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Prosecutorial Agency, Backlash and Resistance in the Peruvian Chapter of Lava Jato

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INTRODUCTION

Brazil's *Operação Lava Jato* quickly evolved into a much larger investigation that revealed a transnational bribery scheme. The turning point for the internationalization of Lava Jato came in December 2016, when Odebrecht, the Brazilian construction company at the heart of the case, struck an agreement with the authorities of the United States. It emerged that Odebrecht had offered bribes to public officials in a variety of countries, and financed electoral campaigns in exchange for preferential treatment in the allocation of construction projects. According to US Department of Justice documentation, between 2001 and 2016, Odebrecht "paid approximately $788 million in bribes in association with more than 100 projects in 12 countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela" (US Department of Justice 2016: 7).

Given the source and tenor of the allegations, judges and prosecutors in various Latin American countries had little room to ignore the news and were forced to open local chapters of Lava Jato. The political repercussions across the continent have been far-reaching. In fact, several national chapters of Lava Jato directly or indirectly contributed to the downfall of sitting presidents, or to the indictment, arrest and conviction of former presidents and their closest aides (Gonzalez-Ocantos and Baraybar 2019). In this chapter, we present a detailed analysis of how the investigation unfolded in Peru. With the exception of Brazil, Peru stands out as the case where investigators have been able to stretch the

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tentacles of Lava Jato the most. Initially, the Peruvian chapter of Lava Jato focused primarily on officials responsible for accepting bribes during bids for three major infrastructure projects. But the investigation quickly expanded its remit. A special prosecutorial taskforce established that Odebrecht had also bribed officials to secure additional projects, and engaged in the illegal financing of electoral campaigns, including a referendum in Lima and various presidential races. To date, the investigation has uncovered evidence against every single elected president since the return of democracy in 2001, as well as some of the most powerful political figures in the country. In the process, it contributed to President Kuczynski's (2016–2018) downfall in 2018, the shut-down of Congress in 2019, and the impeachment of yet another president in 2020 (President Vizcarra).

Peru presents another opportunity to study some of the most interesting and overlooked tensions at the heart of the judicialization of politics in Latin America, one of the key goals of this volume. First, in line with the other chapters on Lava Jato, we show that when courts and prosecutors are willing to exercise their accountability functions effectively, they often test the limits of the rule of law. The successful prosecution of grand corruption requires the presence of judicial actors with enough determination to take on powerful political and economic interests. But these investigations present a series of challenges related to how to secure evidence in notoriously hostile and information-poor environments. Overcoming these challenges without jeopardizing the integrity of the inquiry is no small feat because the tools that prosecutors and judges must rely on, including plea bargains, pre-trial detentions, the redefinition of traditional evidentiary standards and public relations strategies, are controversial, to say the least. In other words, the tensions between, on the one hand, prosecutorial effectiveness, and on the other, respect for due process and lawful punishment, are difficult to resolve. This chapter digs deep into the micro-dynamics of Peru's Lava Jato to discuss the nature of these challenges and how judicial actors, especially prosecutors, dealt with them.

Second, like other chapters in this edited collection, ours addresses the phenomenon of backlash. Politicians are rarely passive bystanders during anti-corruption investigations. They don't just let prosecutors collapse their governments, sully their reputations or demolish their electoral chances. Quite the contrary: politicians who are the target of zealous judges and prosecutors tend to respond not only by defending themselves in court, but also by deploying ruthless tactics to delegitimize, remove or

block the investigative effort. We explain what triggered political backlash in the Peruvian case, discuss how it conditioned the behavior of prosecutors, and identify the reasons why, so far, investigators were able to mitigate the impact of backlash. In so doing, our case study also converses with the chapters on judicial corruption in Mexico (Rios-Figueroa, Chapter 8) and Ecuador (Basabe Serrano, Chapter 9). One of the most interesting features of the Peruvian experience with Lava Jato is that investigators not only had to deal with an obstructive political class, but also with networks of judicial clientelism commanded by senior judges and prosecutors, who also happened to be loyal allies of some of those implicated in the scandal. As a result, backlash came within and from outside judicial institutions. We look at how prosecutors defied these bureaucratic pathologies and protected the inquiry from their superiors.

Finally, our case study shares with Da Ros and Taylor's chapter on Brazil (Chapter 10) the narrower goal of trying to understand the conditions that lead to the success or failure of massive anti-corruption investigations. To do so we present a careful reconstruction of the ongoing prosecutorial effort in Peru, relying on primary sources such as news reports, official documents and confidential interviews with some of the main protagonists. The narrative highlights the role of interactions between judicial actors, and between them and political/economic players, in determining prosecutorial outcomes along the way. Without downplaying the impact of institutional (or superstructural, to use the editors' terminology) factors, such as, for example, the adequacy of the legislation governing the prosecution of corruption, the relative power of the elites under investigation or the make-up and autonomy of the judicial branch and prosecution services, we focus on the role of prosecutorial agency. We show that contingent choices by prosecutors often determined whether enough evidence came to light, thus widening windows of opportunity for ambitious investigative efforts in a hostile environment, or whether external attacks could be diffused.

AGENCY IN ANTI-CORRUPTION INVESTIGATIONS

Scholars of corruption prosecutions tend to assume that what happens in the courtroom is the direct product of dynamics external to the judicial process. For some, it is the will of political leaders that propels anti-corruption probes forward (Rotberg 2017). This is particularly true in dictatorships, where autocrats use judicial rituals to legitimize the

side-lining of opponents and signal regime strength (Pei 2018; Shen-Bayh 2018). In democracies, corruption investigations may also be politically orchestrated. Maravall (2003) famously describes the use of the "rule of law as a political weapon" in Spain, where the right politicized and judicialized corruption in order to make electoral gains. Similarly, Popova and Post's (2018) work on Eastern Europe argues that prosecutions consist mostly of legal proceedings purposefully targeted against weak rivals rather than genuine accountability efforts. Finally, Helmke et al. (2019) show that former Latin American presidents are more likely to end up in jail if their successors are anti-establishment outsiders who are not afraid to politicize corruption, or if irregular exits from office severely damage the electoral competitiveness of outgoing presidents and their parties (see also Conaghan 2012).

These explanations provide useful insights into the macro-political conditions that favor anti-corruption crackdowns but ignore the process of investigating and punishing corruption through the courts. As a result, they have less to say about the capabilities that enable anti-corruption agents, namely judges and prosecutors, to translate opportunity into outcomes. While it is certainly true that judicial actors do not act in a political vacuum, and likely evaluate the permissiveness of the political environment vis-à-vis the prosecution of certain leaders, there is no reason to assume (a) that they are perfect agents of politicians seeking to weaponize or stop prosecutions for political gain; (b) that judicial behavior, with or without intention, has no independent impact on the outcome of prosecutions, both in contexts where powerful politicians welcome convictions and where elites have a preference for impunity; or (c) that judges and prosecutors are always helpless in the face of backlash. In other words, to understand why investigations against corrupt politicians gain momentum, particularly why they become crusades of historic proportions, we also need to take the role of prosecutorial and judicial agency seriously.

A few studies of the Mani Pulite operation in Italy point in this direction. Scholars have assigned great explanatory power to judges' acumen, courage, creativity and prior experience with cases of macro-criminality. For example, Della Porta and Vanucci (2007: 845) see the roots of the Italian "judicial revolution" of the 1990s in prior changes to the judiciary's institutional identity: "In the 1970s and 1980s, especially in the struggle against terrorism, mafias and corruption, a new generation of judges began to exercise a 'substitutive function' with respect to a weak and divided political class, thus increasing its own *espirit de corps*."

Similarly, Sberna and Vanucci (2013: 582) explain that "Italian judges started to perceive themselves as charged by a civic mission of responsibility towards society and community." This new judicial role conception, coupled with smart decisions taken at the start of the investigation, largely explain the success of Mani Pulite: "As soon as the first politicians and entrepreneurs in jail – deliberately put by the Milanese judges into a prisoner's dilemma-like situation – started to collaborate with judges, the whole mechanism was set in motion. The amount of information gathered by the prosecutors on illegal activities of political actors grew exponentially, with a domino effect" (Sberna and Vanucci 2013: 576).

One key lesson from the Italian case is therefore that prosecutorial success in grand corruption cases calls for the presence of assertive judicial actors with a very specific set of skills and values. In particular, in order to exploit opportunity structures that favor anti-corruption crusades, or manufacture momentum when the anti-corruption cause is politically inexpedient, judicial actors must not only be ready to take on the establishment and accept the possibility of backlash; they must also be willing and able to embrace creative ways to secure the flow of high-quality information. The latter point is especially important. Corruption crimes leave behind very opaque evidence trails. The mechanisms used to camouflage and launder the proceeds of corruption are indeed extremely convoluted (Klinkhammer 2013; Martini 2015). Crimes tend to be transnational in nature and involve the use of figureheads in multiple countries, secret offshore accounts in financial havens and intricate asset ownership structures. Uncovering these schemes requires highly technical financial investigations and often makes legal assistance between jurisdictions imperative. Complicating things further, corrupt elites have the uncanny ability to adapt in the face of prosecutorial risk (Della Porta and Vanucci 2007). Passive, reactive or highly bureaucratic judicial role conceptions are likely to repress investigative zeal and encourage a reliance on routine tactics that are not fit for purpose. By contrast, judges and prosecutors who are prepared to go beyond their comfort zones, and act in unconventional ways, are more likely to uncover "smoking-guns." Importantly, this high-quality information is likely to generate new information and enhance momentum because it can alter the strategic calculus of key witnesses contemplating whether or not to confess or sign a plea bargain agreement. It may also provide political cover for committed investigators, who now have the perfect pretext not to abandon their lines of inquiry even when "invited" to do so by powerful elites, or the necessary push for reluctant ones, who now have fewer excuses to turn a blind eye.

On a practical level, prosecutorial progress tends to be a function of the extent to which investigators are willing and able to rely on three crucial investigative tools, namely pretrial detentions, plea bargain agreements and international cooperation, and how they navigate the complications and tensions that inevitably arise from the use of these tactics.

First, judges and prosecutors must decide whether and how to use pretrial detentions. Grand corruption cases target defendants who are well connected and might therefore end up distorting the investigative process at various stages (Bertossa 2003). Pretrial detentions are useful precisely because they help neutralize the firepower of such actors. In addition, pretrial detentions sometimes enable investigators to extract confessions. But despite these benefits, not all judicial actors are likely to feel comfortable with the use of pretrial detentions, especially if they adhere to liberal conceptions of criminal law.[1] Legal preferences aside, the benefits of pretrial detentions are highly conditional on the extent to which they are used with caution, as they can quickly turn into accusations of political "revanchism" or lack of respect for due process. In other words, if not used or explained carefully, pretrial detentions can backfire, damaging the integrity of the investigation and jeopardizing the viability of the case in the appellate stages. This is particularly true when the tool is used strategically, because critics may convincingly cry foul, arguing that judges and prosecutors are biased against certain individuals or groups.

Second, investigators must consider the use of plea bargains. First-hand accounts of anti-corruption investigations almost always make the case that balancing carrots and sticks is the only way of obtaining incriminatory evidence. As Sergio Moro points out, it is very difficult to proceed without the collaboration of those involved. Milanese prosecutors relied heavily on this tool because they soon concluded that "corruption involves someone who pays and someone who gets paid; if both shut up, we won't ever find out." According to Moro, getting a criminal to confess in exchange for benefits "is in fact collaborating with the law and with the application of the laws of a country" (Moro 2004: 58). But the use of carrots is not as uncontroversial as he makes it sound. Legal preferences also play a role. Judicial actors may simply refuse to consider plea bargains as a matter of principle because they regard them as incompatible with their mission to punish the guilty, not reward them.

[1] In Latin America, the term used is "garantismo."

Complicating things further, in some legal cultures the very notion of prosecutorial selectivity is an alien one and therefore hardly a routine, "go to" tactic (Langer 2004). Professional dilemmas aside, these moves need to be planned and executed with great care. Trading immunity for information can be unpopular, and lead to the charge that investigators are abdicating their role or simply biased. In fact, plea bargains often provide the perfect ammunition for those who wish to cast doubt on the impartiality and effectiveness of the investigators.

Third, investigators need to nurture relations with foreign companies, banks and judicial institutions that possess critical information. Judges and prosecutors are not always well-versed in these practices, which involve venturing into the worlds of international relations and penal cooperation. Crucially, in order to build and maintain these new associations, investigators must do more than just issue formal information requests. Unfortunately, domestic judicial authorities cannot directly compel foreign banks or prosecution services to hand over the evidence. Instead, investigators must work hard behind the scenes to establish bonds of trust that make comprehensive cooperation possible, as this informal approach is the best way to secure productive exchanges rather than limited formalistic responses. In addition to certain personality traits or the willingness to travel abroad, cooperation also requires a great deal of creativity in the interpretation of domestic law and international anti-corruption conventions in order to make the evidence that results from these efforts admissible in court. Any mistake while navigating these unchartered waters can prove fatal, as it may alienate crucial information sources or trigger byzantine admissibility battles. Finally, when it comes to cooperation agreements with the companies responsible for bribing politicians, prosecutors must be willing to offer penal, economic and commercial benefits in exchange for information. These could range from granting immunity to top executives to lifting commercial sanctions that could cripple company finances. Deals of these sorts present similar professional dilemmas and strategic risks to those associated with pretrial detentions and plea bargains with defendants. In Latin America they are particularly experimental because the relevant legislation is very recent.

In sum, securing the evidence needed to punish corrupt politicians depends on the presence of investigators willing to learn fast and innovate, take risks and step outside their comfort zones. This condition is especially hard to meet in very hierarchical judiciaries or prosecution services, where careers are tightly controlled from above, and those in charge are either opposed to prosecutions or favor a highly formalistic

and cautious approach.[2] In these environments, the rational bureaucratic response is to avoid crossing the anti-corruption Rubicon and stay put. But even if judges and prosecutors enjoy considerable internal independence, as they do in Brazil or Peru as a result of superstructural reforms implemented in the 1990s and 2000s (Gonzalez-Ocantos et al. 2021), or suddenly muster the courage to defy bureaucratic inertia and assume professional risks, success is far from guaranteed. Pursuing an aggressive prosecutorial strategy that relies heavily on the strategic use of pretrial detentions, plea bargains and transnational cooperation channels to overcome evidentiary lacunae requires great skill. This is because corrupt elites will most certainly try to politicize or undermine the prestige of the investigation by questioning the use of these tactics. To secure some degree of insulation and protect the integrity of the investigation, judges and prosecutors must therefore combine courage with doses of pragmatism, savviness and moderation.

In what follows, we trace how Peruvian prosecutors navigated these challenges between 2016 and 2019. The narrative reveals that securing high-quality information hinged on their willingness to privilege an aggressive prosecutorial style over a more traditional one, especially when it came to designing a strategy of international cooperation vis-à-vis Odebrecht. We also discuss the compromises required by this aggressive approach, and how those compromises made prosecutors vulnerable to backlash.

THE PERUVIAN CHAPTER OF LAVA JATO

Within days of the December 2016 revelations, the Peruvian chapter of Lava Jato began in earnest, with a focus on bribes paid to secure three major infrastructure projects: a segment of the Inter-Oceanic Highway built during Alejandro Toledo's administration (2001–2006); an electric trainline built during Alan García's administration (2006–2011); and a coastal infrastructure project sponsored by the regional government of El Callao. The investigative effort soon expanded to include an inquiry into an illegal campaign financing scheme, which targeted, among others, former president Ollanta Humala (2011–2016) and his wife, Nadine Heredia; opposition leader and several times presidential candidate, Keiko Fujimori; and former Lima mayors, Susana Villarán and Luis Castañeda.

[2] For a discussion of internal judicial independence, see Ríos-Figueroa (2019).

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The scandal erupted six months into President Kuczynski's administration. With the Fujimorista opposition in total control of Congress (73 out of 130 seats), inter-branch relations were tense from the start (Léon 2019; Sifuentes 2019). Keiko Fujimori had been defeated in the second round of the presidential race by a razor-thin margin and quickly turned her legislative prowess into an obstructionist force. At first, the Lava Jato inquiry seemed to be centered on some of Fujimori's favorite figures of hate, especially former presidents Alejandro Toledo and Ollanta Humala. Fujimoristas naturally saw the scandal as an opportunity to further discredit them. Given that Kuczynski had served under Toledo, it was also a great opportunity to try to implicate the president. For example, with help from former president García's party (Alianza Popular Revolucionaria Americana, APRA), Fujimoristas launched a congressional investigation. During these proceedings, Fujimoristas and Apristas went to great lengths to safeguard their respective leaders, ensuring the scandal maintained its initial narrow focus (Roca 2019). While the specter of the Lava Jato inquiry did eventually come to haunt Kuczynski, precipitating his resignation in March 2018, the investigation also ended up implicating Fujimori and García. When this happened, Fujimoristas enlisted key allies in the judiciary and prosecution services to orchestrate a backlash. Interestingly, however, these efforts failed and backfired because, as we shall see, in September 2019 they led to the dissolution of Congress, Fujimori's main institutional stronghold.

Several actors enmeshed in this severe inter-branch conflict tried to weaponize the anti-corruption crusade. Unfortunately for them, though, they were never able perfectly to control the prosecutors in charge of the case. As a result, Lava Jato quickly expanded beyond its original remit, implicating politicians both in and out of power. In so doing, judicial actors served to exacerbate the political crisis still further. To understand why the inquiry stretched its tentacles, and why prosecutors were able to withstand backlash, we need to pay attention to prosecutorial agency. Central to this process was an innovative and controversial investigative strategy, which included a frenzy of pretrial detentions and intense negotiations with the main bribe-payer, Odebrecht.

Pretrial Detentions

By December 2017, just a year into the investigation, the team of prosecutors in charge of the case had identified sixty-four bank accounts and fifty offshore companies used in the bribery scheme, reviewed more than

2,000 suspicious wire transfers, and conducted searches at fifty different addresses.[3] Throughout, they adopted an aggressive approach to pretrial detentions. In fact, between December 2016 and July 2019 judges agreed to order at least fifty-one jail terms. During interviews, sources close to the investigation mentioned that these requests were strategically planned in part because prosecutors were well aware of the controversial nature of such measures. It was of course entirely possible that, while vital for neutralizing powerful defendants and extracting confessions, some judges could consider the requests excessive, risky or politically inexpedient. To circumvent such obstacles, our sources tell us that it was common for the prosecutors to time the requests in order to make sure they landed on the desks of sympathetic judges.

Regardless of the veracity of these claims, the prosecutors certainly found an echo in the courts. For example, personalities such as Miguel Navarro Portugal, deputy communications minister under García; César Alvarez, former governor of Ancash; and Keiko Fujimori, leader of the opposition, served time in pretrial detention. Ollanta Humala and Nadine Heredia also spent time in jail between July 2017 and April 2018. Furthermore, in February 2017, national and international arrest warrants were issued against Alejandro Toledo. At the time of writing, Toledo awaits a final decision on an extradition request after being apprehended in California in July 2019. The former governor of Callao, Félix Moreno, was similarly handed a pretrial detention order, but is currently a fugitive. Finally, former presidents Alan García and Pedro Pablo Kuczynski were initially banned from leaving the country. Kuczynski was eventually placed in preliminary pretrial detention in April 2019 after he asked for permission to travel abroad, and was later put under house arrest. Most tragically, when a preliminary pretrial detention order was issued against García that same month, he committed suicide.

In some cases, pretrial detentions made a difference. For example, after the authorities captured businessman Gil Shavit in April 2017, prosecutors traded immunity for information. This agreement was instrumental in determining that Odebrecht had paid US$4 million in bribes to Callao governor Félix Moreno. Similarly, in December 2017 prosecutors placed the top executives of Peruvian construction conglomerate Graña & Montero in pretrial detention for eighteen months. They were suspected

[3] Figures released by the Prosecution Services. See www.mpfn.gob.pe/equipo_especial/logros/ (accessed April 19, 2019).

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of facilitating bribe payments in the Inter-Oceanic Highway case. While the detentions were cut short in March 2018, the decision to "turn the heat" on Graña & Montero forced a restructuring of the company's management team. The new chief executives were eager to mitigate the damage inflicted on their reputation and, one year later, agreed to sign a cooperation agreement with the prosecutors. And when prosecutors threatened the former executives with another stint in jail for their alleged participation in the Metro de Lima case, they quickly agreed to a plea deal. Finally, Susana Villarán, former mayor of Lima, was accused of receiving money from Odebrecht to fund a 2013 recall referendum campaign and her 2014 reelection bid, and was placed in pretrial detention in May 2019. This move persuaded a witness to sign a plea bargain agreement in which they corroborated the charges. Days later, Villarán confessed to the crimes despite having denied the charges during a congressional hearing.

These victories notwithstanding, the use of pretrial detentions has not been without controversies or costs. For example, the prosecutors placed Keiko Fujimori in pretrial detention in October 2018 because they suspected she was working behind the scenes to obstruct the investigative effort. But the decision to put her in jail for thirty-six months without a conviction, the maximum allowed by law, became the subject of a byzantine legal battle that put prosecutors on the defensive. In fact, this battle risked undermining the effectiveness of pretrial detentions as both the Supreme Court and the Constitutional Court subsequently handed down rulings limiting the conditions under which it is legitimate to resort to this tool. In one of those decisions, for example, the Supreme Court reduced the length of Fujimori's detention from thirty-six to eighteen months. Contributing to the onslaught, Fujimoristas in Congress orchestrated a move to undermine the prosecutors' claim that the money Keiko received from Odebrecht to fund her presidential bid could be classified as "money laundering." Specifically, they passed a law in August 2019 creating the lesser crime of "illegal financing of electoral campaigns." On the basis of this change, judges could eventually apply the principle of retroactivity of the most favorable criminal law, thus forcing the prosecutors to abandon the money laundering classification. This classification allows for longer investigations, longer pretrial detentions and tougher sentences.

The fallout from García's suicide was similarly problematic. The tragedy led to accusations of overzealousness and recklessness against the prosecutors. Echoing these criticisms, Apristas and Fujimoristas in Congress tabled bills to reform the rules governing pretrial detentions.

A few observers argue that the prosecutors suddenly sensed that tolerance for their aggressive strategy was declining and responded by lowering the rate of pretrial detention requests. There is indeed some indication that at least in high-profile cases prosecutors opted for placing defendants under house arrest or simply issued international travel bans. For example, some sources speculate that had García not committed suicide, former mayor of Lima, Luis Castañeda, would have been handed a pretrial detention in 2019 rather than simply an international travel ban. Furthermore, in light of these criticisms, judges also became warier of agreeing to pretrial detentions: between April and June 2019, the courts rejected at least six requests.

Deal or No Deal?

The difficulties in striking a fine balance between an aggressive investigative approach that leads to quick results and maintains momentum and a more cautious one that minimizes the fallout from using controversial prosecutorial strategies, can also be seen in the use of plea bargains.[4] Plea bargains have been the main (and most effective) tool in the arsenal of Peruvian prosecutors since December 2016. They allowed the investigators to generate the evidence needed to expand the remit of the inquiry beyond the three large infrastructure projects, and justify some of the most controversial pretrial detentions. Interestingly, however, the use of this tool was fraught with difficulties. First, unlike pretrial detentions, offers of immunity in exchange for information were not universally endorsed by prosecutors, opening internal rifts and generating inconsistencies in the overall strategy. At times this caused mistrust among key informants and led to the interruption of information flows. Second, negotiating cooperation agreements with companies such as Odebrecht was unprecedented, and required adapting negotiating tactics. Prosecutors also had to coordinate with government lawyers (*procuradores*), whose primary role was rather different: to impose fines on the company. Excesses on this front would not help the prosecutors ensure the company's cooperation. And even after agreeing a common strategy with government lawyers, any benefits prosecutors exchanged in order to

[4] According to article 474 of the Code of Criminal Procedures, prosecutors are permitted to strike plea bargain agreements in cases of macro-criminality, including illicit associations, terrorism, money laundering, cyber-crime, crimes against humanity and human trafficking.

lock in corporate cooperation would have to be defended from those eager to accuse the investigation of bias in favor of foreign business interests.

In December 2016, the chief prosecutor created a taskforce to investigate the Odebrecht scandal. Led by Hamilton Castro, these prosecutors trained their eyes on the bribery scheme mounted to secure major infrastructure projects. A second group of prosecutors commanded by Rafael Vela was tasked with pursuing the inquiry into Odebrecht's campaign contributions. When it came to negotiations with Odebrecht, the two teams adopted very different approaches.[5] As early as January 2017, the company expressed willingness to collaborate in exchange for immunity for executives implicated in the scandal. Odebrecht was also after a deal that would allow it to resume operations in Peru and continue contracting with the state. Vela's team welcomed this overture. He and Alonso Peña Cabrera, head of the international cooperation division of the prosecution services, quickly negotiated a plea bargain agreement with Jorge Barata, former head of Odebrecht in Peru, and two other Brazilian executives, including Marcelo Odebrecht. In the deal signed on June 8, 2017, Peruvian prosecutors agreed to refrain from bringing charges against them. This was an important concession not only because it generated goodwill among key witnesses, but also because Brazilian judicial authorities refused to release relevant case files if this risked opening the door to the possibility of double jeopardy.[6] The agreement permitted access, among other things, to the official video of the confession that Marcelo Odebrecht made in Curitiba in May 2017. It also made it possible to further interrogate Odebrecht in November 2017, and thus obtain new evidence about illegal donations to Keiko Fujimori's and Ollanta Humala's presidential campaigns. These accusations were corroborated by Barata in February 2018, who also confessed donations to other politicians, including Toledo, Kuczynski, García and Villarán. In other words, this initial plea bargain agreement was instrumental in allowing Vela and his associates to make quick progress on their side of the investigation.

By contrast, Castro proved more reluctant to grant immunity to those willing to help. This was a major problem for everyone involved. First, it hampered progress on the more significant line of inquiry. Second,

[5] Gustavo Gorriti, "Entre el Silencio y la Confesión," *IDL-Reporteros* (February 22, 2018).
[6] Gustavo Gorriti, "Quieres la Información? Firma Primero," *IDL-Reporteros* (June 12, 2017).

because Castro's cases involved bribes that cost the state millions in overpriced infrastructure projects, he held the keys to the broader agreement the company was after, i.e., a reduction in damages and an end to the ban on bidding for future government contracts. Without these benefits, Odebrecht executives had few incentives to continue cooperating with Vela's team.

Castro's relationship with Odebrecht was very tense from the start. Despite signing a preliminary agreement in January 2017, in which the company promised to assist the work being done in the *Inter-Oceanic Highway* and *Metro de Lima* cases, Castro opened a formal investigation against Odebrecht. Castro also refused to entertain the possibility of closing a preexisting investigation into Odebrecht's participation in a case not included in the original agreement, in exchange for additional cooperation. More importantly, while Barata's cooperation had enabled some of the most high-profile pretrial detentions ordered by members of his team, Castro never offered Barata full immunity from prosecution and asset embargoes.[7] Castro's decision to spend several months testing Barata's good intentions with numerous requests for additional information eroded trust, limited the flow of evidence and stalled the negotiations. At one point, Castro concluded that Barata had withheld information from his team, so he decided to open a formal investigation against the star witness and asked a court to freeze Barata's assets. The potential implications of this decision were huge, as it violated the terms of existing cooperation agreements, and therefore jeopardized the admissibility of the testimonies and evidence that Barata and other collaborators had provided thus far to Vela's team. The relationship reached breaking point in July 2018, when Odebrecht decided to stop talking to Peruvian prosecutors.

As a result of these contrasting prosecutorial approaches, the two streams of the Lava Jato inquiry moved at very different paces. This illustrates the importance of securing confessions in order to make progress in grand corruption cases. Factors such as the legal framework governing plea bargain negotiations, or the formal independence of the prosecution service, obviously cannot explain such contrasting approaches between similarly situated prosecutors. The observed variation across teams is likely a function of a host of other factors, including professional role conceptions and personality traits. In this sense, most of

[7] Gustavo Gorriti, "Hablaste, te fregaste," *IDL-Reporteros* (June 14, 2018).

our interviewees, including journalists with privileged access as well as prosecutors involved in the inquiry, described Castro as a "traditional" prosecutor, with a structured and conservative style. Plea bargains with a company were simply unprecedented. Castro was therefore extremely cautious and tried to make sure he extracted as much information as possible before agreeing to any deal. And even if this high informational threshold was ever met, Castro never seemed persuaded of the value and appropriateness of offering exceptional monetary benefits on top of immunity from prosecution. For example, he showed little interest in coordinating strategies with the *procuradores* tasked with estimating the fines. Partly as a result of this lack of coordination, throughout this period the *procuradores* pursued a maximalist strategy, at one point asking for S./3,000 million in reparations, which clearly undermined the chances of the prosecutors reaching a deal. Odebrecht was not in a position to pay such an exorbitant amount. If it ever agreed to do so, the outcome would most certainly be bankruptcy, a situation that would have also doomed any prospect of obtaining additional information.

By contrast, Vela and his team were anything but "traditional," and showed greater willingness to take risks. For instance, their decision to classify the crimes under investigation as instances of money laundering reveals quite daring and creative personalities. Under existing Peruvian law, accepting campaign contributions of this kind could easily be characterized as an administrative offense. Instead, they sought to prove that various Peruvian political parties were essentially criminal organizations designed to launder money from corruption. This approach made strategic sense because investigations for money laundering can last longer and pretrial detentions can be extended up to thirty-six months. When it came to the issue of immunity, they were similarly open to risk-taking. In their view, without a deal with the company there would be no information, and without information, no case against the politicians. If a deal meant being accused of "rewarding" a corrupt company, so be it. Furthermore, in contrast to Castro, Vela was prepared to accept that the company had no incentive to provide access to all the evidence it had about corruption in Peru, so at some point his team would have to stop asking for more information, agree to grant generous criminal and commercial benefits, and trust that in the future Odebrecht would be more forthcoming. In line with this pragmatism, Vela's team was also willing to invest time in establishing a personal relationship with Brazilian prosecutors via messaging apps, emails and trips to Brazil, and thus

improve their predisposition to share evidence. Castro, by contrast, was more reticent to engage in informal transnational adventures.

Deal!

Two events improved the prospects of a deal with Odebrecht. First, a team of provincial prosecutors stumbled upon incontrovertible evidence of influence peddling by members of the judiciary while investigating a drug-trafficking organization based in the port city of Callao. They had strong reasons to believe that a network of judicial clientelism, which involved Supreme Court judges, members of the National Judicial Council, provincial judges and prosecutors, and influential lawyers and politicians, worked behind the scenes to place friends and allies in key posts and micromanage the outcome of court cases. Reporters obtained information about this separate investigation, and published a series of high-impact exposes starting in July 7, 2018, just a few days after Odebrecht withdrew from the negotiating table in the Lava Jato case.[8] The revelations, which came to be referred to as the *Cuellos Blancos del Puerto* (White Collars of the Port) scandal, sent shockwaves across the judiciary. In an effort to change the narrative by showing the system's commitment to fighting corruption, Chief Prosecutor Pedro Chavarry removed Hamilton Castro as the head of the Lava Jato taskforce, and appointed Vela. As a result of this decision, both streams of the inquiry would now benefit from Vela's pragmatism and greater coordination. Cuellos Blancos had an additional positive externality for Lava Jato. The senior law enforcement actors involved in the scandal were also those who had been trying to contain the probe from the start. This is because of their connections to some defendants, especially Keiko Fujimori. Fujimoristas in Congress adamantly tried to shield these judges and prosecutors from impeachment or resignation, but this was not possible in all cases. And with their political links now exposed, those who did manage to stay in post would in the future find it much harder to disguise obstructionist shenanigans in technical legalese.

Second, in March 2018 the government promulgated Law 30-373, which created a formula to calculate fines for companies implicated in corruption cases. This replaced a more subjective set of criteria outlined in the Civil Code. With the construction sector paralyzed, Lava Jato was

[8] "Corte y corrupción," *IDL Reporteros & Justicia Viva* (July 7, 2018).

severely damaging the economy. Payments along the supply chain were at a standstill and companies had trouble securing loans to fund operations as banks feared that existing and future corruption allegations would cripple their finances. The government therefore hoped that the new objective criteria to estimate fines would avoid excessive penalties, bring certainty to balance sheets, and reassure the banks. The law also had the potential to provide a clear focal point for negotiations between the company and the *procuradores*, which until now had been marred by massive disagreements over the amount that was due in damages.

Determined to get a deal, Vela abandoned Castro's policy to conduct separate plea bargain negotiations with individual executives and the company. The decision to bring all negotiations under the same umbrella had one key objective: speed up the process of corroborating the information and establishing the credibility of the witnesses. Without this, no judge would approve the final deal. Crucially, while the company could supply hard evidence of the illicit payments, only the individual executives could provide the necessary context to fully grasp the dynamics of the bribery scheme and assign individual criminal responsibility. For example, the executives were the only ones who could reconstruct the sequence of informal meetings or decipher the pseudonyms used in the company's parallel accounting system to identify each client. It therefore made sense to unify both sets of negotiations and corroboration exercises.

As negotiations resumed, Vela also inaugurated a new chapter in the relationship between the Lava Jato taskforce and the *procuradores*. By law, any deal on the criminal front had to be accompanied by a deal on the civil front (i.e., the fine). It was therefore essential to coordinate efforts between government branches, something that had been missing under Castro. The prosecutors agreed that the *procuradores* would be solely responsible for negotiating the fine and the payment scheme. While the law allowed the prosecutors to take over this aspect of the process, the job was simply too complex, and Vela recognized that his team lacked the necessary time or technical expertise. In addition, because the *procuradores* were now strictly constrained by law in what they could demand from the company, in terms of both a maximum and a minimum amount, they were in a better position to negotiate a fine that would be high enough to insulate the deal from criticism, and low enough to avoid crippling the company. And given that the prosecutors' main goal was to extract information, not money, their threats to the company regarding the lowest fine they were prepared to offer would be less credible. The *procuradores*, for their part, came to terms with the idea that negotiating

the fine in the context of a plea deal with the prosecutors was the best way to make sure the company paid. With the new formula in place, the *procuradores* needed the information obtained by the prosecutors to estimate damages. Cooperation was therefore essential. This confluence of interests made it possible to agree on a joint strategy.

The *produradores* established damages for S./ 610 million and refused to budge. The company protested, turning to Vela. But in line with the strategy agreed beforehand, Vela and his team refused to get involved with the financial negotiations. Vela thus forced the company to sort things out with the *procuradores*, and only then come back to negotiate immunity from prosecution and an end to the ban on the company's ability to do business with the state. Odebrecht finally agreed to pay S./ 610 million. While much lower than the amounts floated in previous months, it was still a debilitating figure. In order to make sure the company could pay, the *procuradores* accepted a proposal for a flexible payment plan and removed an asset embargo hanging over the company. The prosecutors then agreed to offer full immunity from prosecution and to lift the aforementioned ban. They also agreed to a dynamic deal, whereby the benefits wouldn't be automatically suspended should the investigators discover new crimes. In doing so, Vela accepted that the company would not disclose everything at once. Finally, Odebrecht agreed to give information about the corruption scheme mounted to secure four major infrastructure projects (the Vía Evitamiento in Cusco, the Costa Verde in El Callao, the Inter-Oceanic Highway and the Metro de Lima), and to surrender the information saved in the My Web Day and Drousys servers, which included (among other things) information about the payments made through the infamous Division of Structured Operations.[9]

Backlash

Because the company had to establish credibility and reliability, the flow of information accelerated as the final negotiations progressed. With new evidence in hand, in October 2018 a prosecutor filed the aforementioned pretrial detention request against Keiko Fujimori and conducted an unprecedented search in her party's headquarters. This was a daring move: Fujimori's party still controlled Congress and was well-known

[9] This was the division set-up to manage relations with politicians and government officials across Latin America.

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for having allies in the upper echelons of the judiciary and prosecution services. The *Cuellos Blancos* scandal had revealed that much. The pretrial detention, coupled with the imminence of a deal, put the establishment on high alert, and a fierce backlash ensued. On December 31, 2018, Chief Prosecutor Pedro Chavarry dismissed Vela and one of his lieutenants, Prosecutor Pérez, accusing them of mishandling the relationship with Odebrecht. When Chavarry promoted Vela back in July as a gesture, in an attempt to weather the storm unleashed by *Cuellos Blancos*, he expected to be able to control the new team. In particular, Chavarry, whose links to the network of judicial clientelism eventually came to light, hoped the investigation would not move too far away from its initial focus and implicate Fujimori. In so doing, he fatally underestimated the prosecutors' commitment to the case and their willingness to pursue all lines of inquiry.

What followed was an impressive display of media savviness on the part of the embattled prosecutors. By going public, Vela and Pérez managed to engineer mass support for what until that day had been a relatively obscure prosecutorial taskforce, and also secured the backing of important political personalities. This public support became particularly visible on January 2, 2019 (three days after they were fired). A huge group of protesters marched to the headquarters of the prosecution services to demand Chavarry's resignation. This unprecedented display of support for judicial actors was reinforced by the *Junta de Fiscales Supremos* (Board of Supreme Prosecutors), which immediately asked for Chavarry's resignation. These developments forced Chavarry to reinstate Vela and Pérez. He resigned a few days later. Far from being a function of systemic political support for the investigation, the survival of the Lava Jato team, and the continuing momentum behind the case, were thus the result of daring prosecutorial defensive efforts.

A reinvigorated Lava Jato taskforce sealed the deal with Odebrecht on February 15, 2019 at the Peruvian consulate in São Paulo. Immediately after, Jorge Barata confirmed that Odebrecht had supported former President García's campaign, corroborated the existence of a cartel in the construction sector, proved that Odebrecht had bribed Toledo to secure the Inter-Oceanic Highway project, and showed that former Lima mayor Susana Villarán knew of Odebrecht's contributions to her campaigns. In other words, no one was spared. The prosecutors thus confirmed that they had been right to see the deal as the main pillar of the investigative strategy.

Their problems, however, did not end there. While big chunks of the network of judicial corruption revealed by *Cuellos Blancos* were dismantled surprisingly fast, key members still survived as senior prosecutors and Supreme Court justices, and were prepared to go to great lengths to protect some of the defendants. Had it not been for timely media exposés detailing the links between these individuals, the *Cuellos Blancos* network and Fujimorismo, it is possible that in July 2019 the Supreme Court would have endorsed the request of a senior prosecutor, himself involved in *Cuellos Blancos*, asking for Keiko Fujimori's release from pretrial detention. Such a move would most certainly have torpedoed efforts to deepen the campaign finances stream of the Lava Jato inquiry, and with it the most productive pillar of the entire investigation.[10] With the Supreme Court option now out of bounds, Fujimoristas trained their eyes on the Constitutional Court, which had to decide on a *habeas corpus* request filed by Fujimori's lawyers. Their goal was to establish a precedent against pretrial detentions and the classification of the Lava Jato crimes as instances of "money laundering." To do so, in September 2019 Fujimorista members of parliament tried to manipulate the appointment of new Constitutional Court justices. But like previous attacks against judicial institutions, the move failed. In fact, it triggered a full-blown inter-branch conflict with the executive, which ended with the dissolution of Congress, Fujimori's only remaining institutional stronghold.

These developments suggest that the judicialization of corruption often leads to extreme attempts to politicize the judiciary, but that overt and unscrupulous forms of backlash against the courts can backfire. Not all the avenues chosen to fight back against the Lava Jato taskforce, however, were equally clumsy or ineffective. Discursively, at least, opponents of the investigation have consistently embraced fairness and "rule of law" arguments to discredit the prosecutors. First, critics framed the deal with Odebrecht as a capitulation to foreign business interests. The focus was almost invariably on the fine, which they deemed too low. For example, according to Luz Salgado, a member of the Fujimorista parliamentary group, "[the prosecutors] don't know how the debts are going to be paid, [...] what I see is mostly a concern for the interests of the company instead of our own." Her colleague Rosa Bartra agreed: the prosecution

[10] One Supreme Court justice mentioned in the *Cuellos Blancos* wiretaps had to recuse himself from the case, which delayed the proceedings. The senior prosecutor who advised the court to release her was also implicated in the scandal.

is "giving everything to a criminal organization that has perverted our system." Second, shortly after the courts had reviewed and approved the deal, reporters revealed that the Drousys server contained records of bribes that the company had failed to confess. This was an excellent opportunity to depict the prosecutors as naïve at best or biased in favor of the company at worst. While the law didn't leave prosecutors with much wiggle room to impose a higher fine, and thus insulate the deal from the first line of attack, their negotiating strategy did open the door for the second line of attack when they agreed to a deal that would not punish the company for lying or withholding information. Their calculation, of course, was that this would at least ensure that the cases included in the original agreement could be prosecuted swiftly.

Partisan objections against plea bargains and pretrial detentions were also picked up by independent journalists and lawyers. Going forward, as the investigation struggles to deal with the complications brought about by the Covid-19 pandemic (e.g., most defendants were released from prison on health grounds), as well as with the fallout of the controversial deal and Lava Jato's role in the impeachment of President Vizcarra in 2020,[11] efforts to discredit the investigation will continue and perhaps become more effective. These developments underscore the risks of a prosecutorial strategy that is reliant on daring and occasionally questionable decisions. If the prosecutors can't show results fast enough, key actors, including the mass public, may quickly start to lose faith in the taskforce. They may begin to wonder whether the price paid for the company's secrets was the right one, and whether protracted pretrial detentions and other controversial tactics are actually being used to conduct more effective inquiries or to simulate effectiveness, all at the expense of the rule of law.

CONCLUSION

At the time of writing, Peru's Lava Jato is still ongoing and the taskforce is beginning to send the main cases to trial, including the one against Keiko Fujimori. As society awaits a resolution to the drama, the political

[11] The opposition succeeded in impeaching Vizcarra after a source leaked to the press that the Lava Jato taskforce was finalizing a plea deal that would show the president had accepted bribes when he was governor of Moquegua. Several opinion leaders accused the prosecutors of "playing politics" or "playing dirty" instead of pursuing justice. See Luis Pásara, "Los fiscales han jugado sucio," *La Mula* (November 17, 2020).

establishment will continue in a state of utter disarray. The wounds inflicted by the most ambitious and consequential anti-corruption probe in history won't heal fast.

The judicialization of corruption in Peru pitted a small group of committed prosecutors against a large portion of the country's political class. The Lava Jato taskforce also had to respond to obstructionist maneuvers orchestrated by high-ranking members of the judicial and prosecutorial establishments. A key takeaway from this story is that prosecutorial agency should be taken seriously when trying to understand why the inquiry gained momentum, often against all odds. It does not all come down to the preferences of key political actors or the balance of power between government and opposition. The choices prosecutors made along the way, especially their willingness and capacity to innovate and abandon bureaucratic comfort zones, had an impact on the kind of evidence that came to light and how much they could expand the scope of the investigation. Prosecutors who were well-intentioned but reticent to rely on pretrial detentions, strike plea bargains or court foreign actors would not have achieved as much. And as in any story that emphasizes agency, contingency played a central role. For example, given the complexity of the negotiations with Odebrecht, it is not hard to come up with a long list of things that could have gone terribly wrong (e.g., failure to coordinate with the *procuradores*; failure to triangulate information from different plea deals to corroborate confessions; etc.). Similarly, had the *Cuellos Blancos* network not been exposed, the Lava Jato taskforce would have probably faced more effective opposition from within the judiciary and the prosecution services.

Not everything, of course, comes down to agency. Three aspects of the institutional and political environment emerge as particularly important to understand why this innovative and ambitious prosecutorial strategy was possible. In other words, superstructural reforms of the kind reviewed in this book's Introduction do play a role in reinforcing the ability of judicial actors to exercise accountability functions. First, like many other Latin American countries, from the late 1970s Peru introduced a series of important independence-enhancing reforms to the prosecution services.[12] In 1979, for example the Ministerio Público became autonomous from the executive. As a result, the chief prosecutor exercises a high degree of control over criminal prosecution policies. A key

[12] The process was similar to the one that Da Ros and Taylor describe in Chapter 10. For a more general account of prosecutorial reforms in Latin America, see Michel (2018).

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prerogative in this regard is the ability to create special taskforces that specialize in the investigation of certain crimes. A Lava Jato taskforce could therefore be created relatively quickly. Crucially, the investigation benefited from the appointment of prosecutors with experience in teams tasked with investigating various forms of macro-criminality. These teams had been set up during a process of organizational strengthening that started in the aftermath of the democratic transition, at a time when the Peruvian state was trying to reckon with Fujimori's legacy of corruption, human rights violations and judicial capture (Dargent 2005, 2009; Gonzalez-Ocantos et al. forthcoming). It is still worth remembering, however, that Chief Prosecutor Chavarry made use of this same prerogative to try to get rid of committed investigators in December 2018. The skills and commitment displayed by Vela and his team are hence still important to understand why, once appointed, the taskforce was able to survive and perform its accountability functions. In other words, superstructural change alone is insufficient to enhance the accountability potential of judicial institutions.

Second, several key legislative changes equipped the prosecutors with better tools to investigate corruption. For example, the Code of Criminal Procedures was reformed in the 2000s, marking a transition to the accusatorial model, which strengthens prosecutorial power (Langer 2004; Michel 2018). The new code also allows for plea bargain agreements in cases of macro-criminality, including criminal conspiracies, terrorism, money laundering, cyber-crime, crimes against humanity and human trafficking. More recently, Law 30-373, passed in March 2018, further regulated corporate plea bargains and made it easier to strike leniency agreements with companies. But here again prosecutorial agency also played a role: had it not been for the speed at which the investigation had progressed up to that point, and the damage this inflicted on the construction sector, the government would not have felt the pressure to facilitate corporate cooperation via changes in the law and thus save the economy from paralysis. Vela's dexterity and zeal was also critical when it came to negotiating the actual deal, which was by all accounts unprecedented.

Third, the longstanding weakness of Peruvian political parties also helped the prosecutors (Levitsky and Cameron 2003; Munoz 2019). Politicians such as former presidents Toledo and Humala or former Lima mayor Susana Villarán had few political resources to defend themselves. Those who found themselves in a better position because of their leverage in the legislature, i.e. Fujimori and García, or because they

controlled the presidency, i.e. Kuczynski, did not fare much better. Fujimoristas and Apristas first tried to capitalize on the investigation to discredit Toledo and Humala, and further weaken President Kuczynski. Later on, when the prosecutors trained their eyes on Fujimori and García, their parties relied on Congress and connections in the upper echelons of the judicial and prosecutorial establishments to obstruct the inquiry. These tactics, however, proved too clumsy, and led, for example, to the dissolution of Congress in 2019 and Fujimori's loss of her main institutional asset in the elections called to replace the defunct legislature in 2020. The underlying feebleness of all political organizations in the country likely facilitated this poor strategic planning and exacerbated political tensions, leading politicians to destroy each other in the process. Prosecutors were simply smart enough to take advantage of a situation they unintentionally helped create.

As we saw, however, the kind of innovation that allowed prosecutors to remain standing in a context in which everyone else suffered severe political defeats was not without costs for the political system. This suggests that judicial actors that enjoy more power and are highly committed to their accountability mission may not always benefit democracy. Where some see unwavering determination to fight corruption, others see serious affronts to the rule of law, especially in the way defendants are treated, as well as risks for the stability and openness of democratic competition. This raises uncomfortable questions about the real implications and value of horizontal accountability efforts via the decisive judicialization of grand corruption. This is especially so in light of the political devastation that the Lava Jato investigation produced in a short period of time, contributing to the downfall of two presidents, unworkable interbranch relations, and greater political fragmentation and party weakness.[13]

Furthermore, the inevitability of backlash, and the continued presence of rogue actors in senior judicial and prosecutorial roles despite ambitious institutional reforms mean that anti-corruption prosecutors can easily fall prey to politicization. This obviously risks undermining the prestige of the system of horizontal accountability, and limits the reach of punitive outcomes in the medium to long term. Vela and his team may be unique personalities in the Peruvian judicial system. While the *Cuellos Blancos* case did help remove some figures with the power to block or stop the

[13] For example, the 2020 parliamentary elections resulted in the rise of hitherto marginal far-right parties and extremely high levels of fragmentation.

inquiry on appeal, it is still unclear whether the case will lead to convictions. And even if we leave aside judicial corruption, trial-level judges and prosecutors may eventually question the admissibility or quality of evidence obtained through unusual channels, and find issue with the way defendants were treated in the investigative phase. These are all problems born out of the aggressive and creative investigative strategy the taskforce deemed necessary in order to succeed. Going forward, the absence of clear results will most likely multiply the voices against the investigation and raise questions about whether zeal and unorthodoxy were actually worth it.

References

Bertossa, B. (2003). Difficulties Encountered by the Judiciary: A Summary of Key Issues. In Asian Development Bank, ed., *Effective Prosecution of Corruption*. Manila: Asian Development Bank, pp. 9–12.

Conaghan, C. M. (2012). Prosecuting Presidents: The Politics within Ecuador's Corruption Cases. *Journal of Latin American Studies* 44(4), 649–78.

Dargent, E. (2005). Juzgando a los Señores: Reflexiones sobre el Proceso Anticorrupción en el Perú. In F. Portocarrero, ed., *El Pacto Infame: la Persistencia de la Corrupción en el Perú*. Lima: Red para el Estudio de las Ciencias Sociales en el Perú (IEP, PUCP, UP).

(2009). Determinants of Judicial Independence: Lessons from Three "Cases" of Constitutional Courts in Peru (1982–2007). *Journal of Latin American Studies* 41(2), 251–78.

Della-Porta, D. & Vannucci, A. (2007). Corruption and Anti-Corruption: The Political Defeat of "Clean Hands" in Italy. *West European Politics* 30(4), 830–53.

Gonzalez-Ocantos, E. & Baraybar, V. (2019). Lava Jato beyond Borders: The Uneven Performance Anti-Corruption Judicial Efforts in Latin America. *Taiwan Journal of Democracy* 15(1), 63–89.

Gonzalez-Ocantos, E. Muñoz Chirinos, P., Pavao, N. & Baraybar, V. (forthcoming) The Criminalization of Corruption in Latin America: Prosecutors, and Voters during Lava Jato. New York: Cambridge University Press.

Helmke, G., Jeong, Y., Kim, J. & Ozturk, S. (2019). Upending Impunity: Explaining Post-Tenure Presidential Prosecutions in Latin America. Unpublished manuscript.

Klinkhammer, J. (2013). On the Dark Side of the Code: Organizational Challenges to an Effective Anti-Corruption Strategy. *Crime, Law and Social Change*, 60, 191–208.

Langer, M. (2004). From Legal Transplant to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure. *Harvard International Law Journal* 45(1), 1–64.

León, R. (2019). *Vizcarra: Retrato de un poder en construcción*. Lima: Debate.

Levitsky, S. & Cameron, M. A. (2003). Democracy without Parties? Political Parties and Regime Change in Fujimori's Peru. *Latin American Politics and Society* 45(3), 1–33.
Maravall, J. (2003). The Rule of Law as a Political Weapon. In J. Maravall & A. Przeworski, eds., *Democracy and the Rule of Law*. Cambridge: Cambridge University Press.
Martini, M. (2015). *Fighting Grand Corruption*. New York: Transparency International.
Michel, V. (2018). *Prosecutorial Accountability and Victims' Rights in Latin America*. Cambridge: Cambridge University Press.
Moro, S. (2004). Considerações sobre a operação Mani Pulite. *Revista CEJ* 8(26), 6–62.
Muñoz, P. (2019). *Buying Audiences: Clientelism and Electoral Campaigns When Parties are Weak*. Cambridge: Cambridge University Press.
Pei, M. (2018). How Not to Fight Corruption: Lessons from China. *Daedalus* 147 (3), 216–30.
Popova, M. & Post, V. (2018). Prosecuting High-Level Corruption in Eastern Europe. *Communist and Post-Communist Studies* 51(3), 231–44.
Ríos-Figueroa, J. (2019). Judicial Independence in Judicial Hierarchies: Civil Law Systems. In L. Demetrius & S. Sterett, eds., *Research Handbook on Law and Courts*. London: Elgar Publishing, Chapter 7.
Roca, D. (2019). *Lava Jato en el Congreso, la corrupción en el Perú*. Lima: Revuelta.
Rotberg, R. (2017). *The Corruption Cure*. Princeton, NJ: Princeton University Press.
Sberna, S. & Vannucci, A. (2013). It's the Politics Stupid! The Politicization of Anti-Corruption in Italy. *Crime, Law and Social Change* 60(5), 565–93.
Shen-Bayh, F. (2018). Strategies of Repression: Judicial and Extrajudicial Methods of Autocratic Survival. *World Politics* 70(3), 321–57.
Sifuentes, M. (2019). *K.O. PPK: Caída pública y vida secreta de Pedro Pablo Kuczynski*. Lima: Planeta.
US Department of Justice. (2016). *Odebrecht Plea Agreement*. New York: US Department of Justice.