a deal with FCPA, a leniency agreement with CADE, and a set of plea bargains with the Public Ministry were taking place, all as an orchestrated move (very few plea bargains were negotiated individually; Maria Lucia Tavares and Fernando Migliaccio are the only two that came to our knowledge). Descending to the micro-level, we can check the involvement of in-group members implicated at Carwash, and check for cohesion, as expected if we are to refuse the occupational crime or systemic corruption as general explanatory frameworks.

The high tenure of employees tried in the criminal records, an average of 26.5 years in the company, indicates an important mechanism of organizational deviance: socialization. Seniority and *intra corporis* trajectory might account for the engagement in misconduct in conformity with the company's goals. It enables the unwritten rules to be internalized in the organization at the same time it creates the necessary personal trust for visible deviations in the organization. From an endogenous perspective, one could argue that organizational culture and adherence to the OET would not *strain* corruption, but rather *sustain*.

As part of the systemic corruption pattern in Odebrecht, commissions of 2% were paid for employees used as money-laundering on behalf of the company and/or off-shore beneficiaries, such as Olivio Rodrigues. According to an employee's plea bargain "In addition to salaries, the executives, and in this case also Fernando Migliaccio, Olivio and Luiz Eduardo, as well as Meinl [Bank], received a "fee" (fare, commission) in the amount of 2% on each entry of values in the Odebrecht operating accounts controlled by Olivio, which were divided as follows: 0.5% were allocated to the three bank executives, 0.5% to Banco Meinl Antigua, and 1% to Olivio, Luiz Eduardo, and Fernando Migliaccio". Evidence of illegal personal gains incompatible with the organizational goals and without its support was seldom found in the court records. It was determined that one employee, who signed a plea bargain with the Prosecutor's Office before the collective agreement, repatriated 5 million reais, an apartment in Miami, and 8kg of gold in bank accounts in Geneva. Nonetheless, consistent with what has been posited in other corporate crime studies, personal gains were irrelevant or, when existent, of minor importance to circumvent formal rules.

Lessons learned? The consequences for the company

If the economic consequences for the company were not so gloom, and its future existence uncertain, one could say Odebrecht is a rehabilitation success case. In 2018, the monitorship agreed in the FCPA Agreement has reached its second of three years without any upsets. In light of the agreement, Odebrecht agreed to terminate the employment of 51 individuals who participated in the misconduct, to discipline and train further 26 individuals involved (suspensions, financial penalties, and demotion to non-managerial positions besides anti-corruption compliance and business ethics training), to create a Chief Compliance Officer (CCO) position that answers straight to the administrative council, to adopt heightened controls and anti-corruption compliance protocols, to allow double independent monitoring

and increase the budget and human resources for compliance, amongst other more specific measures (Plea Agreement, United States v. Odebrecht S.A., Cr. No. 16-643, E.D.N.Y., Dec. 21, 2016, p. 3-11). At the time of the FCPA agreement, inadequate anti-corruption controls and little or no anti-corruption compliance program were said to exist during the period of the criminal conduct, justifying the recommendation for business ethics training of Odebrecht's personnel.

In 2018, the holding company replaced most of its board of directors and Emilio Odebrecht stepped down as chairman after almost 20 years on the board (Odebrecht, 2018). During this move, it has also been established that members of the Odebrecht family will no longer be eligible for the position. While the holding provides uniform governance and compliance guidelines, each business unit should have its own board of directors, of which at least one fifth should be independent directors. According to an interview with Odebrecht's current Chief Compliance Officer (CCO) Olga Pontes, responsible for an institutional *mea culpa* and for improving the reputational costs that corruption has brought to the group, Odebrecht's 2018 compliance budget was \$20.45 million, whereas the budget used to be around \$3.19 million (apart from monitoring costs) (Russo, 2018).

According to Olga Pontes, Odebrecht has implemented or started implementing governance measures from all the Department of Justice's 10 hallmarks (six actions of prevention, two of detection and two of remedy). Outsourcing has been put in place: a global advisory council with national and international members has been set and whistleblower hotlines aim at strengthening due diligence checks of suppliers. Up to 30% of executives' bonus payments are conditioned to reaching compliance targets, one of the boldest initiatives to tackle internal incentives for mirroring the bad practices within the sector and recurring to cash-for-contract in pursue of organizational benefits (Agência Estado, 2019). However, the

track to dismantle wrongdoing and set in motion the largest-ever global foreign bribery resolution has had far-reaching consequences to the organization's economic sustainability (DOJ, 2016).

In 2017, the DOJ reduced the civil and criminal penalty from \$260 million to \$93 million recognizing Odebrecht's argument of impairment to pay the former fine (Cassin, 2017). Odebrecht filed for Chapter 11 Bankruptcy or rehabilitation bankruptcy under Brazilian law to reorganize its debts in June 2019 (File no^e 1050977-09.2019.8.26.0100, 1st Court of Bankruptcies and Judicial Rehabilitation from the State of Sao Paulo). According to the suit, Odebrecht's involvement in the corruption scandal uncovered by Car Wash operation brought several economic setbacks to the company, including the lack of access to sources of financing and the possibility to pitch and secure new projects in Brazil and abroad. Moreover, several contracts have been suspended or rescinded and assets blocked. Furthermore, the group's heavy investment in *Compliance* has also taken a toll on their budget. It is noteworthy, however, that debts from the Plea Bargain Agreements are not among the debts in the Chapter 11 filing. Odebrecht and Braskem settled in 2016 with the Brazilian Federal Prosecutors Office, the US Department of Justice and Switzerland's Prosecutors Office to pay a combined total penalty of at least \$3.5 billion (DOJ, 2016). In 2018, they settled a deal with CGU and AGU to pay around \$740 million over 22 years.

Beyond these, another seven agreements have been settled with authorities from governments of Brazil, Equator, United States, Guatemala, Panama, Dominican Republic, and Switzerland. Deals with the World Bank, authorities in Peru and CADE (Brazil's Antitrust authority) have been settled only recently, in early 2019. The company argues that despite its best efforts to normalize and continue its activities and collaborate with authorities, what has gradually been happening is that the consequences of Car Wash operation, in addition to the

economic crisis in Brazil (public sector investment in infrastructure diminished from R\$ 967 billion between 2011 and 2014 and got to 2016 just over 1,7% of the GDP), devaluation of the Brazilian real currency, and credit restrictions have significantly affected the company's liquidity (Chapter 11 Bankruptcy lawsuit, 2019, p. 10-14). In disrespect to the regulation applicable in the USA and different from most cases seen so far, Odebrecht also has debts from supporting and financing executives into adhering to plea bargain agreements (besides Odebrecht, some other companies involved in recent scandals are said to have financed the individual plea bargains such as Camargo Correa, OAS, and CCR).

From the Bankruptcy filing one can detect that Hilberto Mascarenhas has a R\$ 24,6 million credit to receive from Odebrecht. Marcio Faria, former director of CNO, has R\$ 74,6 million (Ribeiro & Fontes, 2019). Overall, Braskem may be the only valuable asset left from Odebrecht, another sign that after corporate misconduct was discovered, sanctioned companies suffered the consequences as opposed to past scandals in Brazil (Roy & Bautzer, 2019).

Because of the wide range of criminal practices, further assessment of investigations that were launched and filed on grounds of insufficient evidence in countries like Ecuador or of prosecutors' inertia to respond to accusations in Angola or Mozambique could shed a light into other systemic corruption structures in countries the company operated. Other questions concerning law-enforcement that are being emphasized by investigative journalists in Brazil and elsewhere remain, but so far, one could argue lessons were learned both at the macro and meso levels.

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