

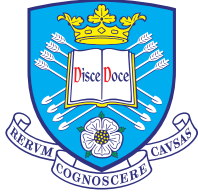
**Institutionalising Anti-Corruption in
Brazil: The Path of the *Controladoria-Geral
da União* (CGU)**

by

Romualdo Anselmo dos Santos

A thesis submitted to
The University of Sheffield
Department of Politics
for the degree of Doctor of Philosophy

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R. A. D. Santos

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Abstract

This thesis is about the institutional trajectory of the *Controladoria-Geral da União* (Brazil's Office of the Comptroller General – CGU). The CGU was established in 2001 and is the anti-corruption agency of the federal government of Brazil. Considering staff and budget, the CGU may be presented as the largest anti-corruption agency in the world. However, there are very few studies about the institution, and the existing works do not address aspects of the origin and development. The study examines the origin and the process of gradual change of the CGU as an example towards institutionalisation. Historical institutionalism indicates the crucial theoretical approach of the study in the sense that the institution is considered as a concrete legacy of a historical process. However, the study has a borrowing approach to explain part of the institution's path. The research aims to explain the CGU's path from origin to its establishment as the main instrument of the Brazil's anti-corruption policy. A combination of methods of archive and document analysis and group and elite interview is applied. The institution itself and the manner in which it has been formed and changed are at the core of the study. Two research questions were developed and answered in the thesis: (1) Why and in which context has this particular institutional arrangement emerged? and (2) How has this institution been persisting over time? The objective and interests are to show not only what have changed, but “how”, “when” and “why” this changes occurred. The research findings point out that an exploratory analysis about institutional change is better understood when a combination of theoretical perspectives is applied. The study also concludes that continuous change and innovation are crucial for an anti-corruption agency to endure and for an anti-corruption policy to succeed.

Não há glória sem luta, nego velho.

Júlio José Anselmo

(My grandfather)

For my sons, Gustavo and Leonardo, sources of inspiration.
Thank you for showing dad that life does not have to be so serious.

For my wife, Luciana, for her love and dedication.

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The remaining errors and deficiencies are mine alone.

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List of Acronyms

ABI	Associação Brasileira de Imprensa (Brazilian Press Association)
ACC	Anti-corruption Commission
AI	Ato Institucional (Institutional Act)
ARENA	Aliança Renovadora Nacional (National Renovating Alliance)
CEI	Comissão Especial de Investigação (Special Commission of Investigation)
CGI	Comissão Geral de Investigação (The General Commission of Investigation)
CGU	Controladoria-Geral da União (The Office of the Comptroller General)
CMO	Comissão Mista de Orçamento (Congress Joint Budget Committee)
CNBB	Conferência Nacional dos Bispos do Brasil (Brazil's Catholic Bishops National Conference)
CNJ	Conselho Nacional de Justiça (National Council of Justice)
CODICI	Comissão de Defesa dos Direitos do Cidsdão (Citizen's Rights Defence Committee)
CPI	Comissão Parlamentar de Inquérito (Parliamentary Commission of Inquiry)
CRG	Corregedoria-Geral da União (Nation General Correction)
CUT	Central Única dos Trabalhadores (Workers' Central Union)
DEM	Partido Democratas (Democrats Party)
FCO	British Foreign and Commonwealth Office
FIESP	Federação das Indústrias do Estado de São Paulo (São Paulo State Industries Federation)
HDI	Human Development Index
IBGE	Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics)
IBOPE	Instituto Brasileiro de Opinião Pública e Estatística (Brazilian Institute of Public Opinion and Statistic)
IC	Internal Control
ICAC	Independent Commission Against Corruption
IMF	International Monetary Fund
MDB	Movimento Democrático Brasileiro (Brazilian Democratic Movement)
MP	Medida Provisória (Provisional Measure, Presidential decree)
NGO	Non-Governmental Organisation
NPM	New Public Management
OAB	Ordem dos Advogados do Brasil (Brazil Lawyers Association)
OAS	Organisation of American States
OECD	Organisation for Economic Co-operation and Development
OGU	Ouidoria Geral da União (Nation General Umbudsman)
PCB	Partido Comunista Brasileiro (Brazilian Communist Party)
PDS	Partido Democrático Social (Social Democrat Party)

PF	Polícia Federal (Federal Police)
PFL	Partido da Frente Liberal (Liberal Front Party)
PFS	Programa de Fiscalização por Sorteio Público (Random Audits Programme)
PGR	Procuradoria-Geral da República (The National Prosecutor's Office)
PL	Partido Liberal (Liberal Party)
PMDB	Partido do Movimento Democrático Brasileiro (Brazilian Democratic Movement Party)
PNBE	Pensamento Nacional das Bases Empresariais (National Thought of Entrepreneurial Basis)
PPS	Partido Popular Socialista (Popular Socialist Party)
PSOL	Partido Socialismo e Liberdade (Socialism Liberty Party)
PT	Partido dos Trabalhadores (Workers' Party)
SFC	Secretaria Federal de Controle Interno (The Federal Internal Control Secretariat)
SPCI	Secretaria de Prevenção da Corrupção e Informações Estratégicas (Corruption Prevention and Strategic Information Secretariat)
STF	Supremo Tribunal Federal (Supreme Federal Court)
STJ	Superior Tribunal de Justiça (Superior Court of Justice)
TB	Transparência Brasil (Transparency Brazil)
TC	Tribunais de Contas (Court of Accounts)
TCU	Tribunal de Contas da União (Brazilian Court of Audit)
TI	Transparency International
TI/CPI	Transparency International/Corruption Index
TRE	Tribunal Regional Eleitoral (Regional Electoral Tribunal)
TSE	Tribunal Superior Eleitoral (Superior Electoral Tribunal)
UK	The United Kingdom
UN	The United Nations
UNDP	The United Nations Development Programme
UNESCO	The United Nations Educational, Scientific and Cultural Organisation
UNODC	The United Nations Office of Drugs and Crime
USA	The United States of America
WGI	Worldwide Governance Indicator

1 – Introduction

This thesis is an investigation of institutional origin and developmental change that have taken place in the Controladoria-Geral da União (The Office of the Comptroller General of Brazil, or CGU). It addresses a gap in research into the anti-corruption institutions, which it will be argued, lacks a substantive origin and change approach. The thesis is informed by developments in New Institutional analysis and uses a historical institutionalist framework. Therefore, it helps to move the study of anti-corruption institutions beyond rational choice and the principal-agent model. The thesis establishes the need to foreground context and incremental change in order to explain the genesis, structure and success/failure of an anti-corruption institution.

It is not a research about corruption and anti-corruption, intrinsically, but about historical institutionalism in the study of an anti-corruption institution. The study is oriented to answer the following two research questions:

1 – Why and in which context has this particular institutional arrangement (CGU) emerged?

2 – How has this institution been persisting over time?

1.1 - The background of the study

The CGU may be considered the world's largest anti-corruption agency, if one takes into account its structure, budget, and staff. However, there are very few studies about the institution, and the existing works do not address aspects of the origin and development of the institution. The existing studies generally focus on a specific action/program (Ferraz and

Finan, 2008) or on a particular function/unit within the CGU (Olivieri, 2008). The benefits of studying the CGU rest not only on its figures, but also on its strategy in curbing the problem. Besides the well known three-pronged action to curb corruption (law enforcement-prevention-education), the CGU innovatively incorporates the internal control function as part of its strategy against the problem.

The wave of interests and studies on corruption and anti-corruption institutions that started by the end of 1990s has been concentrating in defining and measuring the problem, and examining its causes and consequences. This tendency has been true for both regional and country studies, and represents a focus on the problem itself. Analyses of anti-corruption measures are mostly presenting them in a context of administrative reform. Therefore, the problem is a result of a general disarrangement of the bureaucracy (and society) and as such should be addressed. However, on the other hand, studies of anti-corruption institutions are superficially performed and are mostly done through rational choice/principal-agent models.

Apart from emblematic examples, such as the Independent Commission Against Corruption ICAC – Hong Kong and other Asian and African examples, very few cases of anti-corruption institutions are explored, considering the dynamic process of origin and change. It is noteworthy that the same as corruption is different for distinct countries; the face an anti-corruption institution acquires depends on the context in which it is inserted. This is one of the reasons the study of this particular entity is timely, and is also evidence that study case should be preferred instead of generalisations. The example of Brazil's *Controladoria-Geral da União* is one of those not well explored yet.

The ongoing discussion about origin and development of institutions has been guided majorly by the functional approach. According to this, an institution is there because it is functional for its founders, or because the very functions the institution performs. It seems to be true that the functional approach is developed based mostly on the rational choice, as individual interests move the institution up and down. It has to be posed that the functional approach is a good way to start understanding the issue; however, the approach does not tell the entire story.

Another way, that is preferred here, to deal with the task of analysing institutional origin and change is looking at the historical institutionalism scholarship (Mahoney and Thelen, 2010; Streeck and Thelen, 2005; Thelen, 1999, 2002, 2003, 2004). Mahoney and Thelen (2010), a key text for this research, is especially relevant in explaining incremental change within institutions. Streeck and Thelen (2005), the same way, delineates types of institutional change that helps defining the locus of institutional transformation. The Thelen scholarship brings the analysis of institutional change to the core of the institution itself and contributes to the understanding that the process of change is dynamic and is, mostly, driven from the within.

Under the historical institutionalism umbrella, history, timing and sequencing matter for explaining institutional change (Pierson, 2000a, 2000b). The context is to be taken into account throughout the process, as an institution does neither appear from nor evolve in the vacuum. Moreover, historical institutionalism supporters believe that, in a democratic context, once an institution is established and conditions are given, it is difficult for individuals alone determine the institutional path.

Regarding anti-corruption institutions, this kind of historical analysis

is even less common. The common sense is that the appearance of anti-corruption institutions is a response to crises only. A former Commissioner of Hong Kong ICAC highlighted this as she stated that anti-corruption agencies “[B]orn out of a corruption scandal which triggers a massive public outcry” (Law, 2007: 1). This might be true; though, not sufficient to explain the whole process. If one had to consider only this premise the CGU should have been implemented many years before it was. This lack of historical analysis may be explained by the “short life” of these agencies or the shortage of data about them, but one would argue the reason rests on the lack of consensus of what an anti-corruption institution is.

Indeed, there are variations in agency design and context, and anti-corruption agencies “respond to a variety of concerns and crises, and are modelled on a mix of organizational forms” (Meagher, 2004: 1). According to an OECD’s Review of Models (2007), anti-corruption institutions can be grouped based on their main functions: Multi-purpose agencies with law enforcement powers and preventive functions; Law enforcement agencies, departments and/or units; and Preventive, policy development and co-ordination institutions. Both Meagher and the OECD provide an extensive discussion about models; therefore, and for limitation reasons, it is not the intention in this research to expand modelling analysis.

The focus here is on the single institution (the CGU), its origin and development. The objective is to understand and explain both the context of the CGU creation and its institutional path. Even though we do not attempt to fit the CGU into any particular group of anti-corruption institutions, we assume the CGU is such an institution due its own actions, mandate, and discourse.

1.2 - The purpose of the study

This is a case study of an institution's historical trajectory. In this regard, the object of analysis is the CGU, its genesis and evolution as a major tool of the anti-corruption policy in Brazil. The organisation itself, its functions, formal and informal rules, as well as its staff will be considered as the institution. In other words, the analysis will be guided by the institutional concept that there is no dissociation between organisation and its actors/individuals.

The creation of the CGU was more than a formal act, as it represented a change in the way the Federal Executive had dealt with corruption. This might be perceived in two aspects. First, with the new institution, the Executive established a pioneer channel exclusively to receive reports against corruption and combat the problem. Second, the Executive, for the first time, had a ministerial-status institution responsible for elaborating anti-corruption measures and policies.

Traditionally, anti-corruption in Brazil was a matter of political rhetoric. Relevant corruption cases were mostly sent to the law enforcement agencies: *Polícia Federal* (Federal Police, or PF) and the *Procuradoria-Geral da República* (The National Prosecutor's Office, or PGR). Moreover, despite the fact that the country has been a fruitful place of corruption, the government did not have a particular institutional structure against it. The CGU has represented a contrast of this, as its professional and specialised structure with the legal mandate to prevent and combat corruption has allowed the government to tackle the problem with a holistic approach.

The holistic approach or the three-pronged strategy – as it is also known – encompasses education, prevention, and law enforcement measures. The holistic approach represents not only the CGU's action itself,

but also the cooperation it has developed with others institutions of the national integrity system. The national integrity system is made up of institutions, laws and practices that contribute to integrity, transparency and accountability in a country (Langseth, Stapenhurst and Pope, 1997).

The argument to be developed here is that the CGU was the institutional option created after and influenced by a changing period (external facts, crisis and democratisation), and has evolved and reconfigured over time through a dynamic process that involves external and internal influences. The argument will focus on the antecedent conditions, and events which set the CGU into motion, and on the evolution (institutional reproduction) of the institution through a process of increasing returns, path dependence and institutional layering. The argument also suggests that even under this dynamic process and considering the sensitive issue the CGU has faced, the institution is persistent, in the sense of organisational continuity, mandate and purposes.

The institutional structure against corruption may say much about the intentions of a government in curbing the problem. However, as the literature on institutional origin and change has shown, once created it is difficult to predict precisely the outcomes one can expect from that particular institutional arrangement. This because institutions are not a static structure dissociated from both the actors they are related to and the environment in which they are inserted. Interests, national mood, political facts, and catastrophes all contribute to institutional origin, change and evolution.

The context in which the CGU was created is characterised, internally, by the beginning of unofficial presidential campaign for the next year election (in 2002). This is a time when supposed candidates and their parties start to intensify both self-promotion and attacks against adversaries.

Denunciations of corrupt acts are common part of the attacks' arsenal; however, the responses to them are not necessarily counterattack discourses. Silence and indifference are frequently preferred instead of any effective measure to deal with alleged problems. The emergence of the CGU in this scenario is, at first, somehow innovation. However, considering the structure of the organisation in its very beginning and how it was presented, one could raise doubts about the real objectives of the government with the CGU.

Externally, it is possible to identify events that may have influenced the ground for the CGU emergence and configuration. They are the world engagement in anti-corruption policy-making particularly after the World Bank president, James Wolfensohn, famously spoke out against the "cancer of corruption" (in 1996); the signing of the Inter-American Corruption Convention (1996) and the OECD Anti-Bribery Convention (1997); and the international donors' (World Bank, IMF) push for anti-corruption agencies in client countries and the United States of America pressure on Brazil to tackle money-laundering.

An institution does not appear from the vacuum and as such it is out there for a particular purpose, that is, it is always serving a particular interest (political, social, and organisational). These interests may be identified when analysing the institutional foundation, as explained by Thelen (2003). The development of the institution, on the other hand, is the result of a particular arrangement of its institutional foundation. The example of the CGU demonstrates that its institutional development is also internally driven.

The discussion about reproduction mechanisms and punctuated equilibrium reveals it. The CGU is such an organisation "founded to never work", critics argued. That is, in Brazilian traditional public administration, a good way to difficult solutions is creating more and more bureaucratic

instances. Yet the organisation persists and the institutional disposition related to it has developed together since then. Intriguing is the question of why such an arrangement supposedly created to “never work” persists and evolves. Accordingly, this point foments questions about whom and which interests the institution serves.

Persistence and evolution are key concepts in order to illustrate this case of institutional change. Persistence will be considered continuity of organisation (formal body in the presidency structure), mandate (legal procedures, relative autonomy), and purpose (fight against corruption) despite both criticism and political pressure; and evolution will signify a gradual process of changing into a more complex form in the same way Huntington (1968) pointed out.

Rationales about origin and change emphasise the individual, power distribution and cultural aspects of the process, which are ways of hypothesising about the emergence and evolution of institutions. However, other variables such as junctures, historical moment, and internal factors are left behind. An alternative to such an isolated explanation is derived from the historical institutionalism research, which brings important contributions to this account, emphasising timing and sequencing.

In order to explain institutional origin and change, historical institutionalists commonly apply critical juncture, path dependence argument and mechanisms of reproduction (increasing returns, feedback effects, and institutional layering). This model and arguments, as well as the historical institutionalism will be further discussed in the Chapter 2.

In this research the use of historical institutionalism approach is facilitated because the Brazilian case of institutional origin and change took place in a historical moment of political transition, and is characterised by a

continuity of transformations over time. The modest structure of a singular organisation evolved from a presidency to another, and became a comprehensive institutional arrangement against corruption in the country. What are of interest in this thesis are the reasons why such an institution emerged, and how it endured and has been transformed over time.

The thesis is arguing that for an exploratory analysis about institutional change a combination of theoretical perspectives is necessary. Moreover, continuous change and innovation are crucial for an anti-corruption agency to endure and for an anti-corruption policy to succeed. The argument puts the institution in the forefront, a position like no other anti-corruption institution. There has been no such a comprehensive study of an anti-corruption institution in a historical institutionalist perspective. This makes this thesis particularly timely and important.

1.3 - Thesis structure

From historical perspective, the thesis is organised following a sequence of events in the order they have happened. It is in this way not only due to our methodological approach, but also because we assume it is the best way to understand the trajectory of the CGU. It is in this way because the continuity aspect of the institution and the influence former structures has on latter ones within the CGU. In order to understand the institution today, it is necessary to previously know past contexts it has been inserted in and institutional arrangements it has acquired during its existence.

Following this introduction, the thesis structure is divided into eight parts. Chapter 2 is about theory and we discuss institutional creation and change from a historical institutionalist perspective. The objective in Chapter 2 is to set up the theoretical discussion to enable the thesis to answer the two main questions: how to explain the creation of the CGU and how to explain

its development and change.

Chapter 3 is about methodology and there is discussion of the nature of the research, the approach to the research, its operationalisation, ethics and the author's positionality. The purposes of this chapter are to expound our research strategy, framed by the historical institutionalist approach, and situate the author (his own experience and personal knowledge of the CGU) vis-à-vis the research implications (conflicts of interest, bias and sensitivities).

In Chapter 4 we explain the national and international context in which the CGU has emerged. The chapter is descriptive to situate the reader about Brazilian political institutions, relationship between the state powers and actors (players), how corruption interacts with them all, and the international anti-corruption wave. The Chapter 4 shows, in a nutshell, the process of democratisation in Brazil, and the shift occurred in the anti-corruption in the world.

The next part of the thesis deals with the very emergence of the CGU. Here we explore the context and the motivations for proposing the institution. Actors and context interact with each other to produce this institutional arrangement, which was possible after the country's democratic stabilisation discussed in the previous chapter. The Chapter 5 also presents the initial institutional form, capacity and activities of the CGU, comparing it to other previous anti-corruption arrangements in Brazil.

We move the discussion from institutional origin to change and development in Chapter 6. In this chapter we analyse a major change within the CGU, that is the moment of incorporating the Federal Internal Control Secretariat (SFC). We are interested in showing the process of institutional arrangement that occurs within both organisations (CGU and SFC) and how actors, structures and interests relate to each other in order to adapt and

persist.

In Chapter 7 the focus is on the impact of the first government transition to the CGU. Scholars have reported that the change of government is a crucial moment for institutions, particularly for those not well established yet, such as the CGU. In Brazil, the history is evidence, government transition is especially important for anti-corruption arrangements, thus the relevance of the discussion in this chapter. The context of the transition (from Cardoso to Lula), the strategy of the CGU itself before the transition, and the new government idea about the anti-corruption institution are analysed.

Institutionalisation is the main focus of the Chapter 8. The CGU trajectory towards institutionalisation is discussed through the dimensions suggested by Huntington (1968). In the Chapter 8 we look at the adaptability, the complexity, the coherence, and the relative autonomy of the institution by discussing institutional innovations and programmes. There are suggestions about implications of these innovative changes and opinion on the future of the institution. The context in which we discuss the institutionalisation and the future of the CGU is also one of government transition (from Lula to Rousseff), and as such, transition's implications are also considered.

Chapter 9 presents our conclusions. In this part we assess the study, discuss contributions and limitations, and suggest future research directions. We reinforce our argument of institutional development through changes and innovations and defend the originality of the research, as well as the challenging and singular aspect of the CGU. It is worthy mentioning that the conclusion shows that this research may be a first step for further initiatives involving the issues of institutions and anti-corruption.

2 – Institutional creation and change: a historical institutionalist perspective

2.1 Our approach to Historical Institutionalism

As earlier stated, this is a research based on the historical institutionalism, considering that it deals with an institutional historical trajectory. The emphasis and concerns about history here is well supported by the following statement of Charles Tilly:

Not only do all political processes occur in history and therefore call for knowledge of their historical contexts, but also where and when political processes occur influence ‘how’ they occur. History thus becomes an essential element of sound explanations for political processes (Tilly, 2006, 420).

Historical institutionalism is specie of the new institutionalism genre, which has three others variants now. Traditional works about new institutionalism, such as Steinmo and Thelen (1992), Hall and Taylor (1996), Lowndes (1996), and Peters (1999), always mentioned the presence of three schools under the label of new: historical institutionalism, rational choice institutionalism, and sociological institutionalism. These schools differ to each other about the role institutions play in social and political outcomes.

Historical institutionalism sees institution as a concrete legacy of historical process; it influences and is influenced by individuals’ conduct (Sanders, 2006; Thelen, 2002; Hall and Taylor, 1996; Thelen and Steinmo, 1992; Hall, 1986). Rational choice institutionalism considers institution the “rules of the game” and the result of actors’ choice (Shepsle, 1989, 2006; North, 1990). Sociological institutionalism sees it as norms and culture

largely dependent on exogenous variables, such as national society and culture (Granovetter and Swedberg, 1992; Powell and DiMaggio, 1991).

More recently, scholars added a new member that focuses basically on the role of ideas and discourse in the institutional change. Despite the concordance about the focus, there is no agreement in how to nominate the newcomer. Colin Hay (2001, 2006) considers it ideational or constructivist institutionalism; on the other hand, Schmidt (2006, 2008) suggests the term discursive institutionalism. It is not the purpose here to analyse comparatively the new institutionalist schools, for this it is recommended to see the mentioned works, as well as the articles of Koelble (1995), and Kato (1996).

Historical institutionalism is not free of critique. According to Lindner and Rittberger (2003: 445) one critique is the alleged lack of testable propositions and the elusive notion of 'unintended consequences' of initial institutional choices". Peters (2008: 4) points out that HI is "well-suited to explaining the persistence of policies but is much less promising as a means of explaining change in policies or structures". Pierre et al (2008: 238) put that HI "highlights the lock-in effect of institutions, with change being possible only through major change". To respond to this critique we use arguments of gradual change and layering process of change that are movements from the within the institution and stressed by HI scholars. The critique seems to be limited as it is considering the HI a closed approach.

We are not focusing exclusively on the rational choice institutionalism because it stresses on the individual to explain institutions and does not pay attention to the context. On the other hand, sociological institutionalism does not provide other explanation to institutions than a result of exogenous variables, internal changes are put apart. Historical institutionalism seems to

fill these gaps looking at context, considering the interaction between individuals and the organisation, internal and external variables, and pointing gradual changes.

Notwithstanding this historical institutionalist perspective, this study is not locked and we assume that elements from rational choice may help explaining the trajectory of the CGU. In line with this Peters et al (2005: 1277), emphasises that “without including some dynamic conception of agency, and including a greater role for political conflict, the approach [historical institutionalism] cannot provide an adequate explanation for change.”

Peters and colleagues’s argument basically suggests a merging of two approaches. We argue that it is not only possible but indeed it is necessary to combine rational choice and historical institutionalism insights. That is, by emphasising agency and structure, a particular institutional trajectory can be explained. As we shall examine, the CGU could not have transpired without some kind of vehicle to bring about this change. In the initial stages, a political leader primarily represented this vehicle.

Our interests go beyond the explanation of the institutional stability or equilibrium (rational choice), and we address institutional dynamics and historical change. Moreover, we do believe that institutions act in equal measure both as constraints and incentives, to regulate the behaviour of individuals, and the rules of the game of rational choice, as explained by North (1990).

Ellen Immergut (1998: 28), who endorses the potential “for the fruitful combination of elements” of rational choice and historical institutionalism, summarises below one of the reasons why this study adopts the aforementioned borrowing approach and, at the same time, indicates a limitation of the approach:

For all their differences, the several varieties of new institutionalists address a common set of problems from a unified perspective. All are concerned with the difficulties of ascertaining what human actors want when the preferences expressed in politics are so radically affected by the institutional contexts in which these preferences are voiced (Immergut 1998: 25).

The historical school of the new institutionalism in political science has many contributors; however, contemporarily it has been developed based mostly on the works of Peter Hall, David Collier and Ruth Collier, Paul Pierson, Theda Skocpol, Wolfgang Streeck, James Mahoney and Kathleen Thelen, who, along with Sven Steinmo baptised this variant. The citation of these scholars by no means indicates that all their assumptions are applicable to this thesis nor this thesis is based only on them. The intention of such a distinction is for situating this research in a particular direction within the historical institutionalism.

One would argue that most of these scholars “have devoted more attention to explaining macro-political outcomes” (Hall and Taylor, 1998: 958). It seems to be true. However, there is no apparent restriction in applying the used approaches to smaller institutional units. Instead of being a constraint, this is a challenge moving forward the present research, not only because it deals with a singular institutional unit, but also because anti-corruption agency has never been under historical institutionalism analysis before.

The arguments of those scholars are sometimes divergent, but they converge to the ideas of institution constraining actors’ behaviour, institution as a result of a historical path, and the past explaining the future. The borrowing of these authors’ ideas in this thesis is also very apparent. Hence, what follows is a brief of their works and contributions, which support the

argument here.

Peter Hall's **Governing the Economy** (1986), and his well-referenced works (Hall and Thelen 2007; Hall and Taylor 1996, and 1998; Hall, 1992) summarises his relevance in the institutionalism scholarship, in general, and in its historical variant, in particular. Hall presents a formal conception of institution, which he considers the rules, compliance procedures, and standard operating practices that structure the relationships between individuals (1986: 19).

Despite of being formal, the institutional idea of Hall is not necessarily legal, and goes beyond the traditional to consider those "located within society and the economy, as well as less formal organizational networks, in the determination of policy" (1986: 20). Hall goes further to reveal that the institutional relationships "are subject to incremental change and more radical change at critical junctures" (1986: 19). He is a pioneer to stress the fundamental role of institutions in regulating interests, ideas, and determining policy.

Collier and Collier (2002, first published in 1991) notorious research about the impact of political institutionalisation of class coalition in Latin America is a comparative historical analysis on the incorporation of organised labour into the political and legal systems in eight Latin American countries (including Brazil). The contributions of Collier and Collier's **Shaping the Political Arena** are to shed light to historical causation and consequences of institutional origins and evolution; to point out the dynamics of the institutional development (reactions and counter-reactions) and institutional legacy; and to highlight concepts of context and path dependence. This book has the virtue to reinforce the idea that Latin America is not an unvarying region; rather it is diverse and dynamic. In general

analysis, the work of Collier and Collier shows that the genesis of the same institution is different for different countries (distinct context), and that the path subsequently followed by this institution is markedly influenced by that particular context.

Paul Pierson's collection (1993, 1994, 2000a, 2000b, 2000c, and 2004) is most concentrated in explaining how the institutional arrangement structures actors' choices, the importance of history and time in political analysis, and bringing out interpretations of institutional origins and change. Issues of temporality are at the heart of his analysis. Pierson also presents a good view about historical institutionalism:

Historical institutionalist analysis is based on a few key claims: that political processes can best be understood if they are studied over time; that structural constraints on individual actions, especially those emanating from government, are important sources of political behavior; and that the detailed investigation of carefully chosen, comparatively informed case studies is a powerful tool for uncovering the sources of political change. (1993: 596)

The base of Pierson's work is political economy, and it is from economy that derives his arguments about path dependence. In this particular approach, he elaborates concepts of positive feedback (increasing returns, self-reinforcing) and sequencing. He expands the idea of "lock in" to institutional path in political science; that is the irreversibility of certain development process. An important consideration about Pierson's contribution is the necessary attention to causes and effects that are "often separated in time". It is not exempt of critics, particularly considering that idea too deterministic about institution path.

Theda Skocpol main references are her book **Protecting Soldiers and Mothers** (1992), which analyses policy feedback with a historical

institutionalist perspective, and the text developed together with Pierson (Pierson and Skocpol, 2002). The Skocpol's work highlights the effects of policy in the institutional configuration and looks for associations between these effects and governmental decisions. Moreover, Skocpol argues institutional configuration influences actors' alliances and organization.

In her research about United States social policies, Theda Skocpol elaborated that the understanding of the reasons of national distinctive policies at different phases of the country's history was only possible situating the politics of social policy making within a broader, organizationally grounded analysis of the country's political development (1992: 526). In summary, Skocpol points out feedback mechanisms, which are responsible for institutional trajectories over time. Her relevance is addressing the analysis of institutions (forms and functions) within a temporal framework and based on a sequence of events that influences their evolution.

Kathleen Thelen is another prominent in the historical institutionalism scholarship. Her more-than-a-decade collection (1992, 1999, 2000, 2002, 2003, 2004, and 2007) reflects the relevance and evolution of the historical approach. Along with Sven Steinmo and Frank Longstreth, Thelen elaborated the first attempt to congregate the then works under the historical institutional approach (Steinmo, Thelen and Longstreth 1992). The claim of Thelen and her colleagues was that scholars left behind questions of institutional dynamism and its interaction in policy formation and change. In their view, political evolution is a path or branching process and the study of the points of departure from established patterns (critical junctures) becomes essential to a broader understanding of political history (Thelen and Steinmo 1992: 27).

Thelen's **How Institutions Evolve**, where she presents a historical institutional analysis of skill formation, demonstrates that institutions are not "universally embraced or straightforwardly 'adapted to', but rather continue to be the object of ongoing conflict" (2004: 32). This conflict among actors shapes the development of the institution as they struggle to establish rules that structure outcomes more favourable for them (p. 32).

The scholarship developed by Wolfgang Streeck and Kathleen Thelen on endogenous change and their discussion about the layering process of change are relevant in this research. They point out that change "is often endogenous" and in some cases "produced by the very behaviour an institution itself generates" (Streeck and Thelen, 2005: 19). It is also important for our argument the work of James Mahoney and Kathleen Thelen about institutional gradual change, for the scholars "once created, institutions often change in subtle and gradual ways over time" (Mahoney and Thelen, 2010: 1).

Those historical institutionalists' assumptions contribute to this thesis in the following ways. From Hall, the benefits are the conception of institution, which is considered here the formal organization (rules, procedures, operating practices), and the role of the institution in regulating interests and policies, as it seems to be the case of the CGU in anti-corruption agenda. Collier and Collier's conceptions of context and historical causations help to organize and establish the frame of temporal influence on the CGU origin. They also teach that the researcher must pay attention to local particularities (distinct contexts) in order to explain institutional origin and change. It is not guaranteed that the CGU was established according to previous models of anti-corruption agencies; however, its path is different when comparing it to other examples (countries).

Pierson's scholarship drives this thesis to the relevance of path dependence and to mechanisms of institutional development. His fundamentals are to the analysis of institution over time. Pierson's idea of too deterministic a path (lock-in) is not entirely supported here; this is because the CGU has positive feedback characteristics, but the irreversibility of its structure might not be taken for granted. In this regard, it is worthy mentioning March and Olsen (2006: 11): "Change is a constant feature of institutions and existing arrangements impact how institutions emerge and how they are reproduced and changed."

Skocpol points out the institutional evolution as a sequence of events and situates policy according to politics. It is assumed that the CGU's evolution as an institution is characterized by a sequence of facts, and that the understanding of the institution as an anti-corruption tool was/is only possible situating it in the Brazil's political development. From Thelen, the benefits are the understanding of crucial interaction between institution and policy, the importance of initial conditions to the institutional path, and the dynamic of the institutional evolution characterized by ongoing conflicts. As mentioned before, the CGU is not locked in, so its path is dynamic and, *mutatis mutandis*, according to Thelen's idea of ongoing conflicts.

The trajectory of the CGU presents gradual changes where both internal conflicting and restructuring took place. Some changes have been generated from the within, and a major one after a layering process. Streeck and Thelen discussion on layering and Mahoney and Thelen about gradual change support our argument on these.

In order to clarify the claims presented in this thesis, the conceptualisation of what is understood as institution will be expanded; and the mechanisms and concepts which historical institutionalists apply to

explain institutional development will be discussed. Hence, what follows are analyses of institutions, junctures (contexts) and initial conditions, path dependence, and processes of change. All of this considering the present case study perspective; that is, the genesis and evolution of the *Controladoria-Geral da União – CGU*, Brazilian anti-corruption institution, in a context of policy change and political development.

Conceptualising institution and institutionalisation

Historical institutionalists' quest is to develop an analysis which differs from that economic tradition of public choice (rational choice institutionalism); that is, to promote equilibrium between individual and institutional interests when explaining institutional legacy. Contrary to the rational choice, the individual is not the centre of the institutional universe from a historical perspective. Another way to see the contrast between both approaches is that rational choice emphasises institutions as coordination mechanisms that generate or sustain equilibria (Thelen, 1999). On the other hand, historical institutionalism emphasises on how institutions emerge from and on their concrete temporal processes (Thelen, 1999).

Here institutions “play a determinant role since they shape the actions of individuals but are at times affected by collective and individual choice” (Koelble, 1995: 232). For historical institutionalists, “institutions are seen as relatively persistent features of the historical landscape” (Hall and Taylor 1996: 941). The persistency of institutions follows particular paths whose explanation is a hard task to which historical institutionalists have been dedicated. In the historical institutionalism scholarship it is relevant not only the role of institutions in structuring political life but also “how these

institutions are themselves shaped and reconfigured over time” (Thelen, 2003: 208). It is true even for traditional democratic institutions, such as the legislative body (Congress, Parliament, and Chamber of Deputies), as mentioned by Schickler (2001) when explaining institutional layering on the United States Congress. For a less traditional institution, that is the case of anti-corruption agencies in general, and the CGU in particular, the reconfiguration capacity is a matter of its persistency.

In particular, the interests of researching the CGU are compatible with those of the historical institutionalism, as suggested by Elizabeth Sanders: “For HI [Historical Institutionalism], what is mainly of interest is the construction, maintenance, and adaptation of institutions” (Sanders 2006: 42). Sanders’ work not only remarks the importance of the path the institution follows, but also indicates that institutions are “the place to look for answer to big questions” about social and political phenomena. However, as the development of this research will show, isolating the institution as the sole variable conducting political outcomes may undermine other factors which are present in the institution’s evolution. Thus, the historical institutional view here is more open, accepting the individual’s role, and the influence of the environment in the institutional path.

Notwithstanding, in order to develop a better analysis about this scholarship, it is important to point out what is understood by institution. Hall and Taylor (1996: 938), in a widely cited article about the new institutionalism in Political Science, write that historical institutionalists define institution “as the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy”. Hall and Taylor argue that for a historical institutional perspective, institutions are associated with organisations, rules or

conventions promulgated by formal organisation. According to this approach, institutions are a matter of constraint regarding politics, but they are not the unique cause of outcomes (Thelen and Steinmo, 1992).

For the purpose of this thesis, the organisation will be the *Controladoria-Geral da União – CGU*, Brazilian governmental body that reports to the president. The institutional arrangement comprises the organisation (including staff), its programmes, procedures, routines, and norms that, in essence, underpin the anti-corruption policy in the country. The organisation operates in a sensitive area, and its achievements represent the failure of others' interests. This is to say that the CGU as an institution is a structural constraint on individual actions (Pierson, 1993), which is a source of the aforementioned ongoing conflict. To endure in this environment the evolution of the CGU as an institution is dynamic; that is, programmes, routines and procedures have been reviewed, and organisation structure has been adapted.

The historical process of the CGU shows that it was an individual choice, provided that it was created by presidential initiative and law did not compel such an institutional arrangement against corruption. By the same token, there is no legal enforcement that obliges national rulers to maintain the institution. In this case, it is considered that the persistency of the CGU is dependent on the ability of the institution to shape itself in an ongoing conflict between the actors involved.

It is important to point out that even though the CGU was a matter of choice without legal compelling, it was based more on a normatively appropriate behaviour than on "calculating the return expected from alternative choices" (March and Olsen 1989: 22). That is, the individual actor decided for the CGU according to his/her rationality, but this rationality, to a

great extent, was framed by the existing legal institutional arrangement. The Brazilian legal system didn't impose or even recommend the creation of an anti-corruption institution; however, the creation of any institutional arrangement and its mandate must to abide by the constitutional rules.

The ongoing conflict, as Kathleen Thelen puts it, which is one characteristic of this institution, may be represented by the clash between the insider and outsider actors' interests. Inside actors are the supporters and those situated in the organisation (i.e. the CGU staff) whose interests are to sustain the institution and, consequently, their positions. Outside actors are those whose interests are affected by the CGU operations (i.e. other public officials, politicians). Institutional sustainability depends on the capacity of CGU to both sustain its interests and reconfigure its action and structure in order to persist at the conflict.

Institutionalisation

Our dynamic idea of institution takes the research to the concept of institutionalisation. The relevance of the concept to this research is on the title of this thesis, and institutionalisation may represent not a definitive portrait of the CGU but an objective to be pursued. Samuel Huntington's scholarship on the issue is the reference for our development about institutionalisation throughout this thesis. Other ideas are taken into account with the purpose to illustrate the discussion, such as Peters (2008: 9) and Hill (1974), but we assume that they are not conflicting.

According to Huntington (1968) the strength of an organisation is dependent upon the scope of support and its level of institutionalisation.

Institutionalization is the process by which organizations and

procedures acquire value and stability. The level of institutionalization of any political system can be defined by the adaptability, complexity, autonomy, and coherence. If these criteria can be identified and measured, political systems can be compared in terms of their levels of institutionalization. And it will also be possible to measure increases and decreases in the institutionalization of the particular organizations and procedures within a political system (Huntington, 1968: 12).

Using the argument of Huntington is also timely for this research, as the scholar uses internal and external criteria for the analysis of the process of institutionalisation. That means context interacts with structure in the process of changing. Two criteria of institutionalisation are internal: coherence and complexity. The other two are external: adaptability and autonomy. The coherence dimension means the sense of unity, the more unified and coherent an organisation is, the more highly institutionalised it is. Huntington argues that an “effective organization requires, at a minimum, substantial consensus on the functional boundaries of the group and on the procedures for resolving disputes...within those boundaries” (1968: 22). Complexity is about the level and variety of specialisation within the institution and “may involve both multiplication of organizational subunits, hierarchically and functionally, and differentiation of separate types of organizational subunits” (op. cit. p. 17-18).

Adaptability, as an external criterion, is a function of environmental challenge and age. The more challenges that have arisen in its environment and the greater its age, the more adaptable an organisation is (Huntington, 1968: 13), and, consequently, more highly institutionalised it is. The second external measure of institutionalisation, autonomy, “is the extent to which political organizations and procedures exist independently of other social groupings and methods of behavior” (p. 20). Huntington goes further to

point out that institutionalisation in the sense of autonomy means the development of organisations that are not simply expressions of the interests of particular social groups. “A political organization that is the instrument of a social group – family, clan, class – lacks autonomy and institutionalization” (p. 20).

Larry Hill (1974) summarises the argument of Huntington as follows. Complexity and coherence are measures of organisations’ internal structures and capabilities, and adaptability and autonomy are measures of organisation-environmental relationships.

If when in addition to internal complexity and coherence, organizations attain high degrees of adaptability and autonomy in the face of environmental challenges, then they are said to be institutionalized (Hill, 1974: 1075).

Having described that, it is not to say that the measures of institutionalisation are easily identified in the CGU. Peters (2008: 9 - 10) argues that not all institutions are as fully institutionalised as are others and defining that is difficult due to the complexity of institutionalisation. However, within the development of the thesis, it is possible to perceive that the trajectory of the institution is towards fulfilling those four criteria of institutionalisation, that is, a path of acquiring value and stability.

As an institution, the CGU stands apart from most of its counterparts in the Executive branch. Now it is relatively autonomous and well structured; it has above-average salaries, skilled and tenured staff, national visibility, and investigating mandate. The institution, as it will be explained later in this thesis, arrived to this position and configuration after a long-journey of conflicts and dynamic adaptation. The establishment and the development of such an institution, considering a historical institutionalist perspective, is dependent on previous conditions and on contexts (junctures)

that support and influence decision makers. This understanding reinforces the idea that history matters and expands the field when looking for institutional explanations. In the following section modes of institutional change will be explored.

2.2 Forms of Institutional creation and change

Institutional creation

The CGU example is far from being the sole unresolved case of explaining institutional creation and change. Attempts to solve this puzzle are everywhere, and the quest for explanations has drawn a large audience of scholars from social science's disciplines and approaches.

Paul Pierson indicates that the most prominent modes "of theorizing about rational design of political institutions" can be termed "actor-centered functionalism" and "societal functionalism" (Pierson, 2004: 105). He goes further to point out that "[a]lthough not always explicitly stated, functionalist arguments are prevalent in the social sciences" (Pierson, 2004: 46). The functionalist assumption is that institutions can be explained solely by their functions and they exist in the form they do because they are functional for social actors (Pierson, 2000c: 477). That is, the creation and evolution of institutions are associated with the interests of the actors who have created them.

For the functionalist approach the historical process is not essential in explaining institutional genesis and development, the proper functions of the institution and the interests of actors are the reasons for them. A quick look at the CGU creation and evolution shows that functionalist approach is not sufficient to explain its genesis and change. This is because the characteristics

of the institution seem to be driven mostly by historical causation and it has changed significantly since its beginning and so has its functions. In other words, such a dynamic is difficult to be followed only by individual interests.

The functionalist assumption is that institutions can be explained solely by their functions and they exist in the form they do because they are functional for social actors (Pierson, 2000c: 477). That is, the origin and evolution of institutions are associated with the interests of the actors who have created them. Other circumstances may push actors to a diverse way, as it was the case of the European legal system which was not in the interests of members governments but that they have been unable to reorient the system in accordance with their preference (Burley and Mattli, 1993: 41). The context has influenced actors to act in another way. In other words “under specific conditions, actors may be doomed to opt for ‘dysfunctional’ institutions at the moment of their creation” (Lindner and Rittberger, 2003: 445).

On the other hand, Thelen (2003: 214) points out that explanations (which she calls constant-cause) that can be categorized into functionalist, political, and cultural “suggests that the same factors that account for the genesis of an institution will also explain institutional change over time”. Thelen describes that the functionalist (utilitarian) perspective perceives institution in terms of its role in solving collective action problems and allowing actors to achieve joint gains through cooperation and exchange (2003: 214).

Political approach is related to power-distribution, where the distributive effects of institutions is “front and centre” in the analysis. According to this approach, Thelen reveals, social institutions “emerge out of political conflict and strategic bargaining among social actors” (2003: 215). In the Cultural approach institutions embody collectively defined cultural

understandings of the world, and organisational forms “reflect shared cultural understandings of what is efficient or moral or legitimate or modern...change will occur when a prevailing ‘script’ is replaced or superseded by another” (Thelen, 2003: 217).

Historical institutionalism sees the creation of institution as a process not a steady movement. That is, in the words of Pierson (2000c: 475) the institutional creation is much more a “moving picture” than a “snapshot”. This view takes in consideration the entire historical context and looks beyond the actors’ intentions. Lindner and Rittberger (2003: 446) point that historical institutionalists “not only go back and look, but also develop generalizable propositions about the link between institutional design and operation”. They also found that during institutional creation phase key actors may held different polity ideas considering the role of the institution and that it is subject to conflicting interpretations (2003: 464).

It is difficult for actors to have full information about the consequences of their institutional choice and to have a common opinion, for this reason in the creation phase they opt for ambiguous provisions and leave space for interpretation, “seeing such ambiguity as the only way to reconcile different institutional preferences” (Lindner and Rittberger, 2003: 448). This conflict follows the institution during its development and is responsible for changes

Institutions establish a strategic context for the actions of political actors that change the outcome of specific policy conflicts (Immergut 1992). That can support explanations about (in)stability in policy areas and clarify the creation or destruction of institutions. Actors sometimes create this arrangement with a particular intention in mind, “with the objective of giving the agent (or the interests the agent wants to further) an advantage in

the future game of power” (Rothstein 1992: 35). However, this outcome is not entirely at the agent’s hands, again is dependent upon the future institutional arrangement, which could be favourable or not (could be the same or not) for the actor’s intentions.

As it is clear, it is assumed that institutions are continuous; however, they are mutable as representing a result of a new order of factors operating in the political system. As a result, the levels of constraint of a specific arrangement of institutions diverge not only for different policy areas, but also vary for distinct periods of time. This evolution, sometimes regarded as innovation, is an issue in the studies of historical institutionalists (Hall 1992; Steinmo, Thelen and Longstreth 2002; Thelen 2002).

The claim here is that even though the CGU was a discretionary political decision it was based more on a normatively appropriate behaviour than on “calculating the return expected from alternative choices” (March and Olsen 1989: 22). Even for those situations when discretionary (rational) decision is permitted, the actor’s choice and behaviour should be compatible to conventions and supported by justifications that have, or should have, *vinculum to rules*. The motivations for CGU were not only a matter of rational choice of individual actors, but also a result of historical causation based on a sequence of facts that moulded the context in which the institutional arrangement took place.

Punctuated Equilibrium and critical juncture

Historical institutionalists utilise (frequently) in their analyses the punctuated equilibrium model and the path dependence argument in order to explain institutional genesis and change. The punctuated equilibrium model suggests that the institutional sustainability or break down is a result

of external facts or changing in the actual juncture (Krasner, 1988, cited in Thelen, 2002; Pempel, 1998). However, the existing institutional structure is not easily affected by all exogenous events.

Each particular institution has its own foundational elements, thus in order to identify which external event is to bring consequences to the institutional arrangement it is necessary to investigate “about what is sustaining these institutions in the first place” (Thelen, 2002: 100). What could be depicted from the literature about punctuated equilibrium is that it is not necessarily the magnitude of the exogenous event that matters, but the way it affects those institutional foundations. These institutional foundations are related to the level and quality of supporters.

In this research, the identification of the CGU supporters is key for explaining its development. Formally, the institution has its legal mandate supported by the presidency. Its relationship with society and other public and private organisations has built a large chain of supporters, though not all of them are promptly identified. Internally, the CGU staff seems to be for the institution. However, the way supporters are affected depends on their interests. For instance, a corrupt scandal that is not properly addressed by the institution may affect negatively its society supporters (as a matter of reducing trust). However, this influence may not produce effects in the institution structure because it might have not affected the majority of supporters, or the ones who has the power to decide.

On the other hand, external events are not the sole reason for institutional dynamics, what can be proved by the analysis of the institution’s development. According to Thelen (2002), the institutional foundations are ideational and material. In this particular, ideas are a larger concern for those who advocates the newest form of the new

institutionalism: ideational/constructivist/discursive institutionalism (Schmidt, 2008; Hay, 2001, 2006). Thus, it is not the focus here, but some considerations about ideas are important. John (2003) argues that it is not clear exactly what ideas are and “depending on the author, they are sometimes policy proposals, new techniques or solutions, systems of ideas, or discourse and language” (John, 2003: 487). Ideas are the substantive content of discourse, Schmidt (2008) claims. Ideas constitute interests, and so interests are ideas (Hay, 2006). In short, and in benefit of the present research, ideational foundations will be considered the interests presented by supporters through communication among political actors and between them and the public.

Scholars from policy change approaches, such as Baumgartner and Jones, have developed similar arguments about punctuated equilibrium. The authors suggest that change in policy agenda might best be understood in terms of punctuated equilibrium, that is, a long period of stability with phases of instability and major policy change. During the stability period there is a quasi consensus of how problems are defined and how government (and which institutions) should deal with them. However, sometimes other problems or issues arise and change both the policy and the institutional arrangement.

The instability in the long run is due to struggles and generation of new ideas between policy monopolies or “structural arrangements that are supported by powerful ideas” (Baumgartner and Jones, 1993: 4). This argument is criticised by the historical institutionalism because the institutional dynamics is seen only as occasional moments. For Thelen (2004) the institutional change is a process that occurs through an ongoing political negotiation, that because “continuity and change are not separated into

alternating sequences when one or other dominates, but rather are often empirically closely intertwined” (Thelen, 2004: 35).

The example of the CGU is fruitful in this particular assumption. An analysis of its history demonstrates obviously the continuity of the institution as a matter of purposes (fight against corruption), location (presidency), and status (ministry). However, the institution has changed since its creation considering mandate, structure, programmes, focus, cooperation, and visibility. These processes seem to be a result of a continuous negotiation (renegotiation) between actors and supporters.

The reasons to develop considerations about punctuated equilibrium in this thesis are to bring out the idea that external events may drive changes to the institution. However, punctuation is not the sole way in which the institution changes. Thelen suggests a movement beyond punctuated equilibrium in order to explain “the different ways that institutions evolve in more incremental ways over time” (Thelen, 2002: 101).

Thelen argues that, contrary to what punctuated equilibrium model propagates about persistence and break down, what we empirically perceive are remarkable resilience and subtle shift in institutional arrangements. On the other hand, she claims that in “particular empirical cases... ‘sticky’ institutions that persist over long stretches of time undergo subtle but very significant changes in terms of their form and functions” (Thelen, 2002: 101). Thelen points out that for a profitable historical institutionalist analysis it is crucial to focus on and distinguishing between “mechanisms of reproduction and logic of change at work behind particular cases of institutional evolution” (Thelen, 2002: 102).

The CGU represents not only the equilibrium subject to change, but also it was the result of punctuation in the previous Brazilian anti-corruption arrangement equilibrium. The literature about anti-corruption arrangements exemplifies cases where external events fomented the creation of a particular institutional structure against corruption. Johnston (1999) reports that the Godber¹ scandal was the starting point for the Hong Kong's Independent Commission Against Corruption – ICAC in 1974. O'Keefe (2002) states that the decision to establish the Australian state of New South Wales ICAC, in 1989, resulted from serious and ongoing scandals in the public sector also extending into political arena, which had given rise to widespread public concern (2002: 2-3). The accession to the European Union and the criteria required to do so are driving forces which led the governments of Latvia, Lithuania, and Bulgaria to improve and create new institutional arrangements against corruption (Transparency International 2003; UNDP 2005).

New government coming to power and economic crises caused by recurring corruption scandals in the Republic of Korea (Cho, 2001); crisis in public confidence in the government of Thailand (UNDP, 2005); and the recognition of major corruption cases involving cabinet ministers and top civil servants as a threat to the country in Botswana (Frimpong, 2001; Gibadamosi, 2006) are other examples which punctuated the equilibrium in those countries and led the respective governments to implement new anti-corruption institutional arrangements.

These cases are examples of both institutional origin and change, as all of them presented institutional structure that has evolved over time. It is important to point out that these examples of institutional dynamic occurred

1 Peter Godber was the chief superintendent of the Hong Kong Police and became the focus of a

in places where corruption was not an unknown problem and that each case is different to one another. Hence, corruption is not the only one motivation for a particular anti-corruption arrangement, and this structure is dependent on the juncture it is inserted.

The development of the idea of critical juncture in this thesis is based most on Collier and Collier, whose concept is as follows:

A critical juncture may be defined as a period of significant change, which typically occurs in distinct ways in different countries (or in other units of analysis) and which is hypothesized to produce distinct legacies (2002: 29).

Collier and Collier see critical juncture as a part of an institutional development process. They stress this previous condition as fundamental for studying institutional legacy, which is compatible with this thesis assumption that institution doesn't appear from the vacuum. Collier and Collier go further to argue that the concept of a critical juncture contains, among other elements, three components: the claim that a significant change occurred within each case; the claim that this change took place in distinct ways in different cases; and the exploratory hypothesis about its consequences.

The central claim of Collier and Collier is that a critical juncture necessarily produces consequences in a form of legacy; otherwise it does not deserve the label of critical juncture. They suggest that international events influence differently distinct countries, according to national political development, as the same way supported by Ertman (1997) who researched the origin of state institutions in different European countries. Of course it is

major bribery investigation by the than office against corruption in 1973. Godber fled Hong Kong without sanction, resulting in public outcry and disappointing. Then Hong Kong Governor established the ICAC, in 1974, to investigate the case and to review the Colony's anti-corruption policies, bringing Godber to justice and prison on a bribery conviction (Johnston 1999: 221).

not the intention in this research to compare countries, but the insights about a particular period of time contextualised as a source of causal variables are important to the development of the present argument.

Collier and Collier present critical juncture as a momentum not limited in time, so its duration might take a decade long for instance. In short, critical juncture is not the alternative to be chosen; rather it is the favourable period when a sequence starts. However, this period is forged by initial or antecedent conditions “that represent a ‘base line’ against which the critical juncture and the legacy are assessed” (Collier and Collier, 2002: 30) or are specific conditions prior to the critical juncture (Goldstone, 1998). Collier and Collier also suggest the concept of cleavage or crisis which “emerges out of the antecedent conditions and in turn triggers the critical juncture” (2002: 30). Critical junctures produce different institutional stabilities, some last for long others not so long. In this regard, Collier and Collier in their Critical Juncture Framework suggest that the “end of the legacy” inevitably must occur at some point (2002, 31). However, they do not explain what maintains this institutional stability.

Critical junctures, or conjunctures as preferred by Wilsford (1985; 1994), have the function to turn our view out to macro processes that occur in a political system as a whole. Peter Hall, even though not presenting a concept, argues that critical conjunctures are periods when institutional relationships between state and society face radical change (1986: 19). Kathleen Thelen reinforces the view of her historical institutionalist colleagues to state that:

The focus in a significant number of historical-institutional analyses on »critical junctures« – turning points that are shown to have established important institutional parameters that subsequently shape what is politically possible, even conceivable –

have illuminated aspects of political life that do not emerge through other sorts of analytic strategies or points of departure (2002: 99).

The magnitude of critical juncture is also emphasised by Katznelson (1997) who sees it as a period, which sets countries along different developmental path. From Katznelson scholarship it is possible to understand the political processes as a temporal and interactive ordering of processes, which influences institutional outcomes (Thelen 1999: 388). Mahoney (2001: 8) argues that “a focus on critical junctures enables historical researchers to avoid the problem of infinite explanatory regress into the past. Critical junctures provide a basis for cutting into the seamless flow of history and overcoming this problem: the analyst focuses attention on those key choice points in history when (from the perspective of theory) the range of possible outcomes is substantially narrowed”.

Path Dependence

Under the historical institutionalism umbrella history is key because facts (and acts) in the past may be the commencement of processes that have effects in the present. Institutional changes, such as the creation of the CGU, or a shift in a particular anti-corruption policy area are not necessarily a reflex of the current government’s ideas only and do not operate spontaneously. According to Peters (1999), the policy choices made when an institution is being formed, or when a policy is initiated, will have a continuing and largely determining influence over the policy far into the future. Scholars consider this process of causality as path dependence. As Mahoney puts it, in a path-dependent framework, the centrepiece of analysis is a critical juncture period, because after this period major alternative development trajectories are increasingly closed off (Mahoney, 2001: 8). The

term was first addressed by economic literature inferring it as a “sequence of economic changes...which important influences upon the eventual outcome can be exerted by temporally remote events; including happenings dominated by chance elements rather than systematic forces” (David, 1985: 332).

The David’s argument originated from the study of the QWERTY typewriter keyboard case, a model of keyboard that was not the best to be chosen, but due to chance elements became the prevalent in the market. All scholars who study the issue mention this case as an original example of path dependence and lock-in. In essence, the example demonstrates that “an early-established technology becomes dominant, so that later, superior alternatives cannot gain a footing” (Arthur, 1989: 126). Path dependence was then developed as an alternative to explain, for instance, institutional change and variation (North, 1990; Levi, 2002), a tool to examine policy reform (Wilsford, 1994), and as a counsel to be applied in the study of politics (Pierson, 2000). According to Thelen (1999), political scientists have taken from this experiment the notion of some elements of chance in politics; however, “once a path is taken it can become locked-in as all the relevant actors adjust their strategies to accommodate the prevailing pattern” (Thelen, 1999: 385).

While path dependence is largely discussed and referred to as an approach for explaining institutional genesis, evolution, and change, there are significant differences in how scholars interested in history and temporality apply the concept of this approach. Margaret Levi, for instance, considers path dependence in the following way:

Path dependence has to mean, if it is to mean anything, that once a country or region has started down a track, the costs of reversal

are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice (1997: 28).

The concept of path dependence is not exploratory in the sense of revealing or explaining reasons for institutional evolution or change. However, it may be utilised to identify a link between the initial movement and the present outcome. Mahoney (2001) argues that “the notion of path dependence suggest that crucial actor choices may establish certain directions of change and foreclose others in a way that shapes long-term trajectories of development” (p. xi).

Hacker (2002: 26), expanding the concept, claims that in path-dependent processes, timing and sequence are crucial. Explanations need to attend not just to what happens but also when events happen relative to other events or ongoing processes. For him, “path-dependent processes need to be shown through comparative, historical, or counterfactual analysis that highlights both alternative historical possibilities and the self-reinforcing processes that foreclose them over time” (p. 304).

The trajectory of the CGU may represent a path dependence example in the sense that this option as an anti-corruption agency was (is) not the sole option to address corrupt problems. There are many other institutional arrangements to deal with corruption that could have been chosen from (UNDP, 2005). Once the CGU was established the previous and the other options to fight against corruption were left behind. Thereby, this ongoing path initiated with the CGU has been developed continually since its creation. Even though this short sequence seems to characterise a path-dependency system, there is no consensus in this as some scholars are keen to protect path dependence to become a catchall concept.

Mahoney (2000) suggests that all path-dependent analysis must involve three features: the study of causal processes that are highly sensitive to events that take place in the early stages of an overall historical sequence; early historical events are contingent occurrences that cannot be explained on the basis of prior events or “initial conditions”; and once contingent historical events take place, path dependent sequences are marked by relatively deterministic causal patterns.

The restrictive conditions presented by Mahoney suggest that path dependence is a rare phenomenon, as it characterises “specifically those historical sequences in which contingent events set into motion institutional patterns or event chains that have deterministic properties” (Mahoney, 2000: 507). Assuming his own restrictive position, Mahoney points out other definitions, such as past affects the future, initial conditions are causally important, contingent events are causally important, historical lock-in occurs, a self-reproducing sequence occurs, and reactive sequence. He argues that these definitions reflect disputes about how history matters, but clarifies that “the existence of competing definitions is not inherently problematic; indeed, scholarly analysis may profit from the use of different definitions” (Mahoney and Schensul, 2006: 469).

Scholars who support the defining feature of past affect the future assume this simple relation as the sole necessary condition for path dependence. Supporters of this view are North (1990), Castaldi and Dosi (2006), and Tilly (2006). The definition about the causal importance of initial conditions is supported by and Collier and Colier (2002) and Somers (1998). Arguments supporting contingent events, which are occurrences that were “not expected to take place, given certain theoretical understandings of how causal processes work” (Mahoney, 2000: 513), are represented by works of

Mahoney (2000), Goldstone (1998), Arthur (1994), and David (1985). The notion of historical lock-in that is a path of development from which it is unable to escape, was developed by Arthur (1994) from his Polya urn experiment and influenced, for instance, works of Mahoney (2000) and Goldstone (1998).

Cardoso and Faletto (1984), with their *teoria da dependência* (dependency theory), suggest a form of lock-in in the distorted development of Latin American countries. Self-reproducing sequence definition accounts for a stably reinforced outcome over time. It is characterized for the increasing returns model and is supported by Skocpol (1992) and Pierson (2000a, 2004). Reactive sequence definition accounts for

kinds of non-reinforcing sequences... marked by a tight coupling of events in which each event in the sequence is both a reaction to earlier occurrences and a cause of subsequent occurrences (Mahoney, 2006: 467).

The position of Mahoney is divergent from those advocated by Pierson (2000a) and Somers (1998) who considers path dependence a common process. Pierson puts that the usage of path dependence “tends to fluctuate to a broader and narrow conception” (2000a: 252). In the former version “path dependence refers to the causal relevance of preceding stages in a temporal sequence” and in the latter version “preceding steps in a particular direction induce further movement in the same direction” (p. 252). This narrow conception invokes the idea of increasing returns, which suggests that the relative benefits of the current activity compared with other possible options increase over time (Pierson, 2000a).

Associated with increasing returns is the idea of positive feedback, which represents the stable reproduction of some institutional arrangements

over time (Thelen, 2002). The ongoing discussion about how to define path dependence is considered by Thelen (2002: 102) as a “sterile definition debate”. For her, what is important is “shift the debate beyond the issue of whether particular cases conform to a strict or loose version of path dependence toward the more fruitful questions of distinguishing what is staying the same and what is changing, and of producing insights into different modes of institutional change” (Thelen, 2002: 102).

The Thelen’s claim is true, considering that path dependence explanation is not the end in historical researches processes. However, the notion of the approach is crucial for those researches, in the sense that most of the mechanisms available for understanding and explaining institutional genesis and evolution are from the previous concepts of path dependence. The argument to be developed in this thesis, which supports the idea of historical influence on the development of the CGU, is also benefited from path dependence concepts. However, this research presents no flag-waving for a particular defining feature of path dependence. Here, the notion of sequence is evident, as it is the claim that the conditions (context) forcing the CGU creation are not in place anymore. Thus, the factors responsible for the reproduction of the CGU may be quite different from those that account for the existence of the institution in the first place (Thelen, 2003: 214).

The use of path dependence in this research is due to its benefits; that is, path dependence approach when analysing institutional change is not only to point out that history matter but also to confirm that it is important to looking for the causes of decisions. It is not sufficient describing things but also explaining them. Another positive point that is relevant in this regard is that path dependence, instead of being a private approach of a particular field of knowledge, is applied by all of social science disciplines, which

confers to the tool a multidisciplinary approach. Of course the application of path dependence varies for different disciplines.

However, path dependence is not a solution in itself, as it alone does not teach how to find out which particular event has started a specific chain of causation. Many events could compete to each other as the starting point. On the other hand, the analyst may find him/herself facing the *chicken and egg* dilemma when deciding which came first. That is true because, according to the path dependence literature, even the simplest event might initiate a process, which drives to big decisions and changes (North, 1990; David, 1985;).

Gradual institutional change

Once created, institutions often change in subtle and gradual ways over time. Although less dramatic than abrupt and wholesale transformations, these slow and piecemeal changes can be equally consequential for patterning human behaviour and for shaping substantive political outcomes. (Mahoney and Thelen, 2010: 1)

Mahoney and Thelen (2010: 13), theorising about gradual institutional change, made the observation that “the fact that rules are not just designed but also have to be applied and enforced, often by actors other than the designers, opens up spaces (as both an analytic and a practical matter) for change to occur in a rule’s implementation or enactment.”

The scholarship of Mahoney and Thelen teach us to look at not only radical institutional reconfiguration brought by exogenous shocks but also endogenous developments that often unfold incrementally. However, these gradual changes are only perceived by considering a longer time frame. That is why the process of creation and change should be interpreted as a moving

picture not a snapshot.

In the dynamic process of the CGU development, we shall discuss in this research, important changes have happened endogenously. That is with the articulation and proposition from institution insiders. Changes in such a way occur when “problems of rule interpretation and enforcement open up spaces for actors to implement existing rules in new ways” (Mahoney and Thelen, 2010: 4).

The discussion here has the purpose to add the endogenous element to our historical institutionalist analysis of the CGU. Punctuated equilibrium has provided answers to institutional change by exogenous facts. Using concepts of gradual institutional change we can combine exogenous and endogenous sources of change in the way suggested by Mahoney and Thelen.

According to Streeck and Thelen (2005: 19) change can emanate from inherent ambiguities and “gaps” that exist by design or emerge over time between formal institutions and their actual implementation or enforcement. These gaps are spaces in which contest over institutions take place. The development of the CGU and the process of adding the SFC show this contest, which endogenously promoted change in the way the institution acted. The fact reinforces the argument of Streeck and Thelen that change is often endogenous and in some cases is produced by the institution’s behaviour.

Mahoney and Thelen (2010: 15) present four modal types of institutional change: displacement, layering, drift, and conversion. The locus of institutional transformation is what defines each type of institutional change. The organisation made by Mahoney and Thelen follows the assumptions of Streeck and Thelen (2005). Displacement means the removal

of existing rules and the introduction of new ones. Layering is the introduction of new rules on top of or alongside existing ones. By drift they mean the changed impact of existing rules due to shifts in the environment. And conversion the changed enactment of existing rules due to their strategic redeployment.

Considering the interaction between structure and agents Mahoney and Thelen (2010: 22) suggests agents behind each institutional change. They are *subversives*, *sybionts*, *opportunists* and *insurrectionaries*. The first seek to displace an institution, but not breaking the rules of the institution. The second “exploit an institution for private gain or violate the rule to sustain its spirit.” The third have “ambiguous preferences about institutional continuity and they do not actively seek to preserve institutions.” The last ones consciously seek to eliminate existing institutions or rules, and they do so by actively and visibly mobilizing against them.” None of them seems to match the category of the CGU institutional challengers (agents promoting changes); however, it is not to say that they are not agents behind institutional change and that what happened with adding the SFC may not be considered as a real change (see chapter 6).

The part that follows brings more about the process of institutional layering and institutional conversion as they are related to changes that have occurred in the trajectory of the CGU.

Institutional layering and institutional conversion

The previous section, which discussed path dependence, brought out important mechanisms that scholars apply to explain institutional development. They are increasing returns, positive feedback, and reactive

sequence, and may be considered traditional ones. Looking at these mechanisms, Thelen (2002, 2003, and 2004) suggests more concepts of institutional evolution and change; they are institutional conversion and institutional layering.

Institutional conversion occurs when “institutions designed with one set of goals in mind are redirected to other ends. These processes can be set in motion by a shift in the environment that confronts actors with new problems that they address by using existing institutions in new ways or in the service of new goals” (Thelen, 2003: 228). Institutional layering, in particular, was developed first by Eric Schickler when studying the institutional innovation and development of the United States Congress (Schickler, 2001). According to this process the evolution of institutions is a combination of elements of increasing returns and institutional innovation. Schickler points out that institutional layering involves partial renegotiation of some structural elements of an institution, leaving others unchanged. This new arrangements are established on top of pre-existing structures.

Schickler argues that these processes occur because “new coalitions may design novel institutions arrangements but lack the support, or perhaps the inclination, to replace pre-existing institutions established to pursue other ends” (Schickler, 2001: 15). Thelen suggests that some aspects in this process may be locked-in in the way emphasized in path dependence approach. Schickler appends that “this layering process is in some ways path-dependent. The options available to decision makers today depend on prior choices. Pre-existing institutions often create constituencies dedicated to the preservation of established power bases. As a result, institution-builders often attempt to add new institution rather than dismantle the old” (Schickler, 2001: 16).

This dynamic is similar to the one related to the example of the CGU. Institutional layering may be useful in explaining partially the development of the CGU, in the sense that increasing returns and new arrangements on top of pre-existing structures characterise the institution trajectory. The description of the CGU evolution in this thesis demonstrates that within one year after the institution establishment the CGU incorporated a pre-existing institution, the Federal Internal Control Secretariat (see chapter 6). This pre-existing institution pursued other ends than the anti-corruption and did not belong to the presidency structure.

For the SFC point of view, this process might be understood as institutional conversion as it was used in the service of new goals. On the other hand, from the CGU perspective, it was institutional layering as it was established on the top of the pre-existing SFC. Moreover, the SFC was not dismantled; it was somewhat preserved under the authority of the CGU. The maintenance of the SFC as a subunit of the CGU, even considering that it performs crucial activities related to the CGU anti-corruption mandate, may be explained by increasing returns and positive feedback. The cost of exiting from this established arrangement of increasing returns and positive feedback generally rises dramatically. However, this layering process might have disarticulated groups in the SFC structure and facilitated the organisation of others in the new arrangement. This last assumption is based on Theda Skocpol argument that institutional configuration influences actors' alliances and organization (Skocpol 1992).

There are others similar examples in the CGU trajectory that may be associated with the institutional layering and increasing returns. They are, for instance, the control of the *Ouvidoria-Geral* (Ombudsman Office) by the CGU, and the creation of new subunits into the CGU structure that expanded

its original responsibility of investigating corrupt acts to actions of prevention and education (see Chapter 8). Thus, new challenges emerge, but the main actors remain the same. This innovation contributed to reinforce the presence of the institution in the country and its channels of relationship with politicians, media, and citizens. As a consequence, the new configuration seems to have established and strengthened its institutional foundations.

2.3 Studying Anti-corruption institutions

The literature on anti-corruption institutions (ACIs) may be divided into two groups. In the first group there are those works focusing on categorising existing ACIs. They are researches and reports generally supported/promoted by international organisations (donors) with the purpose of mapping and describing the structure of ACIs around the world. The other group is formed by researches that compare ACIs performances and analyse causes of failures and successes. Even though they are very important for the anti-corruption scholarship, both of the groups lack in-depth analysis of the origin and change of the institutions.

Examples of the first group are the UNDP Comparative Study that provides an overview of different modalities of institutional anti-corruption arrangements in 14 countries (UNDP, 2005: iv) and the OECD Review of Models, which presents practical solutions to ensure independence and specialisation and describes 14 ACIs (OECD, 2008: 3). It is also important to mention the initiative of the World Bank, in collaboration with the European Commission, the United Nation Office of Drugs and Crime (UNODC) and the US State Department that aims at reviewing the effectiveness of ACIs. As part of this initiative, study cases of ACIs in Ethiopia, Rwanda and Slovenia

have been completed and of other countries are to come (The World Bank, 2010a, 2010b, 2010c).

Studies of Klitgaard (1987), Johnston (1999), O'Keefe (2002), Quah (2002), Heilbrunn (2004), Doig et al. (2005), Meagher (2005), Gbadamosi (2006) and Mutebi (2008) are examples of the second group. They usually present the classic examples of the Independent Commission Against Corruption (ICAC) in Hong Kong, and Singapore's Corrupt Practices Investigation Bureau (CPIB) as benchmarks and then compare and criticise one or some other ACI examples. The intention of these scholars is to suggest causes of failures and to recommend actions for success.

In some cases, in spite of studying an ACI, the focus is much more on the problem of corruption than on the institution itself. The ACI, then, is one among the measures to curb the problem (Klitgaard, 1987; Johnston, 1999). Some of the mentioned scholars are or have been international organisations consultants and their analyses and recommendations, sometimes, follow those of the international organisation. The independence of the ACI, administrative reform, reporting hierarchy, specific anti-corruption laws, and government capacity to enact strategies are some of these recommendations.

When explaining origin, most of the literature assumes that a single event, generally a corruption crisis, is the cause. As Meagher (2005: 69) points out "[w]hen societies around the world respond to corruption outbreaks, the approach of choice increasingly is to establish an anti-corruption agency". Heilbrunn (2004: 2) adds that the success of an ACI depends on domestic coalition to support needed reforms. Gbadamosi (2006: 16) studying the Botswana ACI suggests a combination of institutional strengths and national measures (in education, civil service reform) as causes of ACI success.

It is worth citing the Doig et al (2005) research about five ACIs in

Africa. They are interested in measuring performance of ACIs and developed a life cycle model that shows in brief how these institutions have failed in those countries. The origin after a public outcry is followed by high expectations, failure in attending expectations and then budget/funds cuts drive the ACI to unsuccessfully fulfil its role. Even though the research is based on African countries, the model seems adaptable to be explored and compared to other experiences. The authors advise that any assessment of an ACI's success "is a comparative and relative process relating activities undertaken and achievements attained within the scale and scope of corruption and an evaluation of context" (Doig et al, 2005: 6).

Most of the studies focusing on ACI are descriptive and arguments do not explore the dynamism of these institutions, that is, scholars do not examine the trajectory of the ACI, but the structure at a particular moment in a particular context. Even though they try to analyse different examples from different regions of the world, the majority of the cases are from Asia and Africa, and very few from South America or Central America. There are no studies about Brazil concerning its anti-corruption experiences.

Researches on ACI concentrate on organisational development, governance and corruption measurement. Theoretical approach is mostly based on rational choice and principal agent relation. There is a great deal of testing hypotheses. What can be depicted from this literature scenario is that for international donors organisations what matter is having a *menu* of models to offer. For scholars, studying the success and failure of ACIs is a midway to explaining corruption (and countries' will in curbing it).

According to Johnston (1999: 217), writing over a decade ago, the great interest ACIs as a measure of reform have attracted is due to the growing "concern over corruption and horizontal accountability". For the same

reason, today international organisations and scholars have also been attracted to this issue. The literature reviewed proves that, but also has revealed that there is a lacuna to be explored within the study of ACIs. That is, analyses of key issues concerning their origin, development and change with an institutional and dynamic perspective.

This research opportunely goes for studying the anti-corruption institution instead of the problem of corruption. The intention is not to disregard corruption problem but to put ACI in the centre of the research. As such, the concern here is over how a particular ACI has been created, developed and changed over time. The originality of the research is not limited to this; using the historical institutionalist approach complements it.

3 – Methodology: a case study within comparative politics

This chapter provides the rationale for the nature of the research, the choice of case study as the preferred methodology, the choice of methods of elite and group interviews and archival and document analysis, the research operationalisation, ethics and author's positionality. It is framed by the theoretical discussion outlined in the previous chapter for understanding the origin, development and change of the CGU.

We are interested in the institution itself and the manner in which it has been formed and changed. In order to *(i)* identify and analyse causes of the CGU genesis, and *(ii)* measure and explain the evolution of the institution towards institutionalisation, the object of study was divided into two parts according to the research questions: genesis and evolution and change. This division is important for both the application of methods and the analysis of data.

3.1 Approach to the research and its nature

Given the describing and explaining aspects of this research and its first commitment of offering systematic explanations for the anti-corruption institution (CGU) as it is, it is possible to consider it a comparative politics work. According to Kopstein and Lichbach (2005: 6-7), there are three ways of studying the determinants of politics, which represent the dominant concepts in comparative politics: interests, identities, and institutions. As it was already explained in Chapter 2, what matters most in this thesis is the institution. Thus, this is a comparative politics research, as a "subfield",

concentrated on a particular institution.

The approach to the research is defined as a case study within comparative politics. The case study was the preferred strategy due to the very research questions, the position of the investigator, and the focus of the research. Regarding research questions, Yin (2006: 112) points out that “case study method is pertinent when your research addresses either a descriptive question (what happened?) or an explanatory question (how or why did something happen?). The latter kind of question has been posed in order to explaining the origin and development of the CGU. Besides, “[f]raming a case study around an exploratory question may lead to more focused and relevant description [...]” (King, Keohane and Verba, 1994: 45).

Another reason for a case study approach is that the investigator has little control over events (Yin, 1984). Facts to be explained about the trajectory of the CGU have happened and developed autonomously, with no influence of the researcher. Finally, the focus of this research is on “a contemporary phenomenon within its real-life context” (Yin, 1984: 9). No doubt questions about origin and change of institutions are at the core of the institutionalist research at the moment. Moreover, particular aspects of the CGU’s trajectory as an anti-corruption institution are better explained linking context to processes, this will be further developed later on in this thesis.

This research is a *single-case* case study interested in explaining how things change over time. The case is the CGU, as the anti-corruption institution, and it is studied with an intrinsic interest in the case as such, the focus is on understanding the CGU (origin and development). However, generalisation can be made analytically, based on reasoning. In this case, the principle of reasoning applied is inductive, that is, constructing a logical argument about the CGU trajectory from specific observations and analysis

of facts within the institution, there are no hypotheses to be tested. The historical institutionalism theory provides explanation for the case. It is suggested that conclusions from facts in the CGU case may be operative in similar cases.

Generalisation is the issue over which case study methodology has been most questioned (Johansson, 2003: 8). Critics point out a lack of statistics in case study, but generalisations from it are not statistical; they are analytical based on reasoning as mentioned before.

“[...] case studies, like experiments, are generalizable to theoretical propositions and not to populations or universes. In this sense, the case study, like the experiment, does not represent a “sample”, and the investigator’s goal is to expand and generalize theories (analytic generalization) and not to enumerate frequencies (statistical generalization). ” (Yin, 1994: 10)

As a single-case referring to a particular country and to a specific moment, the study of the CGU has the limitation of solely representing a specific fact within a unique context. However, the ambition of this research is not to present this case as a model to be applied freely everywhere. On the other hand, if it seems to be true that a wave of anti-corruption initiatives is still in movement around the world, it probably is possible for other cases to be analysed the same way the CGU was.

3.2 Researcher positionality and ethics issues

“A researcher's personal beliefs and values are reflected not only in the choice of methodology and interpretation of findings, but also in the choice of a research topic. In other words, what we believe in determines what we want to study. Traditional

positivist research paradigm has taught us to believe that what we are studying often has no personal significance. Or, that the only reason driving our research is intellectual curiosity (which is a valid reason on its own). But more often than not, we have our personal beliefs and views about a topic - either in support of one side of the argument, or on the social, cultural, political sub-texts that seem to guide the development of the argument". (Mehra, 2002: 4)

Positionality

I have been working for the Brazilian Government internal control and anti-corruption since 1996. My first assignments were at the Federal Internal Control Secretariat (SFC), in Brasilia, where I earned a professional career position after passing a competitive public examination. My main activities at the SFC were audits and inspections within the federal public administration, in the execution of federal public policies and programs, and audits in the execution of internationally funded projects.

After spending six years as an auditor and then chief of division at the SFC, working in Brasilia and in some other Brazilian states, I joined the CGU as a result of the SFC annexation in 2002. At the CGU, besides the regular activities of the SFC, I started working in the new programs of the institution and I began to become more involved in anti-corruption activities. Since then, I have been responsible for co-ordinating audit and anti-corruption teams, serving as the CGU Bahia Regional Office assistant and chief of division, and contacting/mobilising civil society for raising awareness about corruption.

My knowledge and experience in the field are previous to the CGU and have been improved since its implementation. Then, I have experienced the institution origin and development as an insider, but not as the one responsible for decisions. This forged my understanding about the institution

as a whole, including its professionals and managers. I am in a unique position of knowing (professionally and academically) many participants (interviewees) of this research on various levels, which is an additional area for bias. This by no means should be taken that I previously knew the answers for the research questions. But that I knew and have lived part of the story, which will (or will not) be confirmed by the data and evidence collected. What challenged me here to this research was this lacuna about the CGU.

What I have, then, because of my background as a civil servant, professional career auditor, and because of my work in the field of internal control and anti-corruption in the SFC and the CGU, is a strong bias towards the institutionalisation of anti-corruption mechanisms. I believe that the CGU is an important way to curb corruption and improve people awareness by addressing various programs and activities. However, it is important to clarify, my own experiences and personal knowledge of the subject are complementary to this research, and they have been incorporated into the thesis as data to be interpreted by the process of triangulation. This exercise has always been in place since the data conflicted with my own knowledge and experience.

I have made efforts to avoid bias during the process of conducting the research and interpreting data. So that it did not interfere with the data in a way that corrupts or invalidates. For instance, I have reviewed my own ideas about participants and facts, have accepted suggestions of interviewees, and, in some moments, elevated the relevance of external sources. But I do know it is not possible to stay completely apart, as Mehra (2002: 5) points out:

Qualitative research paradigm believes that researcher is an important part of the process. The researcher can't separate

himself or herself from the topic/people he or she is studying, it is in the interaction between the researcher and researched that the knowledge is created. So the researcher bias enters into the picture even if the researcher tries to stay out of it.

Ethics issues

The fieldwork interviews and the access to documents were performed observing ethics and confidentiality. This because some facts and information analysed in this thesis are controversial. In this regard, when controversy is in place or when we were asked for, interviewees are not directly identified and had their identity protected.

All the elite interviews were private, one-to-one, in a place chosen by the interviewee. The exceptions were two interviews conducted by phone and one by email. All group interviews took place within the CGU and involved exclusively professional career civil servants. Their individual comments also remain protected and were not submitted to their bosses. Many documents analysed, even though they were not stamped classified, were not in the public domain and the access were only possible with the guarantee of not revealing the sources.

In order to avoid or manage conflict of interests the academic purpose of the research was previously presented to all participants. All of them were also informed about possible conflict their opinion could have considering their position. The research was clearly delimited as an individual initiative *about* the CGU and not *of* the CGU. Participants and the researcher had no duties of loyalty and, despite the researcher positionality, his tenure position at the CGU was not in question and he was not subject to competing incentives or functions.

A formal letter outlining the research objective was presented to the CGU, which permitted the interviews and document access during the fieldwork. However, it is worth citing, the institution did not interfere with the research design and content. The author has full responsibility for this research.

3.3 Research operationalisation

According to Elizabeth Sanders, there are three ways to look for answers about institutional formation, development and change in a historical institutionalist perspective. She refers to them as the “look for prime movers” and they are characterised by the institutional genesis and change: (1) from the top down; (2) from the bottom; and (3) from an interactive approach (Sanders, 2006: 42).

In the first approach, the analyst attributes prime responsibility for institutional genesis and change to top-level actors (presidents, high-level bureaucrats and advisors, etc.). In the second approach, the prime responsibility rest to social movements and groups (unions, civic organisations, etc.). In the third approach, the focus is on analysing both state and society.

Sanders points out that the choice of focus has methodological implications, as it will determine the number of actors involved and the type of documents to be analysed. In this research, considering the particularities of the CGU, the choice is to develop an analysis from the top down. This option is due to the circumstances of the CGU creation (a presidential act) and changes (guided by high-level bureaucrats and senior civil servants). However, as supported by what has been developed in this research, the

consideration of this approach by no means prevents the analysis nor denies the influence of the other actors, the society, and the external context.

This option determines whom to look first, or who are the primary agents, not the most important. This option is also related to the limitations of this research, which solely focuses on two aspects of the institution: its origin and development. Issues related to the impact of the CGU operations to the society and to corruption levels, for instance, are not analysed.

Research questions.

In order to empirically develop our argument, we have developed the following research questions:

1 – Why and in which context has this particular institutional arrangement (CGU) emerged?

2 – How has this institution been persisting over time?

Under these headings, this thesis will also look at more detailed questions, which help it to answer the larger questions.

For the first heading, detailed questions are: How was the Brazilian political system context before and during the CGU genesis? Which events (internal and external) influence the creation of an anti-corruption agency and the CGU in particular? Which were the political and technical arguments for the CGU? Which were the interests involved in the CGU creation? Which difficulties did the CGU supporters face during the initial steps? Why a new anti-corruption institution in the Brazilian context?

For the second heading, detailed questions are: Why did an institution supposedly created to never work persist? How has the CGU changed? Which mechanisms have influenced the changes in the CGU? Which actors and interests are involved in this process? How can an anti-corruption

institution without compelling mandate persist?

The first question deals with the antecedent conditions and the context in which the CGU was established, not only the very moment it started, but also the period in which the country faced relevant political and historical events and the world faced a wave of anti-corruption measures. The creation of CGU in 2001 was a midway between the particular legal and bureaucratic arrangements the Brazilian Public Administrations had faced since the 1988's Constitution, the Congress and society protests against vote buying scandals in 1997, and the expected presidential election in 2002, to say the apparently most relevant ones.

The world wave of anti-corruption measures perpetrated by nations after the "cancer of corruption" speech of the World Bank president in 1996; the signing of multilateral anti-corruption conventions (Inter-American, OECD); the international donors pressure for anti-corruption actions; and the *developed* world push for measures against money laundry formed the world context into which Brazil was inserted by the time of the CGU launching. Considering the widespread impact of globalisation and the interests of the country in occupying a chief position in the world, it would be difficult disregarding this world context.

The second question is related to the real trajectory of the CGU over a decade. In connection with the first question, the objective of this is to present a particular case of anti-corruption agency evolution. The sensitiveness of the issue, particularly when treated inside a government, makes any institutional arrangement against corruption as a wasp nest; that is, the less you touch it the better (or the level of your bruises depends on the way you manage it). However, that was not what happened with the Brazilian case, on the contrary, the institutional arrangement has grown and

changed rapidly in these ten years after three presidencies.

The aim of the second question is not only to describe the institution, but also to explain why it gains the form it does in this lapse of time. The assumptions are the ones discussed in the theoretical foundations; that is, the CGU trajectory is a dynamic path in which punctuated equilibrium, path dependence, and mechanisms of reproduction, such as institutional layering and increasing returns are involved.

Methods and approach to triangulation

The essence of a case study methodology is triangulation, that is, “the combination on different levels of techniques, methods, strategies, or theories” (Johansson, 2003: 8 and 11). The benefits of triangulation include “increasing confidence in research data, creating innovative ways of understanding a phenomenon, revealing unique findings, challenging or integrating theories, and providing a clearer understanding of the problem” (Thurmond, 2001: 254). In this research we use a combination of archival and document analysis and elite and group interview methods for collecting qualitative data.

Archival and document analysis

Documents and archives were obtained from and examined in the Brazilian Congress, ministries, the CGU and public libraries. They are a compound of governmental reports; policy documents; laws; Congress speeches and committees documents; news reports; and external reports and documents (from Brazilian society and international community). The selection of these materials was made according to the research questions with the support of the theoretical assumptions from the historical institutionalism.

For the question about the origin of the CGU, we collected and examined law proposition documents from the Executive; the speeches of the president and ministers before and at the announcement; previous policy documents about anti-corruption measures; members of the Brazilian parliament discourses around the CGU announcement; the content of international anti-corruption conventions; news reports on the issue; reports and analysis from non-governmental anti-corruption organisations; and the CGU law itself.

These sources were organised by type (official; from society; from the media; external) and by date of publication, signing, releasing or issuing. Some governmental documents, for example internal reports and memorandums, were not publicly available, even though they were not classified. In these cases, the access to them was only possible due to the position of the author as a career professional of the CGU. News reports of national newspapers and magazines were collected from public libraries archives and from the Internet by search engine using key words related to the CGU and its announcement.

Documents provided not only formal and official explanations for the CGU but also pointed out who was interested (or not) in the institution, and who supported (or not) it at the very first moment. It was also important to identify the impact of this measure on the press and on politics and how context has contributed to the initiative. News reports and journalist commentaries were used to access the public opinion about this anti-corruption measure.

The announcement of the CGU was not at the external (international) sources, news and reports. The available documents and news reports about corruption and anti-corruption measures, which were released by the

international community (donors, multilateral organisations) by that time, did not deal with the announcement of the CGU. It was mentioned years later within donors reports, but not as an analysis of the institution.

Textual analyses were made not only considering the sources themselves (reputation, authenticity, location, authority), but also the content. The intention was to identify evidence to support the opinion of elites involved in the process and then help answering the research questions. Notes and extracts from the texts were organised by research questions and by events related to the CGU trajectory (announcement; new programs; restructuring; etc.).

As part of textual analyses and using the triangulation strategy we also proceeded to establish correlations between external and internal events. External events were those independently happened (with no influence of the CGU), such as corrupt scandals and signature of international conventions against corruption. Internal events were the governmental response (or no-response) to those external ones. For instance, law, decree or bureaucratic arrangement the government has taken as a direct or indirect consequence of external events.

The correlation between both internal and external was established as a sequence of events, sometimes facilitated when the external event suggests such internal one, as it was the case of International Conventions, which recommend the implementation of some local measures. For instance, the UN Convention Against Corruption provision that states party shall take appropriate measures to promote the active participation of individuals by *Ensuring that the public has effective access to information (Article 13, d)*.

As a consequence the CGU assumed the leading role in developing, promoting and campaigning for the Brazilian Access to Information Law,

which passed in Congress in 2011. In this process many activities and programs have been developed within the CGU and for the public.

However, when it was not possible to identify such a correlation, the particular internal event was considered and its motivation identified using the method of elite interview. This method is explained in the subsequent section.

Elite interview

A background research made according to the author's own experience within the CGU and Brazilian anti-corruption identified the entire population of those likely to have relevant information about the process of origin and development of the CGU. Individuals from within and outside the CGU formed this population, all of them have been contacted and those who have accepted the invitation and have been effectively interviewed using elite interview method formed the sample.

Those individuals, defined as *elites*, were ministers, deputy ministers, senior civil servants, politicians, CGU professionals, journalists, academia professors and researchers, civil society organisations representatives, and international organisations representatives. The selection process considered the role and position of the participant within and outside the CGU, his/her academic and professional interest, political position, discourse and organised movement, and key individuals who have been involved in activities related to anti-corruption measures in Brazil. Their elite status was dependent on their access to information that helps answering our research questions, not on their role in society. Table 3.1 below shows details about the population and the sample.

Table 3.1 - Elite interview: population and sample

Population*		Sample±
From within the CGU		16
From outside the CGU	Academia	3
	Government	8
	Politician	2
	Journalist	1
	Civil Society	7
	International organisation	0
	Total	37

* Individuals identified as likely having relevant information about the process of origin and change of the CGU

± Individuals who have effectively been interviewed

The interviews, particularly those with individuals from within the CGU, followed a crescent rank order. That is, we tried to interview lower rank civil servants first and then higher ranked ones. We did this in order to get data and perceptions that could teach us things that help us get the most useful information from subsequent interviews with the most central figures (Manheim et al, 2006: 358).

For the elite interviews we followed the general guidelines suggested by Manheim et al (2006: 360-361) and Berry (2002). The majority of the interviews (34) were conducted personally (one-to-one) in Brasilia (Federal District) and Salvador (State of Bahia), using open and standardised questions. We conducted two interviews by telephone (Skype) and one by email. One-to-one interviews took place in a relaxed and private environment (away from potential distractions), generally in the

interviewee's office and their tone was reflective and conversational.

Interviews took around 45 to 60 minutes long and were not recorded, and then we used the process of note-taking, summarising main aspects of the answers. Just after leaving each interview we organised the answers and comments by respondents. This process, made by the author alone, took around one hour per interview and produced sixty-two pages of transcriptions in total. When some points of the content seemed to raise doubts or be not well understood, the respondents were contacted again by phone or email to confirm and clarify their answers. All that the interviewees have said was treated as data thus subject to interpretation and analysis.

Considering some interviewees' request for confidentiality, the sensitiveness of the issue and the possible inhibition for respondents in embarrassing issues, recorders were not used. In this case it is worth citing the argument of Manheim and his collaborators: "If the subject matter is highly sensitive or respondents are likely to be inhibited by recorders, the costs of using them probably outweigh the advantages" (Manheim et al, 2006: 362).

We organised themed questions according to interviewees and the two parts of the research: origin, and development and change of the CGU. By the view of key actors these questions helped to situate the institutional arrangement in its context of evolution and change. It was also the intention to identify the foundational elements (Thelen, 2002), which have been sustaining this institutional arrangement over time, and how the ongoing political negotiation process permeates this institutional dynamics. These last two intentions are based on the historical institutionalism perspective, which sees "continuity and change empirically closely intertwined" (Thelen, 2002: 35).

The organisation of interviewees and the general themes questioned according to the origin (part one) and evolution and change (part two) are detailed in tables 3.2 and 3.3 below. This organisation had the purpose of facilitating the collection of data. This by no means signifies that interviewees listed in table 3.2 are not questioned on themes of the table 3.3 and the same for the ones listed in table 3.3.

Table 3.2 - Detailing interviews for understanding the CGU genesis

Target interviewees (first part)	Number of interviewees	General Themes questioned
CGU proposal law team	3	Political and technical arguments/interests for suggesting such a proposal; People (civil servants, academics, consulting) involved in the elaboration process.
Members of the Parliament who discussed the CGU proposal	2	Constraints and support the proposal faced/received in the Congress and the kind of discussion during the vote process.
The first CGU minister	1	Recommendations from the president; Challenges and main policy; Relation to political actors and other ministries.
The CGU professionals	4	Difficulties to implement a new institutional arrangement; Relation to society, other public organisations, and civil servants; Developing the institutional identity.
Academics and civil society organisation representatives	6	
	Total 16	

Table 3.3 – Detailing interviews for understanding CGU evolution and change

Target interviewees (second part)	Number of interviewees	General Themes questioned
CGU ministers (first level)	2	Why did an original office-base agency shift to a 2000 staff organisation in seven years? Why did this institutional arrangement evolve in this way?
CGU Secretaries (second level)	3	
CGU directors (third level)	4	To what extent is this institutional arrangement influenced by politics?
CGU career professionals (3 groups)	23	
Academics and civil society organisations representatives	8	Why did CGU become a major tool of the anti-corruption policy in Brazil?
The advisory body (Council of Transparency and Combating Corruption)	4	What are the CGU horizons?
	Total 44	

Group interview

As long as we consider the people as part of the institution, the opinion and perceptions of the CGU professionals about new programs, restructuration and decisions were essential for the triangulation process. With that in mind, we have conducted three small group interviews with tenured professional career civil servants working at the CGU. We have decided for it to clarify and improve our interpretation of data about the development of the CGU and its impact on the institution as a whole.

We divided the groups according to the main CGU subunits, which are the SFC, the SPCI and Regional Offices. We did this to have data from people working in different areas within the institution. As it will be explained in subsequent chapters, the SFC represents the tradition, the SPCI the innovation, and the Regional Offices a reflex of the others with a local face.

Participants were selected (not statistically) in a voluntary basis. We first contacted the head of the subunit, and then organised the interview with those who had accepted to participate into the group. Participants were accepted disregard their position, so we had a mix of professional levels in each group, most of them not occupying chief positions. Participants from the SFC formed the first group, the second group by participants from the SPCI, and the third by participants from the Regional Office of Bahia.

Group interviews were conducted in meeting rooms in three different occasions and were not recorded. The tone was conversational and questions were posed for debating. Participants were previously informed about the research and had the guarantee about confidentiality. They were free to present their perceptions individually, but groups were stimulated to present a general idea/view on the most relevant facts regarding the CGU development. We used note taking as the process for summarising themes and conclusions that emerged from the discussion. Table 3.4 below shows details about the groups.

Table 3.4 - Group interview

	Number of career professionals	CGU Subunit
Group 1*	7	SFC Infrastructure Directorate
Group 2*	9	SPCI Corruption Prevention Directorate
Group 3±	7	Bahia State Regional Office

* Interview in Brasilia (Federal District)

± Interview in Salvador, Bahia.

Subjectivity of interviews

The subjectivity of interviews has been considered not only because it is a qualitative research but also because it deals with individuals that are particular “repositories of facts, reflections, opinions, and other traces of experience” (Gubrium and Holstein, 2012: 32). Interviewees and interviewer have their own subjectivity, an aspect that is behind the individual. The previous section on positionality clarifies the *self* of the researcher/interviewer, pointing out his own subjectivity. Here we expand on the side of the interviewees.

As we have mentioned what interviewees say is treated as data, not as factual data. We proceed this way because we cannot control what respondents say, in other words, because the subjectivity of interviews. In light of this, King et al (1994: 112) put that in an interview “the answer given must be interpreted as the interviewee’s response to the researcher’s question, not necessarily as the correct answer.” Our objective is to extract information, and we are expected to avoid shaping it. We did this by controlling our own opinion, guarding the research against drawing invalid conclusions. This process is explained in the next section when discussing triangulation.

Our own experience within the CGU and with anti-corruption in Brazil has helped us to develop an understanding about the selected interviewees. In spite of not controlling everything in the subjectivity field, we know what many of the interviewees believe or claim to be true in related to the CGU. This is not to say that we previously knew all the answers for the research questions, but that we have previously approached the interviewees' position through their own discourses, academic articles, speeches and written work about this research subject.

Approach to Triangulation

As Golafishani (2003: 603) points out “[t]riangulation is typically a strategy (test) for improving the validity and reliability of research or evaluation of findings”. But the strategy, the way it is applied here, has the meaning of not only *validity-checking* but also *seeking complementary information* (Hammersley, 2008: 22). Hammersley also teaches that

[...] using data of different types can help us both to determine what interpretations of phenomena are more and less likely to be valid *and* to provide complementary information that illuminates different aspects of what we are studying (p. 31).

While triangulation is popular, it requires more resources and time to analyse the information “yielded by the different methods” (Guion et al., 2002: 14). With that in mind, we have organised data by method and then by research question, having the control of origin and produced date. Most of the data were collected during fieldwork in Brazil from January to March 2009, and their analysis (including revision, confirmation and validating) took around two years.

The approach to triangulation is presented in the Figure 3.1 below. Data collected from elite interviews (from CGU insiders) are confronted with

each other and with findings from other elite interviews (from CGU outsiders) and group interviews and finally confronted with data from document and archival analysis. If the findings from all of the methods draw the same similar conclusions, then validity has been established. If not, the different viewpoints, together, may produce a fuller and more complete picture of the case that will be interpreted by the researcher.

Using triangulation here is not simply corroborating one interviewee with another, but obtaining information about each research question from as many sources of information as possible before drawing conclusions.

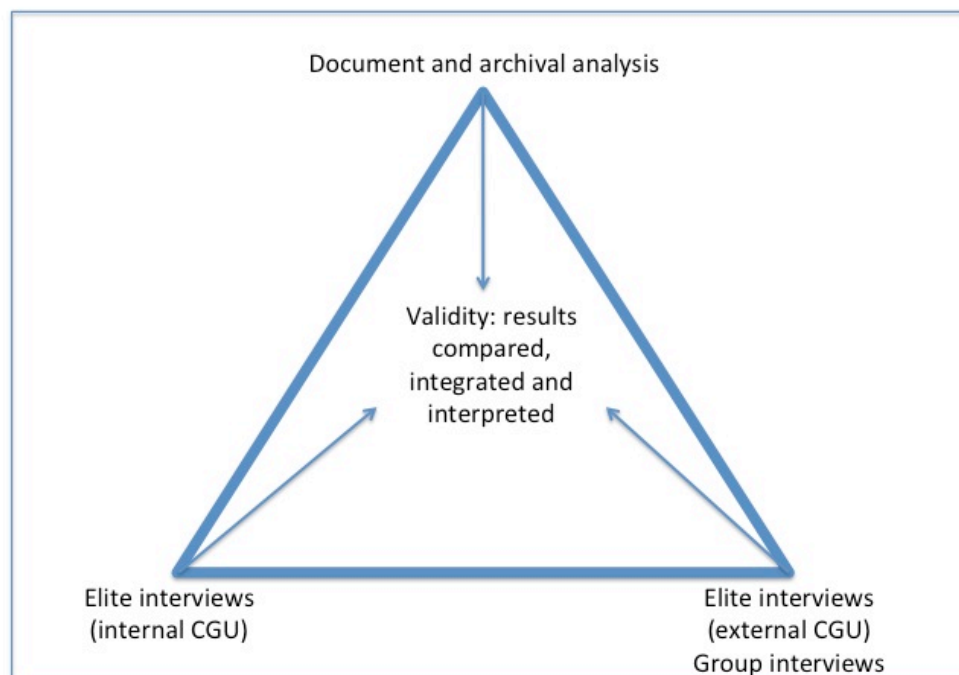


Figure 3.1 – Approach to triangulation

Developed by the author

The author's own professional experience at the SFC and the CGU over fourteen years and of interacting with various governmental and non-governmental institutions and the society inevitably have influenced how this data have been interpreted. However, as discussed in the positionality

section, all the efforts have been made to avoid bias influence. It is in that way in order to test the validity and reliability of the research.

Concerns about the triangulation strategy are also related to how to identify threats to validity associated with various data sources and to how we should decide what additional information is and is not relevant to our study. Again, personal experience may be the answer here, but the argument of Hammersley (2008: 32) is worth citing: “forms of triangulation are investigative strategies that offer evidence to inform judgments, not techniques that provide guaranteed truth or completeness”.

4 - The Context: democracy, Brazilian institutions, corruption, and the world

The politics of the Brazilian state is shaped by the logic of patronage, sustained clientele networks, and patrimonialism. Therefore, the Brazilian state does not act in the “public interest” and state elites are not normally accountable to one another or to the public. The state acts, instead, on behalf of elite groups with privileged access to it.

- Alfred P. Montero,
Brazilian Politics, 2005, p 28

Nevertheless, the country’s course seems to be set...Its government has moved to reduce the searing inequalities that have long disfigured it...The country has established some strong political institutions. A free and vigorous press uncovers corruption...Its take-off is all the more admirable because it has been achieved through reform and democratic consensus building.

- The Economist,
14-20 November 2009

[...] The 1990s have also seen unprecedented expansion in relevant efforts at the measurement and monitoring, as well as mobilization efforts to control corruption. The latter activity in particular involved the mobilization of significant new forces in both the policy world and in academe.

- Arnold J. Heidenheimer and Michael Johnston,
Political Corruption: Concepts & Contexts, 2002, p xi

The first two quotations are sufficient to confound unaware analysts of Brazil. The first question that might come to their minds is how these two worlds could live together without causing an institutional chaos. Another point is for how long this situation will be sustained in the world’s fourth-largest democracy. Answering both questions is not an easy task, this because particularities of both the country and its institutions, even when comparing them to the others’ Latin American nations (Bethell, 2009).

The problem of corruption and the ways that governments have used

to tackle it in Brazil follow that contradictory uniqueness. Corruption is at the core of the traditional politics logic Montero refers to in his quotation and the extent to which the state apparatus deals with the problem may determine the sustainability of that development *The Economist* points out. That local context is inserted into a world where corruption is referred to as a developmental problem and where a wave of anti-corruption efforts has emerged.

It is from that local and global context that the CGU has emerged and developed. The theoretical discussion has emphasised this interaction between institution and context in order to understand an institutional emergence. Punctuated equilibrium, in this particular, presented the arguments for external events changing institutional sustainability and the critical juncture analysis stressed the importance to establish a frame in time to avoid getting lost in the past.

The first institutional order that has changed is the political regime, which permitted the establishment of a democracy and then mechanisms of accountability. International movements have also influenced the country and its policies. It is important to mention the world anti-corruption wave of the 1990s, “[a] period of largely focusing on awareness raising” (Kovács and Tisné, 2004: 2) that was supported by international donors organisations. Marquette (2004: 3) points out the 1996 World Bank President “cancer of corruption” speech to the Annual Meeting of the Bank and the International Monetary Fund (IMF) as “the public recognition of the movement”.

Political system and state apparatus form the context that Hall (1986) and Thelen and Steinmo (1992) consider as constitutional order or the operation of a bureaucracy. This constitutional order in Brazil has been forged through a combination of authoritarian and democratic regimes the

country has experimented since it became a Republic in 1889. Therefore, the resultant today, that is, traditions and institutional relations, may be explained mostly by looking at the way the state apparatus and political system have been developed.

Having exposed that, we assume that an institutional analysis cannot be done without considering the contextual variable. With this regard, Skocpol (1992) remarks the importance of temporal framework pointing the key role of countries' political development in the understanding of distinct policies and institutions at different phases. Before proceeding to the analysis of our particular anti-corruption institution, which will be done in the subsequent chapters, it is important to understand the context in which this initiative has emerged and developed.

We proceed exploring the context in three sections. The first section examines Brazil at the returning to democracy and regime transition. The second section discusses the main components of the state apparatus and their interactions. The third section presents the particularities of corruption in Brazil, the anti-corruption initiatives that existed before the CGU, and discusses the international anti-corruption wave from the 1990s.

Establishing a transition point or watershed within the anti-corruption apparatus in Brazilian history is also the intention of this chapter. After explaining the context and previous anti-corruption experiences, it will be possible to comparatively analyse the CGU as an institutional innovation. This task shall be developed from the next chapter onwards.

4.1 Returning to democracy

The transformation of authoritarian regimes is not necessarily achieved by means of their overthrow, but may also result from...evolutionary change. The (re)establishment of “democratic forms” of government is only one of the possible outcomes of their transformation.

- Luciano Martins

The “Liberalization” of Authoritarian Rule in Brazil, 1986: 72

A democratic state is the one where, to use Dahl’s prescription on poliarchy, participation and contestation are central. These two elements are essential for the anti-corruption activity focused on this research. The discussion that follows emphasises the uncompleted aspect of the Brazilian democratisation process, which corroborates the findings of the literature (Kinzo, 2001; Codato, 2005; Mainwaring and Hagopian, 2005; Montero, 2005; Power, 2008; Zaverucha and Rezende, 2009). Accordingly, distorted relations between political institutions, lack of both horizontal and vertical accountability, and rampant corruption permeate the Brazilian state.

End of Dictatorship

Around two decades after the generals took over the power, the regime collapsed. Among military’s justification for the coupe were to fight corruption and to restate the order. Notwithstanding their promises, military’s relinquished power without fulfilling them. Compared to the military dictatorships in the Southern Cone, military rule in Brazil had as a distinct feature that parties, elections and Congress usually functioned, albeit under severe constraints at times (Mainwaring 1995: 363; Kinzo, 2001).

O’Donnell (1986: 6-7) argues that among the Latin American *bureaucratic-authoritarian* regimes, the Brazilian’s “stands out as the only one which, despite the present social and economic crisis, can claim with some credibility to have achieved significant developmental successes”. Brazilian

military dictatorship, however, was almost the same as elsewhere: lack of democracy, no transparency, censorship, violence, political persecution, nonaccountable political practices and corruption.

The way the dictatorship ended was also singular. Penultimate president, General Ernesto Geisel, started the process when in 1974 he announced a withdrawal plan called *distensão* that would be “*lenta, gradual e segura*” (*slow, gradual and secure*). The political party TV and Radio publicity was permitted and previous censorship banned, *habeas corpus* re-established and the *Atos Institucionais* (AI or Institutional Acts) revoked. Successor president, General João Figueiredo, completed the *abertura* (openness) with the Amnesty Law and the reestablishment of multipartism.

Martins (1986: 82) adds that regime’s difficulties in solving problems of its “internal economy” triggered the “liberalization.” On the other hand, Bresser-Pereira (1989) suggests that this profound political process was not a military concession but a civil society conquest. Economic problems derived from the oil crisis, international pressures and regime internal difficulties are evidences that the process was a midway between both arguments.

From 1974 until 1985, a period Kingstone and Power (2000: 3) point out as “regime’s slow,” a number of social actors and trends emerged. Among them were the “new unionism” independent from the state, social movements and popular organisations, the leftist Workers’ Party (PT), the strengthening of the main opposition party PMDB and the “resurrection of civil society” (Kingstone and Power, 2000: 4; Codato, 2005: 95).

Wrongdoings were favoured by the distorting of institutions like the Congress, the judicial branch and accountability bodies such as the *Tribunais de Contas* (TC or Court of Accounts). Under constraints and lack of transparency they contributed to validate authoritarian regime and its allies’

acts. Although fighting against corruption and traditional politics was a flagship in the militaries' discourses, very few were institutionally done towards it (Starling, 2009).

Hagopian (1996) argues that the political modernisation project intended by the regime found the obstacle of traditional elites and politicians who retained significant power in states and local governments. These elites supported the regime's economic project and took advantage of it. In name of its economic project, the regime tolerated traditional politics and, as a consequence, weakened institutions. This "logic process of exchange", as Johnston (1986) puts it, has distinguished corruption in Brazil and influenced its institutions. The damping practice, as shall be shown, continued even after the end of the authoritarian rule.

Regime Transition

When the transition started and finished, if so, is an ongoing discussion among those who study this period of Brazilian political history. Some scholars point that this process goes from the *distensão* in 1974 until 1985 with the indirect election of the first civil president in 21 years (Bresser-Pereira, 1989; Moisés, 1995, 2008; Power, 2008). Others go further to suggest the transition lasted until the direct presidential election in 1989 (Kinzo, 2001; Codato, 2005), that is, the world's longest transition to democracy.

The rearrangement of the political system through accommodation and interlining of new and old practices and structures was an institutional heritage of the authoritarian regime. This partially explains the relative tranquillity of the Brazilian transition O'Donnell (1986: 7) referred to. Such an "agreement" between elites avoided a witch-hunt over the past rulers (and supporters) and their acts. Included was a blind eye on the widespread corruption of military-bureaucrats.

Guaranteeing a pacific transition and the prevalence of democracy was more important than investigating the problem. It seems that the inaction of the New Republic with regard to corruption was also driven by the idea that democracy *per se* would be the solution for everything. The strategy proved to be a mistake, as democracy is a result of a long process and is not “a cure-all” (Blake and Martin, 2006: 9).

The militaries had guaranteed power and influence in the new Constitution of 1988, and their step down to power by no means represented a reduction of their budget, quite the contrary (Zaverucha and Rezende, 2009). Codato (2005: 101) argues that a significant dimension of the authoritarian institutional outcome to the 1990s governments was the permanence, in the state, of *nucleus of power* with large independence and neither political (Congress) nor social (public) control. These structures of power are in the economic (the super-ministry of finance), military (the military justice, intelligence and security agencies) and entrepreneurial areas (privatisation, policies and external trade agencies).

Sustaining this uneven institutional order, with advantage of key structures of the authoritarian regime, has been possible due to the ability (power) of elites to congregate democratic discourse to traditional politics. Hagopian (1996: 14) points out that this prevalence was due to the enduring strength of *traditional* politics and *traditional* political elites as to the force of *modern* politics. Traditional politics/elites are regarded to be the kind that supported the military regime by centralised, unaccountable and undemocratic measures. They are also those individuals whose economic interests would be better protected by maintaining positions obtained from the regime. By modern politics we mean the kind associated to democratic discourses and practices, as opposite to the traditional.

The sense of pragmatism and opportunism of elites permeated all the transition period and was consolidated even after. This was particularly true for the indirect election of Tancredo Neves and José Sarney in 1985, when yesterday's regime supporters became exponents of today's democracy, the elected vice-president included.

The alliance that permitted a moderate and a former regime representative to be elected was a "democratizing coalition championed by everyone and captained by no one" (Power, 2000: 19). Neves became terribly ill and died in the eve of his inauguration. Amidst national grief, Sarney took office promising to sustain Neves's democratic discourse: complete the transition democratically, establish a real democratic government, call for a Constituent National Assembly and implement the New Republic. Sarney was crucial to avoid any strong revenge against former military rulers and supporters and to sustain nonaccountable political practices (Mainwaring, 1995: 368).

In exchange of his attitude, Sarney was granted a longer presidential mandate – from 4 to 5 years –, which was confirmed by the Congress. Sarney's fifth year was guaranteed by the "unscrupulous use of the extensive patronage available to a president and by other forms of persuasion" (Flynn, 1989: 51). The New Republic's president held the political fragmentation, which stressed participation and contestation but forgot the basis's national reforms in the sense of a new institutional design. This was also observed in the movement that drove the country towards a new constitution enacted on 5 October 1988.

Brazilian Democracy

Brazil has sustained a democratic regime since 1985, and democracy has become more stable in recent years (Mainwaring and Hagopian, 2005).

There are no barriers for political party creation and affiliation, elections are regular and direct for all political posts, the press is free and there are channels for denunciations. The rule is the law and an impeachment of a president and several corrupt scandals involving high echelons have neither undermined the recent democracy nor invited militaries to office again.

Considering the “third wave” minimalist view of Huntington (1991) for whom the existence of free and fair elections means democracy, Brazil is one of it. The plain democracy, however, in the sense of what Comparato (2006) describes, as the exercise of the “sovereignty power” of the people towards the common good of all, is not a reality. As Grugel (2002: 5) points out, “a full democratization cannot take place without either socio-economic reform, cultural and social change or a transformation of gender relations”.

Ongoing reforms towards the “utopic” full-democratisation mentioned by Grugel seem to be a tonic to Brazil. Since the return to democracy all governments have tried different formulas aiming at this purpose. Reforms have proved to be successful in the economic area but failed in changing social structure and rampant inequality.

Codato (2005) argues that this negative outcome derives from preconditions of authoritarian arrangement and the lack of governmental accountability. He adds that neoliberal reforms have not matched demands for more citizenship and control over the state’s institutional apparatus by society (vertical accountability). Weffort (1992), Santos (1999) and Baquero (2003) on the other hand, point out the weakly organized civil society as one of the factors for the slow motion of the reforms regarding social aspects.

Nonetheless, and considering the arguments of Diamond (1999: 74), the scenario is towards consolidation: democratic deepening, political institutionalisation and regime performance. Power (2008) divides this

process of consolidation into two phases. The first, from 1985 to 1993 encompasses the administrations of Sarney, Collor and Franco. The second goes from Cardoso first term, in 1995, to date under Lula government.

The first phase fomented over-optimism to the possibility of solving Brazil's chronic problems such as poverty and corruption. Instead of seeing the elimination of corruption and poverty causes, the country witnessed corruption under democratic rule causing damage to crucial democracy's institutions: the presidency (the Collor case and the impeachment) and the Congress (the Budgetgate *case*) (Silva 2001: 11).

In the second phase there has been far greater stability in leadership compared to the first phase. In the thirteen years from 1995 to 2008, for instance, Brazil has had only three finance ministers, compared to thirteen ministers in the shorter period from 1985 to 1994. Both Lula and Cardoso were elected and re-elected with solid majorities and worked together for a successful transition between their administrations. Therefore, the more favourable socioeconomic conditions prevailing since the mid-1990s should facilitate greater convergence or consensus among political elites (Power 2008: 84).

According to Power (2008: 83) the ideological convergence observed in Brazil during the period of the second phase of democracy is responsible for the survival of the regime. It is also important to add that this convergence has helped consolidating political institutions in the sense of freely exercising their proper functions of horizontal accountability. Corruption investigations by the Congress and accountability reforms in the executive are examples of that and they are part of the sequencing we are investigating in this thesis. With regard to accountability, some institutional initiatives such as administrative reform and CGU have been done. Nevertheless, the perfect

functioning of such an institution requires corrections of some vices of the actual state apparatus configuration.

4.2 Brazilian political system and institutions

Within the structure of the Brazilian Federative State, the exercise of power is attributed to distinct and independent entities, each with its own particular function, with further provision for a control system among them, so as not to allow the possibility of procedures that are in disagreement with the Law or the Constitution.

The Presidency of the Republic
Government Structure, 2009

The Federative Republic of Brazil is organised into three independent levels of government: federal, states and municipalities. Within federal and states levels the power is constitutionally distributed following the Montesquieurian *trias politica* of executive, legislative and judiciary. In municipalities executive and legislative compound the power, as judiciary is provided by the state where the municipality is located. Invariably, the institutional structure of these powers is considerable, this as a reflex of the past (and current) role of the state in the country's economic and social development (Weyland, 2000).

Big structure along with centralised and patrimonialist form of administration concurred to the "crisis of state" Bresser-Pereira (1996, 1998) mentioned in his defence for an ample state apparatus reform. Reforming the Brazilian state, however, has always been a matter of political dispute between components of the federation and power entities.

In theory and according to the official publicity quoted above,

harmony and accountability have met together to produce an equilibrated state. Despite the prevalent rule of law and *de facto* independence of the state's entities, their powers are not balanced. The Constitution that has established considerable and adequate mechanisms for investigating and punishing has also provided additional prerogatives tending to favour the executive control over the agenda and the legislative process (Figueiredo, 2001).

This section describes Brazilian institutions and their distorted relationship. As it shall be presented, main consequences of this distortion are the lack of accountability and corruption. Notwithstanding the distorted relationship, institutions have preserved their independence in some extent, which has contributed to sustain a democratic aspect of the political system.

The Presidency and the Executive

In a presidential regime...The president is the boss, period!
- *Fernando Henrique Cardoso*, President of Brazil, 1995-2002
Interview with *Isto é*, 18 June 1997

The short statement of the former president Fernando Henrique Cardoso reveals what it is the power of the chief executive of the Federative Republic of Brazil. The Brazilian president serves as both chief of state and chief political executive. Therefore, state and government administrations are concentrated at his/her hands, even though legislative and judiciary branches are there to establish the legal balance of power.

The distribution of power between institutions, however, has been severely unbalanced in favour of the executive by the military dictatorship of 1964-1985 (Power, 2000; Figueiredo, 2001). Even the 1988 Constitution was unable to equilibrate forces, resulting in a legal document that confirmed a presidential regime with several parliamentary prerogatives (Power, 2000).

This institutional continuity “affects legal output” as the “Executive branch, due to the legislative powers it possesses, commands the legislative process and in this way, undermines the strengthening of Congress as an autonomous power” (Figueiredo and Limongi, 2000a: 73). The executive has exclusive prerogative of legislative initiative in issues such as federal budget, may request urgency for matters of its interest, and the president may submit to the Congress *medidas provisórias* (MP - provisional measures).

A MP is a decree with force of law issued by the president, in urgent and relevant cases, and submitted to the Congress for deliberation. There are some restrictions regarding the object and content of a MP, for instance penal law, nationality, political rights, electoral law and budget cannot be matter of a provisional measure. However, presidents, with no exception, have been distorting the meaning of urgent and relevant conditions and MPs have been used frequently as an ordinary instrument of *status quo* alteration (Da Ros, 2008).

Shugart and Carey (1992: 19) argue that the “law making power” of a president is necessary in order to ensuring that the popular endorsement of a policy programme through a presidential election can be translated into actual policy output. Without this power, “presidents execute laws the creation of which they had no way of influencing”. Despite this executive’s “hypertrophy” (Lobato 2001: 46) the empowerment of the presidency is also sustained by an ongoing bargaining process with the Congress and political parties.

Exchanges for supporting the Executive proposals are key appointed positions in the government or special budgetary treatment for political parties/representatives’ constituencies. As a result, the public office becomes more a commodity than a way to propose or implement policies.

Nonetheless, this negotiation and sometimes misuse of the public office have not been sufficient to undermine governability (Figueiredo and Limongi, 1994, 1995, 1996; Santos and Vilarouca, 2008).

Even after Collor and Cardoso administrations' privatisation and downsizing programmes, structurally, the federal executive has a size that is compatible to the country's dimensions. There are 27 ministries, 12 regulatory agencies, 9 banks, 18 public foundations, 38 state-owned industries and companies, and a considerable number of universities and educational institutes. Therefore, appointed posts at the federal executive are abundant and their attractiveness is measured by the budget they manage and the visibility or votes they might offer.

Nonetheless, this bureaucracy is massively regulated, which means they all abide by the legislation regarding procurement, personnel recruitment, and budgetary management. Room for appointing is around 4% of the total of the federal civil posts that is about 580,000 (Brasil, 2009). This monumental bureaucracy, which spread over 8 million square kilometres, 27 federation unities (states and the Federal District), and 5,500 municipalities makes any control activity difficult, and consequently facilitates wrongdoings. Depending on the federal agency or ministry, their appointable posts in states and municipalities are, in general, politically fulfilled (Mainwaring, 1995).

The executive structure of control has the CGU as the central organ and small *assessorias* (units) in each ministry. Internal audit commissions do the job in autarchies and indirect administration (state-owned enterprises, universities, and foundations). Although recent improvements in its personnel, structure, legislation and resources, the control structure is far from the ideal to evaluate governmental programmes, prove efficacy and

value-for-money of the application of public resources.

Notwithstanding timid administrative reform initiated by president Collor and the substantial one but partially implemented by Cardoso administration, much red tape remains in the Brazilian bureaucracy. Cardoso's plan was to solve the "crises of state" and "create conditions for the reconstruction of the public administration in modern and rational basis" (Brasil, 1995: 6). Bresser-Pereira (1996) argues that lack of political support in the Congress frustrated the complete acceptance of Cardoso's administrative reform. But this reform, based on the New Public Administration movement, was important to bring some organisational rationality and managerial concepts to the executive.

The Congress and Political Parties

The Brazilian National Congress is a bicameral legislature with 594 elected members. The *Câmara dos Deputados* (Chamber of Deputies) with 513 members elected by proportional representation is the lower house. The *Senado* (Senate) is the upper house and has 81 members elected by majoritarian system (plurality voting). There are 27 electoral districts (26 states and the Federal District) that choose their representatives every four years by an open list system. According to the Constitution 513 is the maximum of deputies and no state (district) will have less than 8 and more than 70 deputies. Each district elects three senators, renovating the upper house by 2/3 and 1/3 every four years respectively.

The legal threshold and ceiling of 8 and 70 distort the principle of proportional representation (Moisés, 2008). This distortion is in name of a *balanced* relation between unities of the federation and is a result of the politics of governors (Hagopian, 1996). For example, the state of São Paulo (29 million voters) elects 70 deputies respectively and, on the other hand,

Roraima (200 thousand) elects 8 seats for the Chamber. While a deputy from São Paulo represents more than 400 thousand voters and a colleague from Roraima 25 thousand, they both weigh the same in Congress voting process. Therefore, territory matters as population does.

Another point of criticism about the electoral system is the combination of proportional representation and open list (Ames, 2001). According to Mainwaring (1995) this feature is unusual and has encouraged individualism among politicians and helped undermine parties, and weak parties have negative implications for democratic governance. There is no preference order by which candidates are elected, as voters cast only one vote for the position according to the list prepared by the parties or coalition of parties.

Twenty-seven parties are registered at the Superior Electoral Tribunal - TSE, but *only* nineteen of them are represented in the Congress for the 52^a Legislature 2007-2011 (Câmara dos Deputados, 2009; TSE 2009). In his analysis, Mainwaring (1995) found that Brazilian political parties were most catchall in form, fragile, ephemeral and had weak roots in society. Indeed, considering the bipartisanship system imposed by the authoritarian regime until 1979, when only the government party ARENA and the opposition MDB officially existed, all the others parties were founded after that year.

ARENA became PDS that turned into PFL and now is DEM (Democratas). MDB transformed to PMDB and some dissidents formed PSDB. The Communist Party - PCB that was clandestine during dictatorship now is PPS. Disenchanted members of the Worker's Party (PT) founded PSOL, and so on. Party loyalty is weak and the movement between parties does not necessarily follow ideology. This tends to influence the average of voters that do not feel themselves obliged to demonstrate commitment to any

particular party. This scenario is persistent notwithstanding movements towards strengthening the legislation, particularly regarding party loyalty, percentage of votes to endure and campaign finance.

With such a number of parties and fragmentation any Brazilian government is only possible by what Abranches (1988) labelled *presidencialismo de coalizão* (coalition presidentialism). As no party detains the absolute majority in the house, even the party of the president, the government have to build coalitions with different legends in order to approve its proposals. According to Geddes and Ribeiro Neto (1992: 650) “if many parties have seats in the legislature...many different deals have to be negotiated...with many individual legislators rather than with relatively few party leaders”.

This praxis involves what the authors suggest as *exchange of public resources for support*. On the other hand, Figueiredo and Limongi (2000b) point out that Brazilians presidents have had considerable degrees of success in enacting their legislative agenda and that it is not true the general idea that in the Brazilian system presidents would face systematic resistance to their legislative proposals, as suggested by Ames (2001). They attribute to this “unexpected findings” to the legislative powers of the president and the centralized organization of the legislative work.

Moisés (2008) argues that concessions for the coalition have helped undermine Congress mechanisms of horizontal accountability. These concessions are appointed positions in the government and, mainly, liberation of resources for pork barrel budget amendments (Pereira and Mueller, 2002). Figueiredo (2001) adds that the centralised decision process based on institutional presidential and party leaders’ prerogatives undermines the check and balance role of the Congress. Party leaders may

decide, by presidential request, relevance and order of issues without consulting the floor.

Notwithstanding the presidential influence over the Congress, it has not impeded investigative function of the Legislative. Let alone the function of the Brazilian Court of Audit, considerable public and ministries audits, information requirements, requests of investigation and control and Parliamentary Commissions of Inquiry (CPI) have been started since the return to democracy (Figueiredo, 2001). Some with remarkable consequences for the country and for the institutional path we are studying here.

The Judiciary and Legal System

For my friends, anything; for my enemies, the law.
- Getúlio Vargas, President of Brazil, 1930-1945, 1951-1954.

In a state where corruption abounds, laws must be very numerous.
- Tacitus

The judiciary is a complex system of instances, courts, tribunals, privileges and power that is not limited to guarantee the due process of law. The system comprises the Supreme Federal Court (STF), the Superior Court of Justice (STJ), the Federal Regional Courts and the Federal Judges, the Labour Courts and Judges, the Electoral Courts and Judges, the Military Courts and Judges, the Courts and Judges of the states and of the Federal District.

This diffuse structure together with lack of judges and a voluminous legislation have contributed to retard processes and frustrate ordinary citizens' access to justice, unless they have a very good lawyer to find their way through the "legal jungle." According to the National Council of Justice

(CNJ, 2009) in 2008 the ratio judges/inhabitants was 6/100 thousand (states' justice) and 0.8/100 thousand (federal justice). The first instance's processes backlog at states' justice was 9 thousand processes per judge and 4 thousand at federal level.

Such a scenario distorts any attempt to make an ample justice as compared to other countries in Latin America and in Europe. In Uruguay, Colombia and Bolivia the ratio judges/inhabitant is 14,6/100 thousand, 11,7, and 9,1, respectively (CNJ, 2011). In Germany, for example, there are 24 judges/100 thousand inhabitants (Veja, 2012). In Spain, France, Portugal and Italy the ratio is 10-17/100 thousand (Consultor Jurídico, 2011).

Pereira (2000: 221) adds that the corporative and personalistic rationality of Brazilian society "defies the application of a cold, blind justice", revealing that the problem is not only *in* the judiciary. As a result, the application of law is no universal and the grant of rights made on a particularistic basis (Pereira, 2000: 221). This is particularly true regarding criminal matters, generating several appeals against the country at the Inter-American Court of Human Rights (Gomes and Mazzuoli, 2005). Locally, the judiciary is constantly criticised due to its supposed partiality and because, as Montero (2005: 39) puts it, it is "ill-suited to solving the country's problems".

Another feature of the judiciary that has deserved large attention is the "judicialisation of politics" (Sadek, 2004; Montero, 2005; Veríssimo, 2008; Vieira, 2008; Barboza Filho, 2008). The phenomenon means an activist judiciary that is not constrained to exercise its competency of reviewing parliamentary function and public policies. That is, the judges are no longer limited to be arbiters in the process or the guardians of the constitution. Thanks to provisions of the 1988 Constitution, they are now actors with the

authority to intervene in political decisions, questioning or holding executive and legislative's administrative acts independently of their will (Sadek, 2004).

These provisions of the 1988 constitution are derived from the changing context and the new balance of forces in which the legal document was elaborated (Campilongo, 1994; Ferraz Jr., 1994). Moreover, the expressive executive's power of determining agenda and influencing the work of the Congress seems to have favoured the development in the judiciary of competencies of control. The result is the transformation of the judiciary in a place for social demands of groups affected by public policies, and the action of these mobilised groups has influenced judicial decisions (Veríssimo, 2008; Lourenço Neto e Lourenço, 2009).

The larger the political role of the judiciary the greater elites' interests tends to be. Thus, the appointment of the eleven justices on the Supreme Federal Court (STF) and the thirty-three on the Superior Court of Justice (STJ) is carefully done considering this role. Montero (2005) makes the point that a consequence of this is a problematic politicisation of judges' decisions. He adds that heightened political and operational autonomy for the judiciary "undercut democratic oversight and accountability by creating opportunities for judges and other court officials to engage in nepotism and cronyism, if not outright corruption" (Montero, 2005: 40-41).

Judiciary internal problems of corruption and nepotism have been well exposed and constant contentions involving the executive and the STF have contributed to an unsuccessful movement for judiciary reform. Fleisher (2004: 121) points out that reform of Brazil's judiciary may be considered an element of political reform, and adds that revision of processes is important to avoid nearly "indefinite postponement tactics" that is more or less

equivalent to impunity.

Impunity is the Achilles' heel of the combat of corruption in Brazil and is one of the characteristics more associated with the judiciary and the legal system. In Brazil impunity feeds corruption and vice-and-versa (Hage, 2012: 1; Fleisher, 2004: 122). Brazilian democratisation history is full of examples of scandals exposure and political condemnation, but this by no means signifies that justice has been made.

Judiciary and legal system is not the only ones to be blamed, this section has proved. The Congress makes the laws, and the executive, as commented earlier, has the agenda power and control the parliament. Relations and contestations among Brazilian state's institutions reveal a distorted system of check and balance, and corruption might be reported as an outcome of this ill-shapen relation. The particularities of corruption in Brazil and previous exercises against the problem, essential features for any anti-corruption initiative, will be discussed in next section.

4.3 Corruption in Brazil and the world anti-corruption wave

Corruption never has been compulsory.
Anthony Eden, Prime Minister of the United Kingdom, 1955-1957

The abuse of public office for private gain (pecuniary or not) in deviation of rules is systematic in Brazil. That means, the problem is not isolated in a particular sector or level of government and has a substantial impact upon government revenues and trade diversion (Riley, 1998). According to a CGU Report, from 2001 to 2008, governmental losses with corruption summed R\$3billion (£1billion). The São Paulo Industries Federation – FIESP points out that corruption prevent Brazilian economy

from gaining US\$6.5billion (£4billion) a year (FIESP, 2006). Therefore, government and market are particularly aware of corruption relevance in the country.

There are international figures regarding the big business of corruption. The World Bank reports², disregarding deviation of public money, around U\$1 trillion as the product of the bribery activity. It is one of the good reasons for the proliferation of international efforts to tackle the problem of corruption since the mid-1990s (Moroff, 2004: 83; Argandoña, 2006: 2). Captained by international donors organisations, this movement or “unprecedented expansion in relevant efforts” against corruption, as Heidenheimer and Johnston (2002: xi) put it, has influenced countries and donors itself look at anti-corruption (Marquette, 2001: 401).

Notwithstanding the awareness of billionaire figures, the persistence of the problem seems to prove what Godoy A. (1996) suggested that visibility of corruption is neither sufficient to start nor sustain a successful anti-corruption policy. Moreover, it is necessary to determine the type and extension (diffusion) that corruption affects a particular society.

Characteristics of Corruption in Brazil

Corruption in Brazil is commonplace, Geddes and Ribeiro Neto (1992: 643) argue. It is said that the problem is out there since the colonial period (Fleischer, 1997: 297). This illustration is important to characterise how old the problem is, but it is not enough. The history of the country, the forms of State and government and the organisation of society may say much about the type and the level of corruption in Brazil, as well as about the way the

² . <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,content.html>

country faces the problem.

Petty and grand corruption in Brazil is markedly associated to the political system, clientelism (pork-barrel), impunity and campaign finance (Fleischer, 1997, 2000b; Dellasoppa, 2005). According to Silva (2000) corruption determinants in the country are the weaknesses of institutions and the existence of *incentives* in the public administration. These incentives Silva stresses are the rules either facilitating or constraining the behaviour of agents (North, 1990). Therefore, considering only this restricted institutional view, the combat of the problem would be efficient only by reforming institutions.

Moraes Filho (1987: 25) pointed just after the return to democracy that the authoritarian regime had helped the institutionalisation of corruption, transforming the problem as a dictatorship's sub product. The sense of Moraes Filho's argument is that corruption was government praxis, that is, corruption was the rule of the regime. The author found that the protection conceded by militaries to their corrupt supporters, even unintentional, helped to turn corruption routine.

Corruption has emerged as a natural consequence of this context and making fortunes has been more important than the productive work in both public and private sector. This subverted ethics is also fomented by the certainty of impunity, an issue that has been frequently pointed out in the literature (Fleischer, 2000b; Silva, 2000; Ames, 2001; Montero, 2005; Barboza Filho, 2008).

Impunity plays such a key role in the game of corruption that Dellasoppa (2005), when analysing corruption in Brazil redeveloped Klitgaard's traditional corruption formula from $C = M + D - A$ to $C = (M + D) I - A$. Klitgaard (1987) analyses corruption as a distortion of the principal-

agent relation, despite the impossibility of precisely valuing his formula's terms the relationship between them is logic. This association may be perceived in the Brazilian case and is a starting point for analysing corruption in the country. Adding *impunity* to the process is not only an improvement in the problem's study but also an assumption that it is a limitation of anti-corruption effectiveness.

Notwithstanding rampant corruption, it has not been sufficient to clog democratic institutions. A reason for this might be the praxis of alternating rulers in all level of government even during the authoritarian regime. Brazil has never had a long life despot to capture all the state's apparatus, even though some examples at state or local level might be observed recently. This has occurred first as a strategy of traditional elites to sustain interests acting behind curtains and really *sharing the market*, and second as a consequence of democratisation that has permitted the emergence of new actors and substitution of old ones.

Traditional elites have divided the state by sector, confounding their own private interests with the public. This patrimonialistic capture has grown forming the "bureaucratic rings", strong links of interests between private actors and the public office (Cardoso, 1975). It might be perceived that as the Brazilian state has always been a major actor of country's development, with considerable investments in as diverse area as social, finance, oil, mining and electricity, traditional elites are dependent on this. Thus, a collapsed state is of no interest for them.

In order to understand the cycle of modern corruption in Brazil, in particular the grand corruption, the analyst should invariably start with campaign finance (Fleisher, 1997). Despite the Party Fund, a limited public resource transferred to parties for maintenance according to their electoral

performance, the campaign finance in Brazil is basically private supported. The law permits great donations as enterprises may donate up to 2% of their turnover and individuals up to 10% of their income. According to Melo (2008) and Marengo (2008) a limited population of donors and the subordination of candidates to them may put mandates at risk.

The average official cost of an elected federal deputy campaign in 2006 was R\$503thousand (£170thousand), which means R\$4.8 (£1.7) per vote. The point is that official numbers candidates and parties usually declare to the electoral court usually are unreal (Melo, 2008). Fleisher (2000b) suggests that some Congress candidates spend US\$4 to US\$6 million (£2 to £3million) in their campaigns, contrasting with their future official salary.

Considerable amount of money involved in electoral campaign may be converted into privileged access to public funds and contracts (Marengo, 2008). Indeed, this is what has really happened. Future “gains” justifies the investment, and these gains are favoured participation in public bidding of friend competitors, deviation of budget amendments to private interests, pork-barrel and political decisions in benefice of donors (Bohn et al, 2002).

According to Abramo et al (2002) it is almost impossible deal with corruption without mention scandals involving governmental procurement. Governmental acquisitions are always relevant and involve voluminous amounts of money to be transferred from the Treasury to the market. Which is derived from this is the strong interest of politicians to have someone inside the public agencies. Corrupt agents and private corruptors have developed mechanisms to find their way through the processes. They range from the traditional bribery and enterprises collusion to the tactic of offering low prices to win the bid and then lobbying for prices revision during services execution.

Most of the time, services are provided, works are done and goods supplied, features that have helped cover corruption. At this stage the involvement of corrupt actors, civil servants and private agents, is like an organized crime where the silence is the rule. Ordinary mechanisms of control are unable to detect this unless the silence is broken. As a result, anti-corruption measures as an institutional intervention must act upon the public agent in order to subvert the incentives in favour of the public (Abramo et al, 2002).

From using public premises and facilities for private celebrations and someone's indulgence, to the literal – and illegal – transferring of public funds and properties to private accounts, all of these characterise Brazilian patrimonialism. In a broad view, the cited examples are nothing but corruption. However, some of them are somehow tolerated and not considered to produce such deleterious effects. This partial and contradictory acceptance was corroborated by a recent opinion poll about ethics and corruption in Brazil.

The poll revealed that at the same time that 94% of the population condemned corrupt practices, 13% had sold their votes, and around 10% had offered or paid bribes. Among those who had sold their votes, 10% exchanged it for a job, 6% for money, and 5% for a present. Moreover, 74% assured they always abide by the laws, on the other hand, 56% pointed that the majority would take advantage of them if they had opportunity. The institute analysts concluded “no one was innocent” (Datafolha, 2009).

The Congress, the Presidency and ministries lead the institutional corrupt ranking. A massive 92% found that there is corruption among deputies and senators, 88% mentioned that corruption is also in the Presidency and ministries followed by 87% and 81% for state and local

governments respectively. Intriguing is the fact that even though the Presidency appears as a running up in this ranking, 69% of the respondents approved the government of the president Lula.

Perceptions of Brazil's high level of corruption are not only internally noted but also externally observed. The Corruption Perception Index – TI/CPI, Worldwide Governance Indicator – WGI and Latinobarometer indexes, to cite three well known, all have presented the country in an uncomfortable and steadily position for the past seven to ten years. Let alone the discussion on the nature, interests and methodologies behind the surveys and international indicators, the true is that corruption is a real problem in Brazil nationally and internationally recognised.

Combating and reacting against corruption

Although it is persistent, corruption has also been *treated* by the Brazilian state since the return to democracy. Measures against corruption and their effectiveness, however, have diverged. Both the Executive and Legislative, particularly as a response to scandals and public outrage, have applied anti-corruption initiatives. However, they have not been part of a well-designed plan or policy against corruption, which might explain the lack of sustainability of some initiatives.

The enhancement of Congress's strategies (Parliamentary Committees of Inquiry, or CPI) and the mobilisation of society have forced governments and institutions towards reform. They are strategies and mobilisations that represent those context events we have earlier discussed and that punctuated the juncture of the Brazilian state with regard to anti-corruption measures. What follows is a brief discussion of examples of CPIs and executive's initiatives we claim have helped changing the state's apparatus against corruption in Brazil.

- *CPI of Corruption: Sarney's Administration*

Institutions in the New Republic were expected to function differently, an assumption taken for granted as democracy had returned. Hopes for a more accountable state and reliable politicians had grown with general and free elections and a new constitution. The hopes, however, were all dashed by revelations in 1987 that illegal intermediation and corruption were commonplace in the processes of transferring federal public funds to municipalities (Geddes and Ribeiro Neto, 1992: 650).

The sense of disappointment came basically from the ordinary citizen, as Castello (1988: 9) remembers it “the notorious practices were usual in the ministries and state enterprises’ corridors in Brasília”. Illegal lobbying and electoral interests mixed together and flourished as consequence of an unprepared internal control structure of the state apparatus.

The scandal was the first occasion for the new democracy tests its institutions. As the core of the problem was in the executive, accusations came from the Congress in order to assure its alleged independence. It was a test of executive’s traditional strength and centralised form and of Congress’s capacity of exercising horizontal accountability. Despite the coalition’s manoeuvres, the executive failed in detaining the Congress and a CPI was installed in the senate.

Investigations revealed lack of control and bureaucracy excesses, an explicit and solid undue influence peddling network within public administration, and an illegal US\$600 million price readjustment that favoured big companies with governmental contracts. The main target of the practices was guaranteeing a 5-year mandate for the president Sarney (Geddes and Ribeiro Neto, 1992: 642). The committee concluded it was necessary the institutionalisation of investigative procedures and

mechanisms of check and balances of the Congress and Judiciary to refrain the “Leviathan” and equilibrate relations (Brasil, 1988).

The CPI was also responsible for the strengthening of Congress by judicial authority, the insertion of mechanisms of budgetary control and the chapter about internal control in the Constitution of 1988. The CPI final report is regarded to be a rediscovery of the accountability capacities of the Congress and society (Castello, 1988). The CPI report reminds that it was not enough and there was a necessity to devolve the lost credibility to the democratic state. However, due to a lack of political will and evidences nobody was convicted.

- *CPI Collor*

Devolving the credibility to the state was one of the flags Fernando Collor de Mello raised in his successful campaign for president in 1989. Collor’s ascension occurred in parallel to the overshadowing of the return to democracy euphoria by a “generalised feeling of disenchantment with the new political order” (Panizza, 2000: 180). Notwithstanding his modernisation discourse, Collor was not different from the traditional Brazilian politicians. His origin and political heritage proved it but his youth (40 years old) and TV ability; along with his promise that would “wipe away” corruption convinced the voters (Skidmore, 2000).

In power, Collor administration was “self-sufficient and almost arrogant, listened little and talked even less with society” (Bresser-Pereira, 1996: 133). As a result, the first year of administration was characterised more by confrontation than conciliation with civil society, politicians and business community. In May 1992, Collor’s ability to govern was seriously affected when his brother “charged that the president was involved in a major

scheme of influence peddling, coordinated by the treasurer of presidential campaign" (Chaffee, 1998: 169).

Geddes and Ribeiro Neto (1992: 656) point out the unparalleled characteristic of the Collor administration. They argue that no other government had "so many government resources, favours, items of information and exceptions been sold for personal profit and such large 'commissions' on transactions with government been collected so assiduously". Collor's new *modus operandi* of political corruption meant the centralisation of all schemes within his campaign treasurer enterprises and instead of the traditional 10 to 15% bribery the scheme asked for 40% (Fleischer, 1997: 302). Figueiredo (2000) adds that the system of graft and influence peddling engineered by the campaign treasurer had connexions with the Italian *mafia* and the international drug traffic and may have involved something between US\$400 to US\$600 million.

In June of 1992 the Congress installed a CPI to investigate the alleged charges of corruption. The investigation concluded that an ill-shaped political and bureaucratic system had facilitated the wrongdoings and that the president had "permanently received undue economic advantages and omitted himself of observing functional duties of public morality" (Brasil, 1992: 134). Consequently, the recommendation was for the Congress accepting the charges and proceeds to the impeachment process.

This happened as recommended because, as Avritzer (2000) points out, unlike Sarney, president Collor had no longer a majority coalition support in the Congress. Had president Collor attended Congress requests and followed the traditional bargaining relation, the impeachment would never have happened, Avritzer adds. On 29 December 1992, moments before the judgement by the Senate, Collor resigned but the Senate decided to

proceed declaring the impeachment and Collor's political ban for eight years.

Recommendations related to the electoral system and campaign finance, budgetary cycle, and internal control system were also in the final report. Most of recommendations were not straightforwardly implemented. However, a new procurement law was enacted and new budget planning transparency regulations were implemented. The creation of the Federal Internal Control Secretariat (SFC) and the reformulation of the internal control, also recommended by the report, were not implemented at that time. These initiatives would later prove to be crucial for the reduction of wrongdoings in the budgetary process and government procurement and for the consolidation of the CGU.

- *CPI – Budgetgate*

The Budgetgate was like an extension of Collor's scandal and happened one year later. The scheme was operated in two corruption fronts but was commanded by members of the permanent joint budget committee of senators and deputies (CMO). The first front was the "subventions" where social entities were exclusively created to illegally receive public resources without any commitment to social action. The second front was the "contractors" where enterprises organised fraud and collusion to gain public contracts.

According to the CPI the scheme represented a "non-institutional structure of power" that involved elements and a spurious interaction between the executive and the Congress. The CMO was "only a component of the scheme", the CPI affirmed (Brasil, 1994). The CPI also added that budgetgate was a natural consequence of the president Collor political process and that when the state is infected it is improbable that this infection

rest only in one of its branches. The CPI recommended institutional reforms in the budget process, control mechanisms and in the electoral system, and further investigations about corruption in the executive and on campaign finance.

Under investigation were 43 congressmen, three state governors, public employees and major construction companies. The bulk of evidences gathered by the CPI could compromise one third of the Congress, several governors, the Executive, and the private sector (Fleisher, 1997). That was too much for a CPI and for the new Brazilian democracy. Therefore, the Committee decided to “practice ‘damage control’ and prematurely closed out its investigations” (Fleischer, 1997: 307). However, out of the 17 legislators recommended for sacking six were absolved, seven were expelled and four resigned (Fleischer, 1997).

The exposition of the budgetary system problems fomented changes in the control structure. By CPI’s recommendation, the executive internal control was separated from the Treasury and the SFC was finally implemented. In spite of not referring to a special anti-corruption agency, the CPI works and the outrage it provoked influenced the president Itamar Franco to create in 1993 the Special Commission of Investigation (CEI), an ephemera but positive anti-corruption experience. This and two other executive’s initiatives will be next analysed.

- *The Comissão de Defesa dos Direitos do Cidadão (CÓDICI)*

Whatever the intentions and despite the blind eyed attitude towards wrongdoings in the government, Sarney administration implemented a committee to defend citizens rights against public administration abuses, errors and omissions. The *Comissão de Defesa dos Direitos do Cidadão* (Citizen

Rights Defence Committee, or CÓDICI) was created in December 1986. The CÓDICI would be a co-ordinator body with ombudsman functions to receive and organise people's denunciations and complaints and ask for solutions from the competent governmental body (Brasil, 1986). The Committee had not been created as an anti-corruption but most of denunciations and complaints received were on corruption of civil servants and public agencies.

Without investigative prerogatives and with limited structure the CÓDICI was not capable of performing all its attributions (Alves Júnior, 2002). Representatives of the Military Cabinet, the Chief of Staff Cabinet, the Republic Advisory Office, the Public Administration Secretariat, and the General-Prosecutor Office composed the Committee, which was attached to the President's personal cabinet. With this composition and no enforcement power the CÓDICI was a toothless body, but this first step towards a more accountable government proved to be necessary.

About the committee, Mazzilli (1989: 74) adds that it was a "bureaucratic body manipulated by the executive, with no independence to deal with denunciations about abuse of authorities linked to the same power". Reporting directly to the president, the CÓDICI had not permitted unauthorised disclosure of its assessments. Notwithstanding its weaknesses, the CÓDICI transformed itself into a centre of attention due to the speeches and communications of its co-ordinator, a journalist who previously served as chief of the Presidency Press Office. His declarations were insistently towards federal public agencies impregnated with corruption.

The CÓDICI had received an average of 100 letters (denunciations and complaints) a day (Mesquita, 1987) and almost 500 cases were catalogued (Folha de São Paulo, 2001). In spite of being limited in structure and power, the Committee bothered many traditional politicians. However, the lack of

consistent results, the vacillating composition, the choir of discontents and, mainly, its omission during the CPI works of 1988, weakened the committee (Folha de São Paulo, 2001; Maia, 2007). Therefore, the CÓDICI was transferred to the Ministry of Justice in 1989 (Brasil, 1989) and was extinct in 1990, the year of Collor inauguration (Brasil, 1990).

The experience of the committee revealed that positioning, structure, independence, and political will are crucial elements to an institutional success in fighting corruption. Positioning at the presidency gave the CÓDICI visibility and information access. The lack of structure and independence helped undermine their attributions. The trajectory of the Committee evidenced that president Sarney never had the necessary political will to foster denunciations investigations.

- *The Comissão Especial de Investigação (CEI)*

The *Comissão Especial de Investigação* (Special Commission of Investigation, or CEI) was created in 1993 to help the Congress in its investigative duties and to investigate, analyse and propose measures against cases of wrongdoings in the executive (Brasil, 1993). The Commission started its works in February 1994 one month after the conclusion of the Budgetgate CPI. Documents produced by both Collor CPI and Budgetgate CPI, along with legislators who worked in both anti-corruption initiatives guided CEI investigations.

The minister of the Federal Administration Secretariat headed the CEI and it had eight other members in its configuration selected among relevant figures with reputation for honesty from civil society sectors. Speck (2002) and Braga (2008) argue that the CEI creation was not an isolated act of President Franco. Rather, it was a result of society mobilisation and pressure from non-governmental organisations.

The Brazilian Press Association (ABI), Brazil's Lawyers Association (OAB), the Workers' Central Union (CUT), the Brazil's Catholic Bishops National Conference (CNBB), and the National Thought of Entrepreneurial Bases (PNBE) were among those organisations. The government was constrained towards the creation of an independent body (independent from the Congress) to extend the investigation within the public administration in order to identify the ramifications of the budgetgate and to analyse the nature and causes of corruption.

The CEI received ample power and responsibility of investigating and requesting. Among them were the free access to documents and procedures of all body and agencies of the federal public administration, the capacity to recommend audit and special investigative procedures and propose anti-corruption measures for the president. The CEI investigative procedures were dependent on the proper structure of the executive which was not necessarily well organised to the task. The Commission faced a "monolithic corporatist resistance within ministries, banks and agencies" (Carvalhosa, 1995: 17).

The CEI, despite ephemeral, was an important change in the governmental anti-corruption strategy, that is, instead of focusing only on the corrupt fact it turned its efforts to the causes of the problem. The CEI diagnostic revealed that corruption in federal public administration was systemic and harmful, involving most of ministries and public agencies and that the state's apparatus had no control (Carvalhosa, 1995).

In December 1994 CEI's members produced a consistent report with recommendations about the elaboration of an ethic code, reformulation of legislation against corruption, lobbying regulation, control of external money transfer and money laundry, and revision of public procurement law. The Ethic Code for civil servants was elaborated and the internal control system

restructured in 1994 (Dias et al, 1998: 78). The CEI report was not an enforcement instrument; therefore, some recommendations were left out waiting for political will (Carvalhosa, 1995).

The CEI concluded that corruption was a “permanent phenomenon within the state’s power” and to curb it the identification and punishment of wrongdoers were not sufficient. They argued that it was necessary a permanent effort to sustain a public integrity feeling among society and the establishment of an anti-corruption policy conjugating political will and citizenship.

The CEI’s diagnosis about corruption, in spite of being crucial for its understanding, was preliminary. This because time and structure the Commission had were limited and its work was developed in a year of presidential election. The Commission had to present a report before presidential transition to justify its effort, which could have been a guarantee of its continuity. Sadly, before the conclusion of the task of seeing recommendations implemented, president Cardoso silently extinguished the CEI on 19 January 1995 (Brasil, 1995; Fleischer, 2000). Cardoso had formally received the CEI Report, opted, however, to ignore it.

- *The Secretaria Federal de Controle Interno (SFC)*

The Senate made a proposition to create a new agency responsible for the internal control in the Executive in 1991. According to the proposition, the institution would be located in the presidency, have ample power to act and be headed by an independent secretary with a fixed term. The Senate’s constitutional committee, however, considered the proposition unconstitutional, rejecting it in January 1992. Later in that year and after Collor’s CPI investigation what had been rejected proved to be necessary.

The CPI Report recommended that an institution like the one

proposed in 1991 to be implemented. The following Budgetgate CPI reinforced the problems and the weaknesses the then structure of control represented. The work of the CEI revealed the organisation of the control was urged. This final push to implement the suggested SFC let politicians without excuses. Therefore, on 27 April 1994 president Itamar Franco signed the act creating the Federal Internal Control Secretariat and reorganising the internal control system.

The institution came with a different structure from that previously rejected by the Senate. Located in the Ministry of Finance the SFC had a secretary with neither special power nor mandate. The new internal control system, however, constituted an important start of controlling the bureaucracy. The investigatory procedures by the Congress and the CEI had proved that all sorts of malfeasance and wrongdoings could have happened without the knowledge of the presidents. This had led some cases to media exposure before to reach the *Palácio do Planalto*, causing embarrassment to the president.

The organisation of the internal control system and the SFC came also to try to solve this administrative aspect. It was in the legal document that the system aimed to assess the public administrators' performance. Olivieri (2008: 13) argues that the SFC has carried out this function since its inauguration and that the SFC "is a bureaucratic agency and a political resource". Its bureaucratic function is presented by administrative surveillance over public policies execution. As a political resource, the SFC is an instrument for monitoring the bureaucracy and the implementation of federal policies by state and local governments (Olivieri, 2008).

At the Ministry of Finance, increasing revenue has been more important than controlling expenditure. This proved to be a limitation to the

action of the SFC. According to respondents “the SFC has always been requested to make sacrifices to support the ‘losses’ but rarely received an invitation to share the ‘profits’, and it was remarkable in 1999 when due Asian crises the Secretariat had 40% cut in its budget” (Civil Society Informant 1, Public Sector Informant).

This feeling of a “second class” secretariat was pervasive among the SFC professionals and with it the desire to move the institution to the presidency arose (Government Informant 3, Government Informant 10, and Government Informant 15). This idea was not welcomed by the minister of finance who had perceived the importance to have this resource of power to “control the bureaucracy and monitor public policies” at his service (Olivieri, 2008: 14; Political Party Informant 1).

Despite its strategic activity the SFC has not been a consensus. Bresser-Pereira (1998: 182) argues that the SFC represented more *burocratismo* (*red tape*), more formal controls and more processes control. He adds that the creation of a new secretariat, though at first a good idea, accentuated the tendency towards the managerial formalism, as there were neither objectives nor performance indexes to be controlled.

The results of the SFC activities, its position as the central organ of internal control and the allegations of conducting unpublished government programmes assessments fomented an operational audit by the Brazilian Court of Audit (TCU) in 2000 (Civil Society Informant 1, Government Informant 3). The TCU’s report recommended transferring the SFC to the presidency “to enhance the functional independence of the SFC in order to the internal control institution efficiently performs its constitutional competencies” (Brasil, 2001c).

Consequently, president Cardoso created a working group to examine

the viability of TCU's recommendation. The "president had all the interests of having control over the control", a respondent affirmed (Government Informant 2). In February 2002, the SFC is definitively transferred to the Presidential Staff Office and in March of the same year to the CGU where it has been since. This process will be analysed in the Chapter 6.

International anti-corruption context

Since the 1990s, corruption has received remarkably great attention worldwide (Ades and Di Tella, 1997: 496; Heidenheimer and Johnston, 2002: xi). It is no longer a taboo subject for reporting news and research (Quah, 2002: 513). Interests are from societies, governments, international organisations and academia. This movement, we are referring to as anti-corruption wave, has no precise origin, but it is linked to a widespread awareness-raising about the problem. Harrison (1999: 324) puts it as a "grand 'moral coalition' around the good fight against corruption".

It is not necessary to go further to perceive the damage corruption may cause to society and countries alike. It thwarts economic development, undermines political legitimacy, results in wasted resources, and greater distrust of government (Elliot, 2002: 925). The relevance of the issue has guided the international community to implement organised initiatives, such as the anti-corruption convention of the Organization of American States, in 1996, the anti-bribery convention of the OECD, in 1997, and the UN anti-corruption convention in 2003. It is also important to mention the World Bank commitment to fighting corruption announced in 1997.

The speech of the World Bank president to the 1996 Annual Meeting of the Bank and the IMF when he mentioned the "cancer of corruption" is

regarded to be a “turning point” for donor policy against corruption (Marquette, 2004: 3). This policy changing has impacted the operation of the Bank projects and its clients countries. The same may be said about the other initiatives from the OAS, OECD, and UN. Webb (2005: 191) points out that the UN convention against corruption represents the “first binding global agreement on corruption” and that it has elevated anti-corruption action to the international stage.

It is not difficult to assume that this anti-corruption wave has also impacted Brazil. The country is one of the main World Bank clients, signed the OAS, the OECD, and the UN conventions, and until 2005 had received frequent IMF visits for economic help. The country has interests in being recognised as a global player, it is the next in the queue to join the OECD, and dreams about a permanent seat at the UN Security Council. No doubt that following the wave rules can benefit the country’s global interests, but it is not to say that the country is giving a *yes* for everything.

For instance, the implementation of anti-corruption measures in the country is previous to any international convention (see the discussion in this chapter). On the other hand, an important anti-corruption initiative (CEI) was extinguished in the inauguration of a government in 1995 and other only implemented in the end of this same administration in 2001 (CGU). However, the structure of the current anti-corruption agency and policy, as we shall discuss later, follows many of the international conventions provisions. The CGU is the contact point for the implementation of anti-corruption conventions in the country and is indicated as a model for neighbour countries.

We argue that international context has a role to play in the trajectory of the CGU, but this influence should be carefully analysed. There is no

strong evidence that this is a leading role, we cannot affirm, for instance, that Cardoso has followed the recommendations of the OAS and OCDE conventions to design the CGU in 2001. But it is possible to point that having an anti-corruption institution and policy is pre-condition for many of the country international ambitions.

Conclusion

The chapter develops an historical narrative in order to forge the contextual ground where the CGU has evolved. Context is at the core of this thesis's argument and part of the first research question. The text begins by presenting the evolution of the Brazilian political system and its institutions since the return to democracy. It is observed that the much of the format of government that has helped cover corruption during dictatorship remains during regime transition and democratisation. They are the powerful and centralised executive and traditional elites and their politics.

This empowered executive is one of the main reasons for the upsurge of the judiciary as an important player in the policy arena Sadek (2004) and Veríssimo (2008) argue. The phenomenon called "judicialisation of politics" that subverts the function of the judiciary increases the interests of the other powers in influencing the judges. With lack of judges and voluminous legislation the judiciary does not produce a universal justice, the beneficiaries are the elites and those covered by the impunity that the system provides.

Impunity is reported to be one of the main reasons for rampant corruption in Brazil (Dellasoppa, 2005). The problem is systematic, but has not been sufficient to undermine democracy or to bring down institutions. This is because traditional elites are dependent on strong state apparatus

investing in diverse areas. Far from considering that situation as an irreversible legacy of the Brazilian society, the facts discussed in this chapter helps explaining how difficult it is to an anti-corruption institution to combat such a diffuse and contradictory problem. It is not to say that institutions are embedded of corruption; rather, their rules follow traditions that facilitate wrongdoings.

Institutions have been benefited from the ongoing democratisation process in the sense of consolidating their functions, notwithstanding those aforementioned distorted relations and corruption problems. This process of institutional consolidation may be perceived with regard to measures of horizontal accountability, particularly between the Congress and executive. In exercising this power, the Congress, by Parliamentary Committees of Inquiry (CPI), has been investigating corruption scandals and has forced the executive and the Congress itself to take actions towards preventing and combating the problem.

As a result, a considerable number of institutional measures leading to a better control and against corruption have been taken place in both the Congress and the Executive. The chapter has shown that some of these measures were ephemeral and ineffective. However, they helped to improve later anti-corruption mechanisms within institutions. Many of these improvements are both part of the CGU today (e.g. the SFC and the ombudsman function previously performed by the CÓDICI) and a tool the institution uses in its functions (such as the procurement legislation and the code of ethic).

The chapter also considers the international context of a global anti-corruption movement that has emerged since mid-1990s. The country is not off this world, thus it is possible to find some connections between initiatives

from the international community and the country's anti-corruption policy. However, there is no strong evidence to concluding for a leading role of the external context.

Therefore, in presenting a broad view about the political system, institutional relations, corruption and anti-corruption experiences, and the world context, the chapter answers part of this research's first question. That is, the context in which the CGU has emerged. This temporal framework proved to be important to the present analysis in the sense that important events and political developments that have occurred in it provide explanations for the CGU. In the next chapter the discussion focuses on the emergence of the CGU itself, first steps and reactions.

5 - The Emergence of the Controladoria-Geral da União

The aim of the federal government with the establishment of the CGU in April 2001 was, undoubtedly, to regain much needed trust from society.
CGU Annual Report – 2001

Having described the context in which the CGU is located, we now move on to analyse the origin, development and evolution of this anti-corruption institution. Our analysis is divided into four chapters and begins by discussing the creation of the CGU. The following chapters focus on its institutional development, which is characterized both by endogenous change and national and international insertions. Our approach is a historical one and we are interested in understanding the mechanisms of reproduction (path dependency and increasing returns) behind the CGU. Therefore, this section is strongly influenced by the scholarship of Thelen (1999, 2002) and Pierson (2000, 2004) about reproduction and feedback mechanisms, and timing and sequencing.

It should be emphasised that our analysis embodies a certain degree of borrowing and cross-fertilisation from across the board of approaches to new institutionalism. That is not to say that everything seems to be influencing everything. Nor is it an analysis with deliberately “off the shelf” contributions. Our ontological commitment favours a historical institutionalist approach in the sense that structure plays the main role. However, considering the singular trajectory of the CGU, with the specific conditions for its genesis, change and development, we argue that individuals appear to be “primary animators” in the first phases of the

institution existence. We also take into account the critique of Peters, Pierre and King (2005: 1277), that “without including some dynamic conception of agency, and including a greater role for political conflict, the approach [historical institutionalism] cannot provide an adequate explanation for change.”

An institution does not arise from a vacuum. And in order “to understand institutions one needs to know what they are, how and why they are crafted and sustained, and what consequences they generate in diverse settings” (Ostrom 2005: 3). This statement from Ostrom sums up the objective of this thesis. Following the discussion on the Brazilian context, which, as we have stated, we believe to be a necessary introduction for an understanding of the country’s institutions, the present chapter focuses on explaining how and why the CGU was “crafted”.

The Office of the Comptroller General emerged from within a government whose president – Fernando Henrique Cardoso – had started his administration with positive credentials, support from his government, and an established reputation for fighting corruption and reforming the Brazilian state. His experience as an opposition senator during José Sarney’s presidency and ministry of finance in Itamar Franco’s administration had put him in a privileged position. The diagnosis regarding corruption in the government that President Cardoso received from members of the CEI (Special Investigation Commission) corroborates what he had previously always denounced in Congress and discussed in his books. However, the fact that the CGU did not arise until the penultimate year of his second mandate demonstrates that the decision to develop a new institution is not only individual but also contextual.

The following analysis supports our claim about context being an

influence on institutional decision. We develop the argument by relating individual decision and local and international context, with the assumption that, in the case of an anti-corruption institution, concurrent issues can indeed undermine its emergence. No government is explicitly against anti-corruption measures, especially democratic ones. On the contrary, a quick look at anti-corruption experiences worldwide shows that the tendency is to propagate such measures, particularly when a global anti-corruption wave is on. International conventions and commitment of donor organisations have influenced countries towards this direction.

However, as the discussion on institutional relations in Brazil demonstrates, unless a decision for an anti-corruption initiative finds an institutional agreement, it is difficult for such an initiative to be implemented and therefore to be sustainable. That is why we argue international context has its role, but the final decision is dependent on local arrangements.

With regard to longevity and in comparison to previous anti-corruption experiences, the CGU stands apart from this logic. This chapter and the subsequent sections of this thesis show that the path the institution has followed, despite not always in agreement with the agents involved, has not been changed. This characterises the theory of path dependence and increasing returns as discussed in the theory chapter. Moreover, it supports our claim regarding the innovation aspect of the institution.

This chapter analyses the announcement of the CGU in the context of President Fernando Henrique Cardoso's government (1995-2002). It is not an assessment of Cardoso's administration but rather a discussion about circumstances considered relevant to the emergence of the CGU. The argument of the historical path permeates this institutional analysis; therefore, timing and sequencing are presented in the text. The discussion is

divided into two parts. In the first part, we discuss the proposition of the CGU in terms of how it contrasts with theories of the origin of institutions. The second part concentrates on the structure and rules that form the institution at its origin.

5.1 Proposing the CGU

The proposal for an institution, as indicated by the literature, is frequently associated both with the objectives of the institution itself and with the interests of the individuals responsible for the proposal. Paul Pierson refers to this as a functionalist approach, represented in the way rational choice institutionalists explain institutions. The functional approach is one in which the origin and evolution of institutions are associated with the interests of the actors who have created them (Pierson, 2004). Therefore, institutions are created, and exist, in order to serve the interests of a few, and they then evolve due to their proper functions.

Kenneth Shepsle, a rational choice theorist, argues that “one cannot understand or explain institutions, however, without first explaining their effects. So it is quite proper to examine effects first” (Shepsle 1989: 138). These effects may be assumed as intended interests. Notwithstanding the positive contribution of the functionalist approach to the institutional analysis, key elements of timing, sequencing and historical context are left behind. In this regard, Thelen (1999: 400) argues, “functionalist perspectives will not take us far, since they skirt the issue of the origins of institutions and the all-important matter of the material and ideological coalitions on which institutions are founded”.

The historical institutionalist literature, on the other hand, advocates the “role of historically generated context in explaining actors’ interests” and

that “contextual factors may affect the functioning and salience of institutions” (Immergut 1998: 22). Historical institutionalism supporters believe that once an institution is established and conditions are established, it is difficult for individuals alone to determine the institutional path, democratic context considered.

Our development in this research shows that elements of timing, sequencing and historical context are crucial to the CGU’s trajectory understanding. Therefore, it is not possible to explain the CGU using a limited approach only. That is, to exclusively consider a rational choice/functionalist view in which individuals “have their own well-ordered sets of preferences that remain largely unchanged by any institutional involvement they may have” (Peters, 2008: 3). Nor it is possible to focus uniquely on the persistence of the institution, on its structure, leaving aside conflicts and preferences. Thus, our analysis can be placed in the middle ground on the scale of between a less deterministic approach and a greater one, in terms of institutional stability and change.

From another standpoint, an analysis too broad, encompassing as many elements as possible, may misleadingly cause the study to show a situation where everything seems to be influencing everything. For the sake of balance, the analysis of the CGU is divided into two parts. The first, which deals with the origins, is explained using a kind of functionalist approach in which the individual’s interest is highlighted, while context still remains important. The second part, which discusses the development of the CGU, is explained using historical institutionalism in which the institution itself and the context are the main points, but where the individual is still a key factor. Both analyses are in line with the dynamic path of the CGU. That is, the conditions that brought the institution into being are different from those

responsible for its development.

From the outset, the proposal of an institution responsible for fighting corruption has not been an easy task. There is no consensus about the motivations, but the following quotation from de Sousa et al (2009: 7) may shed light on this:

[T]ransformations in the nature of corruption have pushed governments and societies in different countries to go beyond traditional institutional frameworks and strategies to combat it. Governments feel a growing need to pass a clear message to public opinion and world financial institutions about their intentions to boost detection and sanctioning mechanisms or, at least, to give the impression that they are doing so.

This section deals with the context of the CGU announcement and discusses the reasons for the establishment of this institution, including a critique on whether or not a “corruption crisis” exists. Interaction between agents and structure are stressed in the sense that they have been jointly responsible for forming the characteristics of the institution. The section presents the CGU as a new element in Brazilian anti-corruption legislation. However, it is assumed that this new proposal had certain limitations at the time of its inception, considering the interests of the people responsible and the nature of traditional Brazilian politics.

Crisis, Agents and a quasi-CPI

Viewed from a common sense perspective, the appearance of an anti-corruption institution is merely a response to a corruption crisis. A former Commissioner of Hong Kong - ICAC³ highlighted this thought as she stated

³ The Hong Kong Independent Commission Against Corruption (ICAC) is regarded to be the most successful and famous anti-corruption agency in the world. It was implemented in 1974 and many others around the globe have followed its model.

that anti-corruption agencies are “born out of a corruption scandal which triggered a massive public outcry” (Law, 2007: 1). This may be true; however, it is not sufficient to explain the whole process. If one considers only this premise, then the CGU would likely have arisen years before it actually did.

The anti-corruption institution CGU did indeed emerge out of a crisis. But not a corruption crisis, we argue, rather from a presidential image crisis that came about as a consequence of corruption scandals. That is to say that even with the presence of corruption scandals, the institution would never have come into being without the presidential image crisis. There was a personal embarrassment for the president as public opinion pointed him as “someone doing nothing against corruption”(Public Sector Informant, 2009).

The largest Brazilian newspaper, *Folha de São Paulo*, published on its front page the following day the CGU announcement that the CGU was a president’s “response to opinion poll” after seeing the name of his government associated to corruption and that “56% of the population found that the president was not combating corruption” (*Folha de São Paulo*, 3 April 2001: 1).

According to Boin and Kuipers (2008: 55), “a crisis represents a turning point, a discontinuity between past and future”. With this in mind, and referring back to the previous chapter, it can be concluded that such a discontinuity was not verified in terms of corruption itself. That is, the level of the problem and its perception by society was always constant (high), corroborated by Brazil’s steady position on international corruption indexes⁴.

Therefore, the events surrounding the announcement of the CGU may not be considered a corruption crisis, but a political one, because they simply

⁴ International Transparency’s CPI, World Bank’s World Governance Index and Latinobarometro.

represented continuity in the sense of corruption. In line with this, Fleischer (2004: 130) argues that “In evaluating the evolution of corruption in Brazil over past decades, many feel that the levels of corruption have not changed, but rather the intensity of revelations by a free press and increased levels of investigation and prosecution by police and prosecutors have given the impression that corruption has increased.” This cannot be said about the presidential image.

It would be possible to suggest that a presidential image crisis brought on by corruption scandals is a corruption crisis. However, we argue that this is not true for our study because there was no direct association between the specific denouncements of cases of corruption and the president himself. In other words, as far as we are concerned, despite the apparent increase in cases under his presidency, president Cardoso was not the corrupt actor or the direct beneficiary as Collor had been. Moreover, regarding corruption levels, on the eve of the announcement of the CGU, Silva (2001: 12) suggests “it seems that political corruption levels in Brazil, which rose during structural crises, are more under control now due to strengthening of democracy and relative economic stability.”

The crisis we are referring to is not the kind that triggers a critical juncture as presented by Collier and Collier (1991). However, it did contribute to punctuate the existing anti-corruption equilibrium in Brazil. The previous chapter discussed this equilibrium, which was characterized by a relative inaction of governments facing corruption. This inaction can be demonstrated in terms of ephemeral and ineffective initiatives, omission and sometimes connivance with the problem. In sum, the crisis brought the issue to the attention of the presidential office and started a dynamic process that converted the anti-corruption policy from inaction to institutionalisation.

The year 2001, when the CGU was established, was preceded by, externally, the signing of the OAS (1996) and the OECD (1997) anti-corruption conventions and, internally the rising pressure on the government since the voting process of the re-election amendment in 1997. This pressure was related to the indifference and incapacity of the government in dealing with corruption cases within public administration.

Opposition parties in Congress and some sectors of the media consistently targeted the president when reporting the cases. Attacks by the opposition did not focus on the president himself as corrupt, but instead alleged his lack of competency to curb the problem. A brilliant, internationally recognised professor, icon of the fight against dictatorship, former senator and finance minister, president Fernando Henrique Cardoso's image was far from corrupt. Image was very important to Cardoso, who was reported to be excessively proud of his accomplishments (Pinto, 2003: 253). He strongly denied cases of corruption in his government and declared in an interview after being questioned if he was afraid of corruption in his presidency that

I can state comfortably that there is no corruption in this government. When we know about it we act straightforwardly (President Cardoso interview to ISTOÉ, 1997).

This statement was presented just after the government allies succeeded in passing a proposal for the statute of re-election. This re-election amendment was reportedly passed due to bribes, which were offered to some deputies by a governor and a highly ranked appointed officer (Lima, 1999; Government Informant 6, 2009; Carta Maior, 2012: 1). In fact, a government deputy declared⁵ to the media that he received 200 thousand

⁵ The statement from the deputy was obtained through a recorded phone conversation and reported by the Brazilian newspaper **Folha de São Paulo** on 13th of May 1997.

reais (£70 thousand) to vote in favour of the re-election proposal and stated that four other colleagues did the same. Two of the people named in the statement resigned their mandates (Lima, 1999). Despite considerable noise, the opposition was able neither to prove nor investigate the allegations.

The re-election amendment was passed, and president Fernando Henrique Cardoso was re-elected in 1998. In 1999, the first year of Cardoso's second mandate, it became clear that that this second commissioning would not be easy for the president. The year started with increasing allegations of official wrongdoings reported in 1998, a situation that became known as Caribbean Dossier. The president, two ministers and a fellow governor were accused of maintaining non-declared bank accounts in the Cayman Islands. Part of the dossier was proved false (O Globo, 2001); however, the rest of the document did not receive the necessary attention to be investigated. The president in his capacity denied the allegations and initiated legal proceedings against the people responsible for forging and delivering the dossier (Folha de São Paulo, 2000)⁶.

The government's strategy had always been to deny cases of corruption, particularly when the president himself was perceived to be involved. In this regard, the National Prosecutor's Office – PGR – acted on behalf of the government to try to prevent the success of allegations against the presidency. Although the official discourse was that for any denouncement of corruption, there would be a proper investigation, the fact was that there was no specialised structure or institution to carry out such an investigation. Moreover, the limited investigative capacity of congress and the federal police, who as the Brazilian federal bureau of criminal

⁶ The case was unsuccessful due to lack of evidence.

investigations number only about 3000, constrained the ability of these actors to investigate corrupt practices by the largely autonomous governors and mayors. (Montero 2005: 42).

A new legislature elected alongside the president contained deputies and senators willing to take advantage of an apparent fragility of the government on corruption issues. In the year 2000, the Senate started to report corruption cases in public agencies and demonstrate that the government was incompetent in fighting corruption. The mantra was that corruption was widespread in the government and that the president had done nothing to curb it. These clashes between Congress and the Executive contributed to unveiling the government's weakness in dealing with corruption. Indeed, the government had done less than what the public had expected from president Cardoso. The relationship between the legislature and the government at the time suggests that the move by Congress was part of a bargaining game, given that the allegations were not followed by any suggestion of institutional change within public administration.

Notwithstanding aspects of traditional Brazilian politics, at the beginning of 2001 the opposition finally mobilised to launch a CPI in both houses of Congress, regarding all kinds of allegations of corruption in the executive. For a CPI to be implemented in both houses of Congress, there is a requirement of 27 signatures out of a total of 81 senators and 171 signatures out of a total of 513 deputies. But the intentions of a considerable number of representatives and supporters of the CPI were thwarted; 25 and 131 signatures were collected in the Senate and the Chamber of Deputies, respectively. The president's self-confidence passed the test. To help explain this victory for the President, Amorin Neto et al (2003) state that Cardoso's mandate had been the "only one true majority government since the

promulgation of the newly democratic constitution in October 1988.”

Outcomes of this contention were not entirely positive for the government or for the president. The movement and debates fomented by the opposition, however, pushing the issue to the forefront of the media, had only previously been supplanted by Collor’s impeachment. For about one month, the CPI proposition remained in the spotlight both in Congress and in the public eye. The fact that such a relevant issue had no viable solution caused apparent frustration and disappointment among legislators and society at large.

The government had been placed under strong pressure and the image of the president had been significantly affected. A poll conducted in March 2001 revealed that 84% of the population supported the CPI, while 31% believed that the president was the person responsible for the problems and 56% thought the president had not adequately combated corruption (DATAFOLHA, Folha de São Paulo, 2001). A former highly ranked senior official in Cardoso’s government revealed “the government had been living in fear throughout the CPI of the corruption movement” (Government Informant 1). This implies that because the government was already aware of the extent of corruption in public bodies, particularly in cases involving misconduct of civil servants, these cases had been under-investigated or never investigated at all.

Another point to be considered was that a CPI certainly would be utilised as a flag against the government for the following year’s presidential election (2002). Therefore, the strategy decided by the government was to impede the CPI at all costs and attempt to recuperate the presidential image. Cardoso’s attitude was understandable, given that past experience of CPIs had resulted in the impeachment of a president, expulsion of deputies and a

senator, exposure of corruption schemes and damage to some major political projects (Kramer, 2007).

Even though Cardoso had a majority in both houses of Congress, meaning that his impeachment would never be permitted – a situation similar to that of Sarney in 1988 –, a CPI process would have been like a Pandora's Box, once opened nobody knows what might come out. And this was particularly true with regards to Cardoso's image and for his future academic and political plans. Cardoso has had already successfully used the same strategy of undermining CPI throughout both his two mandates. However, what the president probably did not expect at that time was the impact of this CPI movement on society at large. A freer than ever press and an impatient society is a possible explanation for this impact (Jornal do Brasil, 2001: 14; Silva, 2006: 107)⁷.

The analysis shows corruption not only as a common problem but also as a political tool for bargaining. In the Brazilian case, the extent to which this problem deserved governmental attention was dependent on its effect on the president himself. The main actor's interest in this case was to protect or recover him from image damage. In order to do so, his strategy was at first to use the rules of the game of traditional Brazilian politics. That is, bargaining with Congress and inaction in terms of policies to combat corruption (Hagopian, 1996; Figueiredo, 2001).

This institutional equilibrium may well have been maintained if the damage to the president's image had not occurred. Considering the tradition in facing corruption as the institutional rule, it could be suggested that the status quo was punctuated by the emergence of the CGU as a new institution. However, the basis for the establishment of this new institution

was not to solve the corruption problem itself but apparently to solve the issue of this specific presidential setback.

Whichever the intention of Cardoso when proposing the CGU, as we shall see, the anti-corruption institution was transformed. In this regard Shepsle (1989: 142) emphasises that:

[T]he choice of an institution may be thought of as the selection of a game in which there are many uncertainties – unforeseen contingencies, unknown states of the world, incomplete information about the preferences of others. An institution is chosen by individuals, intelligently using what knowledge and information is available, but before the `values` of many parameters are known.

Due to the circumstances of that episode, the new institution cannot be taken as a well-planned initiative to play out in the long run. According to the then presidency communication secretary the idea of the CGU “came two weeks before its implementation” (Matarazzo, 2001: A6). In this particular, Pierson (2000: 261) points out that “political actors, especially politicians, are often most interested in the short-term consequences of their actions, long-term effects tend to be heavily discounted.” Next, with the contributions of the elite interviews conducted in Brazil, we will discuss in detail the reasons for this new institution.

Reasons for the CGU

The CGU as an institution is presented to Brazilian society as the new initiative to solve the Federal Executive’s corruption problems. The institutional organisation was a presidential suggestion, designed within the presidency initially to serve the president himself. It was an institution created without a policy. Two months previous to its establishment there had

⁷ Jornal do Brasil, 13/05/2001, Opinião, p. 14, “Por baixo do pano”.

been neither record about this initiative nor any mention of the existence of an anti-corruption policy in the Mensagem ao Congresso Nacional⁸ (Presidential Message to the Congress). Even the term corruption was barely mentioned. As pointed above by the secretary of communication of the presidency, the idea of the CGU had appeared two weeks before its announcement.

Before the CGU, corruption was not considered to be a problem within the government, as the white papers confirm. Rather, corruption was a problem outside the government, to be dealt with by the law enforcement agencies. In a nutshell, corruption was an issue for the police not for policy. Notwithstanding this tradition, pressures from Congress for corruption investigations and the consequent erosion of the president's image forced the government to bring the issue to the office. Therefore, on 02 April 2001, the CGU was launched as part of an image recovery strategy.

We argue that in order to find out the reasons for this announcement of the anti-corruption institution, it is necessary to go beyond corruption problems. As we have previously discussed, corruption has always existed in Brazil (Fleischer, 1997: 297). Accordingly, the problem has been considered high in level and systematic in nature. Corruption per se may be considered the main push for previous initiatives, such as CEI and CPIs (Taylor, 2009: 21). However, for the CGU we argue it was only a secondary motive. That is, secondary in terms of the fact that the existence of corruption or the revelation of corruption scandals was not the determining factor for the CGU decision.

⁸ The Mensagem ao Congresso Nacional is a formal document issued by the president and presented annually to Congress. The document comprises executive's policies and achievements from the previous year and formulates a plan of action for issues in the incoming year.

Our claim is derived from both the CGU's initial format (see Figure 5.1 below) and the traditional way of resolving political conflicts in Brazil, particularly conflicts between the executive and the Congress during Cardoso's term. That is, Cardoso's majority support in the Congress, as remembered by Amorin Neto et al (2003), would impede any further investigation. The institution was not instrumented to combat the problem it was announced for, thus there was no compatibility between the alleged corruption cases and the anti-corruption structure.

Moreover, the government under which the CGU was created was known for its neoliberal initiatives of a minimum state and had, surprisingly, terminated the functions of the anti-corruption commission CEI in 1995. More than contradictions, these characteristics show that even though corruption had been pervasive, building a new structure to deal with it was, at first sight, improbable. However, it would change with this other element now at stake given that the presidential image was at risk, we argue.

According to a respondent "the president had been damaged by allegations that he was doing nothing against wrongdoings within the government, therefore, the CGU was a measure to make an impact on public opinion" (Public Sector Informant 2009). The insider informant links image (presidential damage) and public opinion to the institution and its initial objective: to revert the idea of the president in the public eye to that of a favourable figure. The objective of the CGU was to take advantage of the communication capacity of the president, a news report pointed out (Folha de Sao Paulo, 3 Abril 2001: A6).

Merely highlighting the interest of the actors and the function of the institution would guide the research to a limited functionalist view of the CGU, which, according to Thelen (2009) "skirts the issue of the origins of

institutions.” To say it another way, a snapshot of the announcement of the CGU would tell only part of the story. As it is our intention to offer an exploratory analysis of the institution, this study is laden with context and history. Consequently, it is the context and history that help to explain the structure and form of the institution, its proposition and the legal document that gave implications of power to the CGU.

All of these elements compose what we argue as origin of the institution. They also help to situate the CGU as distinct from the previous anti-corruption initiatives we have discussed. Data collected from elite interviews provide a further push in this direction, that is, respondents’ impressions of the CGU do not offer a simple explanation as to the origin of the institution. As a result, it is possible to group respondents’ positions on the reasons behind the CGU into two groups, going beyond the functionalist approach.

The first, which will be considered as creationist, regards the CGU as a governmental response to immediate corruption scandals and as a way to avoid an attitude of incisive horizontal accountability by Congress. The other, which will be considered as evolutionist, considers the CGU to be a result of a historical process, an outcome of several crises in the government structure of control. Both views, considered together, are in accordance with our theoretical discussion as they highlight that the decision for the institution was based on the conjugation of individual and context.

The individual does not act alone; his decision is made considering and in function of the context. Instead of regarding both positions as conflictive, we consider them to be complementary. This because, we argue, the decision for an institution at a given time, although motivated by immediate events, will be implemented considering previous structures

(practices, rules). There is no possibility of existing institutional apparatus being dismantled in order to rebuild a brand new structure. And this is particularly true for states where democracy is prevalent (consolidated or consolidating). A respondent summarises our argument pointing out that “there is no such a thing as a totally new institution in Brazil” (Civil Society Informant 5).

Supporters of the creationist view of the CGU account for it a politician’s attitude facing an eminent problem. They adopt a pragmatic reasoning behind the establishment of the institution, in the sense that it was a remedy to amend the collateral effect of the problem. The CGU was not implemented to act upon the cause of the disease (lack of control and accountability, distortion of institutional relations and weak anti-corruption policy). Neither was it suggested as part of a long-term treatment (state reform). Creationist supporters’ arguments define the CGU as though it were an emergency drug dispensed to a patient in crisis to keep him alive.

With no regard for previous prescriptions, it was not implemented to cure; rather, it was implemented to sustain an ephemeral and apparent equilibrium. Creationists point that “The CGU was an object of bargaining to avoid a CPI, as there was no intention to strengthen that an anti-corruption institution” (Congress Informant). And also that “The CGU was a response from Cardoso’s government to the crisis that was already there” (Government Informant 20). These views are creationist in the sense that they consider only a fragment of the process, even though the context at the time was observed.

A respondent adds that, “My personal opinion is that the CGU was implemented to cause an impact on public opinion and to revert the uncomfortable position of the government due to persistent outings of

corruption in the media. The public impression was that the government was doing nothing to solve the problems” (Public Sector Informant). This understanding of the CGU reveals the salience of the context and how it influenced the president’s decision. However, the creationist viewpoint is limited in the way it considers the act of the CGU’s announcement per se.

That is, the format and the organisation were not relevant as elements of the origin. This position might be consequence of previous Brazilian initiatives that were implemented but did little to fulfil their proposed objectives. Intriguingly, this creationist view is still presented now, even after the relative consolidation of the CGU. If we had to conclude based only on the creationist view, we would have to reduce the reason for the CGU as accidental. But there is a lot more to it, as may be depicted from the evolutionist view.

Respondents supporting the evolutionist explanation of the CGU have pointed out the dynamism in its trajectory. According to this idea, the CGU is a product that was already being developed long before its implementation. And it should be understood not as a result of a policy improvement. Rather, it is another attempt, built on the grounds of previous ones, which has, against the odds and unlike the others, endured. The following statement from a respondent summarises what supporters of this view defend. “What we have today (the CGU) is a result of a historical process of crises the country has faced since the 90s, CPIs and Collor’s impeachment. The CGU was a Brazilian solution for the problem and has been moulding itself through an experimental process” (Government Informant 21).

The evolutionist view does not reduce the institution merely to the point of its announcement, it regards that change is linked to development,

as favoured by Thelen (2002: 101). As a respondent suggested, “to understand the creation of the CGU, one should consider all previous problems within internal control and also the former corruption scandals” (Government Informant 1). To understand this view, it is necessary to assume that the institutional apparatus against corruption in Brazil always existed. It has indeed existed in different aspects and intensities, even when it represented a governmental inaction facing corruption.

Even though supporters of an evolutionist view of the CGU seem to reject any attempt to associate the institution with well-planned administrative reform, they suggest that, if anything, existing “rules” influenced the decision for the CGU. The origin here is, again, considered in a broad sense, which means not only the institution’s establishment, but also its form and structure. But what were these existing rules or continuities that influenced the CGU? They can be grouped according to: (1) who is responsible for the initiative of an anti-corruption measure; (2) the extension of the initiative’s power; and (3) the organisational structure of the initiative.

The CGU followed the tradition being formulated and placed within the presidency, as was the case of CÓDICI and CEI. The initial power of the CGU, like its previous counterparts, was limited to monitoring the federal executive bureaucracy. And, accordingly, the initial organisational structure, in spite of receiving ministerial status, was confined to a squad of civil servants (see Figure 5.1 below). It is important to note that these continuities help to explain the initial format of our case but that there are additional institutions and rules that also forged the development of the CGU. This is to say that the CGU uses legal and previous provisions to achieve gains in its development. The institution has picked up these provisions that were adopted as a consequence of CPIs and internal control reforms. These

additional rules will be presented and discussed in the next section.

The concept of institutional layering, as presented by Mahoney and Thelen, is also in line with the notion that a “wholly new institution” in Brazilian political system is improbable. As discussed in Chapter 4, this holds true in terms of the country’s process of transition to democracy that shaped the political system, as well as the rules regarding anti-corruption that have been diffusely created and applied. However, as will be discussed in subsequent chapters, it is possible to identify significant changes in anti-corruption measures brought about by the CGU. These changes are what we shall argue as innovation and may explain the development and endurance of the institution.

Whatever direction the analysis takes, the reasons for the CGU will be related to change. The creationist view accepts the concept of change but only in a limited aspect, or like the aforementioned functionalist snapshot. Evolutionists support the CGU as a change within an existing institutional scenario that may be associated with the process of layering. We argue that these two views are complementary because while evolutionists emphasise the institution (anti-corruption) creationists stress the individual. We defend the view, with support from historical institutionalist scholarship, that in an institutional analysis it is not possible to dissociate agents from the structure and vice versa. Moreover, as Peters (2008: 6) suggests, in institutional analysis

[T]he number and location of actors who can block decisions will influence the possibility of decisions being made, as well the nature of those decisions... [but] structures persist while individual members of those structures come and go.

Therefore, reasons behind the announcement of the CGU should be found in both (agency and structure). The CGU was indeed part of Cardoso’s

strategy to manage his personal crisis, but it was only made possible to come at that time and with that form, in function of the existing rules regulating anti-corruption in Brazil. These rules constrain even the president to act with caution in order to preserve certain equilibrium between the powers in the political system. Therefore, the CGU as an institution was a structure that had to be negotiated by the actors.

5.2 Initial institutional form: structure and rules

We argue, based on the institutional layering concept, that the CGU was a new rule added to the institutional context of anti-corruption in Brazil. We assume the institution as new, but nevertheless embedded in a traditional political system which, as another institutional structure, has shaped the characteristics of the CGU. Even though the CGU was a *de facto* innovation when considering structure and visibility, its establishment was not an easy decision. The difficulty was due to the interests the institution was about to manage and the number of veto players involved.

According to Tsebelis (2000: 442) "Veto players are individual or collective decision makers whose agreement is required for the change of the status quo." The status quo to which Tsebelis refers is the institutional context or the "policy outcome". In Brazil, as the individual player we have the president and as collective players the Senate and the Chamber of Deputies. Ames (2001: 12) argues that "Brazil's institutional structure...inherently produces a large number of veto players. As a result, its central government has enormous difficulty producing innovative policies."

Therefore, exercising the institutional layering in Brazil is a matter of

bargaining, even when the majority of Congress is in favour of the layering proposer. Moreover, Power (2008: 83) suggests an ideological convergence observed in Brazil that “makes it less likely that vetoes will actually be exercised on routine issues of policy” which “lessens the danger of radical policy swings from one government to another”. On the other hand, the difficulties mentioned by Ames and Power by no means signify impossibilities. This is true because supporters of the status quo may be able to preserve the original rules but they “are unable to prevent the adoption of amendments and modifications” (Mahoney and Thelen, 2010: 17).

It is possible to describe five main institutional characteristics that differentiate the CGU from the previous anti-corruption initiatives within the federal executive. Firstly, the institution was established by a Medida Provisória (MP)⁹ and the other initiatives by a simple decree. In spite of a MP being provisional, it has the same force as a law and is submitted to Congress before coming into force. With regards to a simple decree, the president may enact it and cancel it without submitting to Congress. That was the case for the CÓDICI and the CEI discussed in previous chapters.

Secondly, the head of the CGU and consequently the institution itself has ministerial status. That means that the CGU is hierarchically at the same level or at a higher level than the other bureaucratic structures within the executive, except the presidential cabinet. The other previous anti-corruption institutional initiatives, although part of the presidency, had no ministerial status, therefore, most of time they were at a lower hierarchical level than the agencies they had to investigate.

Thirdly, the association of the CGU with the fight against corruption

⁹ The Medida Provisória n°. 2143-31 was ratified on 02 April 2001 and later became Law n° 10.539 on 23 March 2002.

was direct and incisively mentioned in its announcement and in its publicity (ANOTÍCIA, 2001; Correio Braziliense, 2001; Folha de São Paulo, 2001). There was no place for euphemism neither for the word corruption nor for the activity the new institution would perform, as reminded by the president's speech (Cardoso, 2001). This contrasted with the establishment of the CÓDICI and the CEI, for instance, where the word corruption was not explicitly mentioned.

The CGU came in the middle of the international anti-corruption wave that treated corruption no longer as a taboo subject. Thus, these changing norms at the international level might have impacted norms in the country. The CÓDICI and the CEI came before this global movement, so due to the widely perceived negative impact of the word corruption, these former institutions preferred terms such as deviation, misuse and excess.

Fourthly, the person chosen to head the CGU was an experienced law enforcer, a former federal prosecutor with an immaculate reputation and with no political links. The appointment of a former federal prosecutor was an indication, at least in theory, of the professionalization of the institution. Additionally, it might have been a suggestion of the government's intention to treat the problem not only from within the administrative sphere but also from a criminal perspective. Finally, the announcement of the anti-corruption institution was markedly linked to the personal figure of the president. The media massively propagated the presidential image along with the institution on and just after the announcement (Folha de São Paulo, 2001; O Globo, 2001; O Estado de São Paulo, 2001). If anything, this helped to bring strong initial support to the CGU, and confidence to perform its tasks.

The table below is useful for comparing the initiatives discussed in this thesis. Note, however, that details about the CGU are related to its initial

structure as it was in 2001 and 2002.

Table – 5.1 Comparing Initiatives

	CÓDICI – 1986 - 1990	CEI – 1993 - 1995	CGU – 2001
Legal document of creation	Decree	Decree	Provisional Measure
Direct subordination	President (until 1989)	President	President
Administrative Status	Co-ordination	Co-ordination	Ministry
Composition / Staff	Only government members	7 Government and Civil Society members	69 civil servants appointed with tenure positions.
Structure	none	none	Office
Autonomy	none	Relative	Relative
Initial competencies	Ombudsman – receive and follow up denunciations	Help the Congress in investigations. Receive denunciations and analyse the anti-corruption structure of public administration. Produce a diagnosis about public administration.	Eminently correctional activities. Supervise and control investigations of administrative wrongdoings within the federal executive. Receive denunciations.
Law Enforcement	No	No	Partially Administrative

The Organisation: capacity and activities

With the agreement of those political veto players guaranteed, Cardoso announced the CGU as an innovation to dissociate his government to those of his predecessors. At that time, Cardoso needed his own anti-

corruption institution at least to give an impression that he was doing something. In a letter to the then CGU minister, president Cardoso pointed out the rules for CGU and tried to highlight what he imagined was the organisation's differential:

Now nothing is more important to democracy and respect to the republican institutions than fighting against corruption, impunity and the wrongdoings of public officials...Never before has an Executive institution been given so much responsibility and authority to permanently fight against corruption...Your Excellence should coordinate and give visibility and transparency to the anti-corruption measures the government has been implementing with regards to public opinion...Your job will give leverage to the control, transparency and neutrality practices we have adopted since the beginning of my Government. You will have the power of presidential authority in the Executive and can count on the Executive support at the Public Ministry (The Federal Prosecution Office) and the judicial branch...I assure Your Excellence that there will not be any kind of collusion - political or otherwise - to hinder your action towards clarifying the cases under your analysis (Cardoso, 2001).

Leaving aside any other in depth analysis of Cardoso's discourse, the president's words highlight two key elements that were probably missed in the previous anti-corruption initiatives. These elements are authority and the permanent aspect of the institution. Without these, any anti-corruption would be toothless. However, the presidential initiative may also be contested as a rhetoric move, as the tools given to the CGU were limited and the effectiveness of some its actions was dependent on other institutions. Moreover, the CGU's bill, despite its relevance, was not profound enough to convincingly represent the arrival of a solid institution.

One respondent added that there was indeed no such will in the attitude of the president, as the institution would have to prove its efficacy while Cardoso in office (Congress Informant, 2009). This might be

understood considering the politician's time horizon as described by Pierson (2002). On the other hand, Cardoso was not running for another election the following year and the blame for any institutional failure would certainly rest on others. Whoever won the election would have to deal with a new and intensively publicised institution and one that, as shall be presented later on, brought substantial changes to the anti-corruption structure that had hitherto been stable.

The most read magazine in Brazil synthesised the scepticism about the CGU:

[...] nobody knows the real power the CGU will have to fight against powerful politicians and the government' allies. It is also unknown the infrastructure, budget, and the independence level the institution will have to promote in-depth anti-corruption investigation [...] (*Veja*, 11 April 2001: 120)

The CGU's bill, indeed, was an abridgement of what one could expect from the regulation of an anti-corruption agency. That is why many were sceptical about the institution's objective and future at the time of the announcement. The legal document, which was not entirely dedicated to the institution, comprised several changes within the structure of the presidency. The part of the document reserved for the CGU consisted of four articles. The first article presented the institution as an advisory body to the president and organised its structure. The second explained the CGU's competencies of receiving denunciations, implementing disciplinary investigations, requesting information, co-operating with other governmental bodies, monitoring existing investigations, suggesting corrective measures and requesting civil servants.

There were only two enforcement provisions in the bill: that it was an obligation of governmental bodies to attend the CGU requests of personnel

and that federal public administration entities were compelled to inform the new institution about their own disciplinary investigations. Let alone all the pomp of the announcement, not much was being said within the bill itself. However, considering the veto players' interests and the workings of the Brazilian political system, the CGU bill was a significant step towards the institutionalisation of the CGU in the way Huntington (1968: 12) pointed out: "the process by which organizations and procedures acquire value and stability." We shall return to this in Chapter 8 discussing variants of the institutionalisation process.

This significance may be perceived in two ways. Firstly, the Congress passed the bill easily, meaning that the initiative counted on support from all the main veto players represented by the president, the Chamber of Deputies and the Senate. With this agreement, which is the pre-condition for both changing and sustaining the status quo (Tsebelis, 2000), the new institution had an unusual backing for its operations. The same cannot be said about the previous anti-corruption initiative bills, wherein only one veto player acted, that is, the president enacted a decree instead of a provisional measure.

Secondly, despite modest enforcement provisions, which could have represented a facilitator for the veto players' agreement, the bill, in dealing with the wider presidential structure brought a sense of presidential belonging to the institution that, again, was missing in the previous anti-corruption initiatives. These two rules provided by the bill (support and authority) formed what March and Olsen (2006: 8) called "basic building blocks" of an institution.

Nonetheless, the innovative building blocks, the CGU's structure and some of its legal provisions were similar to those of previous anti-corruption initiatives. Being at the presidency and reporting to the president, receiving

and following-up corruption denunciations and having a reduced organisational structure were among the rules preserved by the new institution. This continuity helps to explain the claim explicitly defended by historical institutionalists, that change, legacy or path dependence is not necessarily triggered by big shocks (Immergut, 1998; Pierson, 2000; Thelen, 2002; Mahoney and Thelen, 2010). The initial prudential start of the CGU, that is, that it did not profoundly change the anti-corruption structure, avoided an initial rejection by powerful veto players. Caution is also demonstrated by the design of the CGU's first organisational structure, as outlined on Figure 5.1 below.

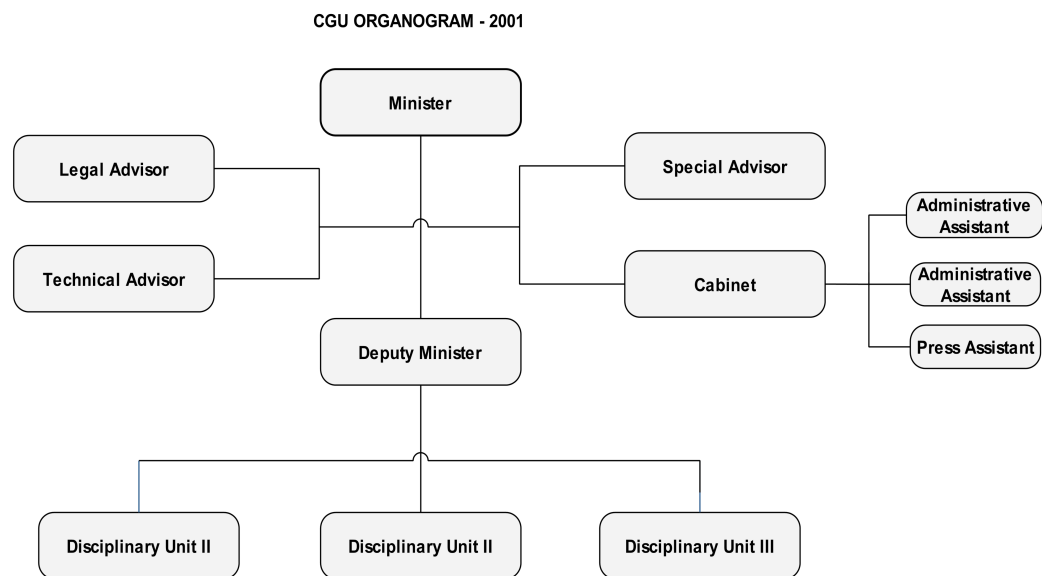


Figure – 5.1 The CGU initial organisational chart.

A first look at the chart indicates the intentions of the government with regards to the organisation of the institution. The modest structure was in line with the then prevalent idea of a reduced state and one with a government proud of its privatisation program. The hierarchy and functions show the CGU as an advisory body rather than an operational one. That is,

despite the presidential discourse, the CGU's initial structure was not organised to incisively combat corruption. Rather, it was ready to assist and inform the president on the issue.

Comparing this to previous anti-corruption measures, which were limited and had no formal hierarchy, the CGU structure was a step further. The structure was initially designed to keep the presidency up-to-date on corruption and investigation of corruption within the federal public administration. Moreover, a new channel was opened up for receiving denunciations and reports of corruption from the public. If anything, the CGU helped to bring corruption issues into the presidency. Not a problem within, but one that had to be treated by the presidency directly. These small changes have been gradually implemented not necessarily eliminating existing rules and institutions.

The CGU was placed within the presidency and this makes all the difference with regard to power. Chapter 4 explains the strong authority held by the presidential office and how it can be used in exercising power. But the fact of the locus being the *Palácio do Planalto* may represent a risk, as the institution must live under the presidential shadow. Previous initiatives are examples of this negative influence, however, it is important to note the legal documentation supporting each initiative.

In the case of the CGU, having a Medida Provisória (converted later into law) as a legal foundation also makes the difference. It was not only a matter of the legal document, but also the initiative in organising the institution hierarchically with ministerial status. We also claim that the CGU received a strong and decisive push that has also been responsible for propelling the institution into motion. This push, in the form of media exposure, was crucial in shaping the public's perception of and

approximation to the new institution. The institution had been on the front pages for several weeks after its announcement, and has been quickly associated to combating corruption.

According to Silva (2006: 345), the media had been generous to president Cardoso in the sense of preserving his intellectual and honesty image. The CGU had been used to explore this and, in exchange, gained also visibility. In Brazil, the role and power of the media cannot be underestimated. On the contrary, the media has played a crucial role in the country's political history. Pieranti (2006: 91) points out that the media was essential for both the election and the impeachment of president Collor and for the process of returning to democracy. He adds that the media is an "active piece in the political game." Miguel (2002: 158) goes further, recognising the media as a "central factor within contemporary political life."

Scholars recognise the media as a forger of political image and the channel between government and society. Radio and TV channels are public concessions, operating with special authorisation from the Ministry of Communications. Many of these concessions belong to politicians and are sometimes received in exchange for political favours that have been rewarded with loyalty. In despite of not always being pro-government, during the CGU episode the media worked together with the president in an attempt to "regain much needed trust from society" (CGU, 2001; Silva, 2006: 228).

The newspaper *Folha de São Paulo* found "consistency" in the way the president Cardoso had managed the crisis¹⁰. Other well read newspaper, the *Estado de São Paulo* supported the president and criticised the opposition, which "wanted paralise the government" with false allegations

about corruption¹¹. The Globo also criticized the opposition movement publishing that it was an “intellectual dishonesty action that was trying to falsely forge a generalising corruption context”¹². All these report news found the CGU a good strategy and strongly associated the institution to the president, but the CGU seemed to be an excuse to show the president.

Location, presidential support, special legal documentation (Medida Provisoria) and media exposure may be regarded as unpredictable reasons because these elements represent new rules within the traditional anti-corruption structure and because the media exposure was intended to benefit the president, not the institution itself. Moreover, using the framework of a Medida Provisória, the president had already legitimated his action with complicity from Congress, that is, it was a unique agreement regarding anti-corruption measures.

Traditionally, as we discussed in Chapter 4, *agreements* between both powers had hitherto been in favour of not necessarily changing the status quo. Nevertheless, this by no means signifies that the powers were serious about the institution. That is because, as argued by Pierson (2000: 259), “actors make commitments based on existing institutions and policies” and “their cost of exit from established arrangements generally rises dramatically.” As we shall see in the course of this thesis, whatever the intentions of those actors at the launching of the institution may have been, the path adopted by the CGU appears not to have followed these intentions. This crucial founding moment of institutional formation, as Thelen (1999) puts it, has sent anti-corruption along a different developmental path. The CGU and the new rules represent a clean break from what came before.

¹⁰ Folha de S.Paulo, 10/03/2001, Opinião, p. A 2, “FHC e a CPI”

¹¹ O Estado de S. Paulo, 27/04/2001, Notas e Informações, p. A 3, “O desgaste que convém evitar”

¹² O Globo, 13/05/2001, Opinião, O País, p. 6, “O mesmo vento”

Implementing such a *radical* change posed significant challenges to the presidency and to the institution as well.

To head the new institution, president Cardoso appointed a retired Prosecutor of the Republic whose reputation as a discreet and serious lawyer defending governmental causes in the Supreme Court was developed. Minister Anadyr Rodrigues had no previous experience in fighting corruption, but her clean reputation was neither the sole nor the main reason of her appointment to the CGU. The circumstances of her being the person chosen are believed to be that her ability in defending the government was the key to the appointment. President Cardoso clarified that minister Rodrigues would not be “another Torquemada” (ANOTÍCIA, 2001).¹³ Before taking over the CGU, minister Rodrigues served at the Office of the Attorney General, as its deputy. The Attorney General was the legal mentor of the CGU and is regarded as being responsible for recommending Rodrigues (Government Informant 1; Government Informant 14).

Minister Rodrigues took on the responsibility of imposing a mark on the new institution, which at the beginning had nothing more to show for itself than intentions. Her profile as a lawyer and prosecutor explains a lot about the disciplinary aspect attained by the CGU during its first year. The initial steps of the institution, and therefore of its minister, were to organise the staff, analyse the then anti-corruption actions of the government, and open a channel for receiving reports of corruption from the population.

The CGU minister, taking her duties seriously and predicting what might happen, suggested that president Cardoso “had waited too long to establish the CGU; the institution had arrived too late to be able to solve

¹³ Tomás de Torquemada, the first Inquisitor General of Spain.

many of the problems that had already occurred in the Cardoso government” (Rodrigues, 2001, interview with *Jornal do Comercio*). The position of the first CGU minister may be regarded as independent and courageous, particularly considering that her post was an appointed one and she had no political backing.

An anti-corruption institution being massively exposed, as we mentioned earlier, was another change brought by the CGU. The previous rule had always been to be discrete and cause as little disturbance as possible. This was particularly true in relation to internal control, which in the past had been accustomed to exercising its duties under surveillance only from the minister of finance. However, this exposure was not followed by any clear guidelines for the public, so the CGU was flooded with all sorts of denunciations and complaints. By the end of its first year, there was a backlog of 1580 reports and denunciations.

This figure proved both the existence of a hitherto restrained demand among the population and also the impossibility of an office-based institution in dealing with it. Even the institution itself was confused about its own role. An example of this, according to a former CGU official, was a case involving a complaint from a member of the public about a faulty imported prosthesis. The CGU minister intervened and sent a formal request to the manufacturer in the United States, which, in the face of such an unusual request, promptly responded and replaced the faulty prosthesis.

The intention of the CGU was for it to be an institution for supervision and punishment – i.e. administrative (disciplinary) sanctions (Government Informant 1). In other words, it was not the intention of the minister to have the agency carry out operations such as teams of officials investigating the entire Executive. Rather, the CGU was to be a centre of information for the

president, where denunciations of corruption would arrive in the first instance and corruption cases would be monitored. The task of investigating would be passed to civil servants of the SFC, activity that we shall discuss in the subsequent chapters.

The institution would therefore be responding to public demand, receiving reports of corruption, and, at the same time, saving the president from dealing with the issue personally. With regards to disciplinary sanctions, these were related to the civil servants charged in misconduct cases, with the CGU being responsible for applying or guaranteeing sentences of suspension, warning and public service expulsion (CGU, 2001). Operating in this way, the institution would avoid direct conflicts with veto players' interests in the sense that the CGU would concentrate its efforts on the consequences and not the causes of corruption.

The preamble to the CGU's first annual Activity Report states that its mission is to assist the president with "eminently disciplinary activities, supervision and control of investigations of administrative wrongdoings within the federal Executive" (Brasil, 2001). As can be observed, the CGU was not intended to be an operational body against corruption. The presidential discourse and the aforementioned Activity Report took it for granted that the existing Executive structure of internal control (SFC) and administrative sanctions would be able to perform the task. Moreover, it was believed that all the public administration bodies would readily and easily accept the CGU's authority and would also understand the new institution's mission. It did not take long for the CGU leadership to realize that these presumptions were wrong.

In the first months of the CGU, instead of managing investigations, the institution was inundated with demands of all kinds from the Executive

bodies and agencies (Government Informant 1, Government Informant 2). As soon as the Executive bodies and agencies noted any mention of wrongdoings, they promptly sent an investigation request to the CGU. The result was piles of reports with insufficient staff to deal with them all. In its first eight months of operation, the CGU was able to form a modest 69-staff agency. Considering that not all staff were on the front line, that is, specialist in legal and disciplinary issues, the contingent attached to the new institution was far from ideal for a gigantic federal bureaucracy. As a result, and thanks to provisions in its constituent law, the CGU started to request, on an ad hoc basis, professionals and specialists from other governmental bodies.

Most of the denunciations or corruption reports received by the CGU were sent to the SFC, but the way this agency worked was different from what was expected by the CGU. At the SFC the treatment of denunciations followed the auditing process, that is, a slow paced process comprising planning, study of the audited party, application of audit methods, discussion with the audited party, recommendations and follow-up. This, according to a respondent, did not attend to the demand of the CGU for “quick answers” and, therefore, could represent negative exposure for the figure of the president (Civil Society Informant 1). The relationship between the SFC and the CGU would have important implications later on for both institutions and also for the institutionalisation of anti-corruption in Brazil.

Conflicts were inevitable. This was the institutional conflict Thelen (1999) has mentioned when discussing the accommodation of new institutions into an existing structure. The CGU was not necessarily the kind of institution the existing anti-corruption institutional structure had requested. In this regard, the very stability of the CGU would be subject to change.

The CGU's actors appear to have had a hankered desire to impose a style on the anti-corruption structure, taking seriously what the president had written in his letter to the minister. According to a former highly ranked CGU official of that period, they really wanted it to be a permanent anti-corruption institution, and perceived that the new rules were there to stay (Government Informant 1). These new rules were in the form of ministerial status, veto players' backing (legal bill) and presidential will.

The informant revealed that by the end of 2001, eight months after inauguration, the institution realised that it was unable to live up to the initial high expectations and that, unless changes were implemented, the situation would worsen. The informant sustains that the only way to guarantee both the stability and the strengthening of the institution would be by assuming constitutional competencies. The solution was to incorporate the internal control functions, whose provisions were in the Constitution and had the SFC as the central organ.

This elaborated strategy shows how, as Thelen (1999: 387) points out, the institution "continued to evolve in response to changing environmental conditions." The process that culminated with the incorporation of the SFC and the internal control functions by the CGU as well as its implications, is fundamental for an understanding of the trajectory of the institution, and will be discussed in the next chapter.

Before proceeding to the next discussion, another element must be highlighted: the fear demonstrated by the CGU for its own institutional future in relation to the lifecycle of an anti-corruption commission (ACC), as elaborated by Doig et al (2005: 4):

The lifecycle of a new ACC is characterized by initially high expectations from governments and donors but the ACC is an

infant organization unable to meet the unrealistic expectations imposed upon it. This failure usually means that there is no sustained support for the ACC which limits its capacity to develop as an organization. This failure 'to thrive' encourages disillusionment in governments, donors and in ACCs themselves.

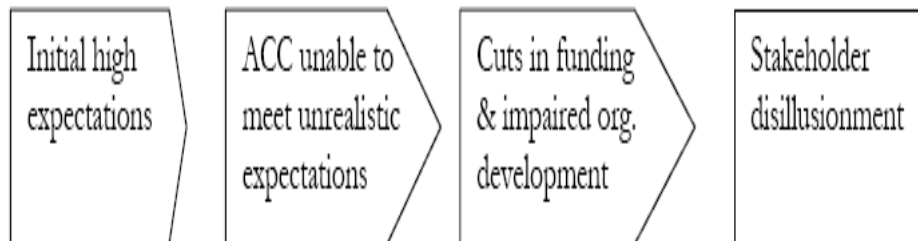


Figure - 5.2 - The lifecycle of a new Anti-Corruption Commission (Doig et al 2005: 4)

The cycle presented in figure 5.2, above, can be used to show what has not happened to the CGU, contrary to expectation. With the help of the cycle and considering the discussion so far, explanations for such a divergent path developed by the CGU may be found in the positive feedback literature. The case of the CGU represents political stability and change at the same time. It is an example defended by historical institutionalism, which explains political change as being inseparable from – and indeed resting on – an analysis of the foundations of political stability (Ikenberry, 1994; Thelen, 1999, 2002; Pierson,, 2000; and Mahoney and Thelen, 2010).

The political stability we refer to here is related to traditional politics being preserved, that is, the CGU was not a shockwave that wiped out all pre-existing anti-corruption structures. The institution arrived and forced the existing structures to adapt to the new scenario. This adaptation, which was also true for the CGU, is the change we point out here.

Conclusion

Understanding the emergence of an institution requires an open mind. Limited approaches that insist on considering merely actors' interests or the institution's functions are not sufficient to explain the outcomes. The CGU is an example of one of those occurrences that, in view of the unusual circumstances of its establishment, compared to the previous anti-corruption measures in Brazil, requires a different focus, beyond that of merely actors' interests and institutional function. We also have to consider changes in international rules guiding the approach to corruption, as the CGU came after a global movement against the problem.

Indeed, the unusual appearance of this anti-corruption institution following a politically contended corruption crisis leads us to expand the frontiers limited by the functionalist view of institutional origin. Notwithstanding the limited horizon or the skirting characteristic of the functionalist approach, which derives from rational choice institutionalism, we cannot dispense its elements. That is why the analysis presented in this chapter is inclusive and follows the historical institutionalism approach.

The CGU was a differential in the Brazilian anti-corruption structure. However, it has not appeared as a wholly new institution like in a displacement type of change where an abrupt breakdown removes existing institutions and rules (Mahoney and Thelen, 2010). The CGU example is, rather, a case of institutional layering which is a gradual type of change where new rules are placed upon old ones without necessarily removing them. Reasons for this option of change are not entirely clear, as opinions of senior civil servants involved in the process demonstrate. Their interventions about the origin of the CGU were grouped into two views we regarded as complementary: creationist and evolutionist. The proper existence of two

ideas for the institution's origin is another demonstration of the differential aspect of the CGU.

The creationist viewpoint regards the CGU as a snapshot, a presidential reaction before a crisis and a political instrument to rein horizontal accountability by Congress. The evolutionist viewpoint goes further, embracing aspects of traditional anti-corruption structure, and does not limit the origin of the CGU to its announcement. The two viewpoints are complementary because one focuses on the individual and the other adds the context to the decision. They converge to identify the pomp that was the announcement of the CGU. Cardoso's government invested heavily in publicising the announcement and this, as discussed, had a profound influence on the development of the institution thereafter. Publicity, the format/status of the institution and the legal document that established CGU are, together, the reasons that make the institution distinct from previous Brazilian anti-corruption initiatives.

This distinction, we have argued, was not a planned move to sustain the institution in the long term. It was arranged to cause as much impact as possible to solve the image crisis president Cardoso was facing at the time. But it also served to involuntarily push the institution further. This push not only forged the path of the CGU, but also influenced the behaviour of the CGU staff, who took the presidential publicity very seriously.

The appearance of this new institution, its rules, and their accommodation within Brazilian bureaucracy created new relations between existing actors. These relations were not necessarily amicable. Conflicts brought about by the new institution were also endogenous in the sense that the institution itself was trying to discover its real role in the anti-corruption structure, demonstrating that the CGU was not well planned. In relation to

the society at large, the conflict was characterised by a misunderstanding about the aims of the institution. These conflicts and misunderstandings resulted in an early revision of the institution's role, which is a theme to be developed in the subsequent chapters.

6 – Moving on to consolidation: incorporating the SFC

Once created, institutions often change in subtle and gradual ways over time.
James Mahoney and Kathleen Thelen, 2010: 1.

To unveil the foundations for the institutional formation and change of the CGU is the main objective of this research. The precedent Chapter 5 dealt with the origin of this anti-corruption institution and presented particular reasons for the CGU. The analysis has used a borrowing approach, which emphasises aspects of agency, structure and context. This chapter moves forward to focus on change. The argument is that change is a constant in the CGU trajectory and, as Thelen (1999: 399) points out, questions of institutional change are “inseparable” of those of institutional stability. We also claim that this remarkable transformation of the Brazilian anti-corruption activity – from inaction towards institutionalisation – did not occur abruptly.

Accommodating a new set of rules such as the CGU has proved to be a challenging experience for both implementers and the institution. The antecedent chapter indicates that this accommodating challenge started in a very early phase. It was just before the institution’s first anniversary that demands for its functions was higher than the CGU could supply. It seemed that the CGU would follow the cycle elaborated by Doig et al. (2005). A cycle that condemn a new anti-corruption institution to perish after not attending stakeholders’ high expectations. However, Doig and colleagues’ idea summarised in the Figure 5.2 in Chapter 5 seems to suggest that the cycle happens whenever no significant measure is taken. That is, whenever the institution is strongly linked to the implementers’ initial “interests.” The

CGU case is evidence that interests may change. Accordingly, the institution may also change.

Change can emanate from inherent ambiguities and “gaps” that exist by design or emerge over time between formal institutions and their actual implementation or enforcement (Streeck and Thelen 2005: 19). These gaps were visible after CGU’s first months and they were, as Streeck and Thelen suggested, by design and have emerged over time. Chapter 5 emphasised the limited initial structure of the new institution, which was purposely designed to attend a particular presidential interest. On the other hand, the first movements of the formal institution proved that implementing and enforcing its rules would be impossible without change.

Institutional development takes place through a process of gradual change, which is not necessarily caused by outside shocks. Rather, they can be driven by endogenous accommodation and adaptation. Chapter 5 concludes that CGU, as a new structure within the anti-corruption institutional apparatus in Brazil, faced necessity for adaptation even before its first anniversary. Backed by a massive publicity, a presidential discourse and taking it seriously the institution started to implement a rhythm that the CGU itself was unable to follow.

This chapter focus on a significant change that has occurred within the new institution. This change was characterised by the process of incorporating the Federal Internal Control Secretariat (SFC), the then central organ of internal control. The process of accommodating the SFC has generated changes in both structures and is a crucial point of a dynamic trajectory of development towards consolidation. For the CGU, being responsible for the SFC’s original functions and structure represented to the institution not only an increasing in figures (e.g. budget, staff and power), but also evidence that Doig at al’s vicious cycle could be broken. The chapter

shows an example of institutional stability by change. That is, our argument is that by incorporating the old internal control body the new institution reinforced its stability.

To explain this particular and crucial change, which is necessary for understanding our thesis general arguments of institutional development through ongoing innovation and that an institutional origin and development face different phases and conditions, we have divided the analysis in this chapter into two parts. The first section deals with the idea of adding the internal control agency to the anti-corruption structure and discusses the sources and origin of the process. This is important to locate the foundations of the change and thus to facilitate its understanding.

The second part presents the result of this change process as a particular kind of layering, which was achieved through conflicts and rearrangements. This section emphasises interests and actors involved in the change and presents the reformed structure of the “new” CGU as the first positive outcome of developing the anti-corruption function. Despite challenging some suggestive concepts of institutional change (layering) and change promoters, the chapter concludes that changes may be promoted endogenously in benefit of the institution and not necessarily in line with powerful veto players’ interests.

6.1 - Incorporating the SFC

Taking very seriously all the presidential publicity about the new institution had influenced the way the institution itself has acted. This is to say that, despite the president’s interests, the CGU as an institution started from the beginning and independently to performing its formal rules. It is important to state that this independence from the president has always been

partial due to the characteristic of the institution, that is, a structure located within the presidency and reporting to the president. Taylor (2009: 21) adds that CGU is not completely independent, but has achieved considerable autonomy. Signs of the CGU attitude before its formal mandate we started presenting in the previous chapter when reporting about particular cases of citizen's denunciations and complaints. Assuming such an independent attitude helped the institution to start changing. A change from within but that was motivated by the aforementioned gap Streeck and Thelen pointed between the formal institution and the actual implementation.

No other event better characterises the institution recognition of the existence of that gap and the necessity of changing than the process of incorporating the SFC. According to the former CGU's deputy minister, Francisco Cruz, the institution wanted to be permanent and it would only be possible by assuming a constitutional function (Interview). He also added that the SFC was the only federal public agency with know-how to be borrowed by the CGU, which demonstrates the preservationist intention of change perpetrators.

The SFC appeared to be the right target for three reasons. First, its functions were constitutional and related to the CGU's; second, the agency had a well-established career; and third, its structure was present in all 27 Brazilian states and the Federal District. Normally, the tendency would be to expect the contrary, that is, the larger structure absorbing the smaller or the stronger eliminating the weaker. Even years after the incorporation process, this logic has never been confirmed. Notwithstanding the prevalence of the CGU, incorporating the SFC markedly changed the institution in terms of structure and national insertion. This process that culminated in a larger anti-corruption institution will be discussed next.

Deciding for the internal control structure

Institutional change and how this process happens are among the main concerns that affect new institutionalism students. According to Streeck and Thelen (2005: 19) "Rather than emanating on the outside, change is often endogenous and in some cases is produced by the very behaviour an institution itself generates." Collier and Collier (1991), on the other hand, suggest that change is a result of a critical juncture promoted by an abrupt event or crises. Shepsle (1989: 144) points out that institutional change is as result of a game where coalitions negotiate with each other, the result are always transaction costs for all the sides involved. The contribution of Zysman (1994: 259) when analysing markets is fruitful to this discussion:

But institutions do evolve and two mechanisms of development must be mentioned. The first mechanism is the sheer force of dramatic crisis – revolutions, depressions and wars – that disrupts political and economic life and reopens established agreement and arrangement...The second mechanism, mismatches between capacities and tasks, is more amenable to analysis. The institutional arrangements of markets and the routines and logics thus generated represent distinct capacities to address particular sets of tasks. As long as capacities march the tasks at hand, all is well. Unfortunately tasks evolve and capacities degrade – creating a need for continuous political and technical adaptation.

The new institution created in April 2001 found just before the end of that year that its capacities was not marching "the tasks at hand." This was not only a question of structure incompatibility – an office-based organisation formed by 69 professionals to deal with corruption problem in a continental-size country. It was also a matter of lack of knowledge about how the entire bureaucracy functioned. The CGU had power and mandate to request information and to investigate the extent to which corruption and wrongdoings had been treated by federal administrative bodies.

The new institution, however, was dependent on the expertise and archives of other technical agencies not directly under its ministerial subordination. The perception of this lack of capacity was evident when the institution had to deal with denunciations coming from all over the country. The institution itself declares these difficulties in its first Annual Report (AR) released in December 2001 (Brasil, 2001). The AR is a self-assessment document federal bodies and agencies must produce to be sent to the internal control (SFC). Former CGU's deputy minister confirmed that "it was necessary to show our weaknesses, and doing so receiving more attention from the government in the sense of gaining structure, budget, etc. (Cruz, 2009). The CGU ambition of being a long-lasting institution turned its intentions to performing constitutional tasks.

Therefore, perceptions that in order to endure the institutional had to change have been there since earlier stages and have originated from the within. This idea confirms the position of Streeck and Thelen quoted above, that is, change or the necessity of it emanates often endogenously. Explaining the movement of change in this way represents the idea that the condition that fomented the establishment of the institution in April 2010 – degraded presidential image – was other than the ones that put it into motion. Of course that a quick failure of the pompous-launched institution would be negative for the president, but then the CGU structure could be sustained, without further losses, until the end of the Cardoso's government one year later.

The CGU structure had also unintentionally attended other's veto players' interests in the sense that its limited reach helped to keep the *status quo* in some grey areas (this point shall be discussed later in this thesis). In summary and considering Brazilian context and political system earlier analysed, interests for enhancing the CGU capacity as an anti-corruption

institution would not be expected coming from the veto players. About veto players' expectations, particularly those of the members of the Congress with links in the executive, keeping the status quo and reining the CGU would be the rule.

From the president's perspective important was to keep monitoring the bureaucracy, particularly after being pointed by his omission in dealing with corruption as newspaper headlines confirmed: "Pool indicates that 56% of the population think president Cardoso does not combat corruption" (Folha de São Paulo, 2001: A4). The CGU necessity of expanding and Cardoso monitoring intentions found a solution in a recommendation from the Brazilian Court of Audit (TCU), which had been delivered earlier in 2001 (see Chapter 4).

The Court of Audit, in an independent and technical decision, suggested that the SFC should be transferred from the ministry of finance to the presidency for independence and efficiency reasons (Brasil, 2001b). By the end of 2001, the ad hoc working group created to study the recommendation and that counted with the then CGU's deputy minister, decided for the convenience of transferring. In February 2002 the SFC is transferred to the Presidential Staff Office and in March of the same year the internal control organisation is incorporated to the anti-corruption institution.

Considering a historical institutionalist approach, particularly the scholarship of Pierson (2004) who describes the significance of timing and sequencing for the analysis of institutions, the TCU's recommendation is one of those events that may change the political scenario even without the intention. The Court of Audit suggestion, which was not mandatory, was based on an audit performed in the SFC in 2000 and it was released in the beginning of 2001, that is, all the process happened well before of both

presidential image crisis and the CGU.

It is secure to say that without that recommendation the SFC transfer from the ministry of finance to the presidency and then to the CGU would sound improbable. It was not possible to confirm whether this process have influenced the decision for the CGU. The TCU had not mentioned restructuring the SFC and the necessity of a new anti-corruption structure. A Cardoso administration staff informed that at the time of the TCU report releasing “there were other problems to be solved” (Political Party Informant 2, 2009).

Despite the significance of the act for presidential interests, the proposed change aimed at benefiting the CGU. This may be proved by the short term SFC spent in the Presidential Staff Office and is in line with which a respondent revealed: “The transfer of the SFC to the CGU was a two-movement strategy. First, our intention was to perceive actors’ reactions and prepare administrative requirements within the presidency. Second, enhancing the CGU with this structure of control” (Political Party Informant 1, 2009). All the process happened apparently with the absence of external disruptions and the role of the institution was crucial for it.

A highly ranked CGU official of that time revealed that “the strategy was thought and developed inside the CGU and then presented to the president who accepted it” (Government Informant 1, 2009). The same informant remembered that the suggestion of acquiring the SFC was many steps further from what the president wanted for the CGU as an institution when proposing it. “The president imagined CGU as a compact and light agency not an operational one”. This might be acceptable and be of the nature of Cardoso, known by his neoliberal discourse of reduced state.

However, it is not possible to simply exclude the role of individual interests. As Olivieri (2008: 14) points out, the SFC was a valuable resource of

power to “control the bureaucracy and monitor public policies” that no one could afford to live without. However, the structure within which this bureaucracy body is placed makes all the difference. In the ministry of finance the SFC had its role that is different from that when located inside the anti-corruption institution of the presidency. In the ministry of finance the SFC had to compete (budget, minister agenda) with other stronger ministry’s structures such as the Revenue Secretary and the Treasure. There were more levels of hierarchy to attend and it was not easy to reach the president. At the presidency there was not such a competition and status would be higher, facilitating operations.

In Chapter 4 several corruption crises are explained as responsible for shaping the internal control function. The structure the function has acquired after all those corruption crises permitted it to expand its presence around the country and to form a professional career with sufficient knowledge about the functioning of the federal bureaucracy, particularly about public policy management and expenditure. The SFC was the central organ of this structure, however, the use of the information the organisation had gathered was under control by the ministry of finance. Organisations had been audited, and reports produced in a regular basis by the SFC, however, its “enforcement” power was dependent on some variables such as political will. Notwithstanding the SFC’s expertise, another limitation for it being effective was a permanent lack of budget, situation which sounded contradictory for a body belonged to the ministry of finance.

Olivieri (2008: 14) in her research exposed the strategic position of the SFC and its function, which is a valuable resource of power to “control the bureaucracy and monitor public policies”; however, she found no evidence that the SFC had been used politically. Castro L (2008), on the other hand, revealed that despite such a strategic condition the internal control

organisation has performed its activities technically and “without anger and favour.” Both views are results of years of observations when political events took place and political actors and governments have been replaced, they demonstrate that an institution’s own interests may resist to external approaches. The professionalisation of the SFC as a result of the “internal control crises” may be one of the reasons, an informant reminded us (Government Informant 2, 2009).

A discreet organisation with no political bargaining power and with a modest budget, however, professionally formed, nationally spread and full of information from its constitutional duties, that was the SFC and that was what the CGU was looking for. The interest of the CGU on the SFC had not appeared automatically. It had been developed gradually as a result of the CGU own work and competencies of requesting, which had the SFC as the main source of information and personnel provider. Nonetheless, as a respondent revealed, “The CGU interest on the SFC grew after some demands were neglected or delayed by the internal control” (Public Informant, 2009).

This not at all means that the move over the SFC was motivated solely by revenge. Both of organisations had the same interests in taking care of the public money expending and avoiding wrongdoing and corruption. The CGU and the SFC, however, were not the same. Let alone the disproportional sizes between them, the philosophy of work were different and the formation of their personnel was distinct. Thus, the idea of combining both interpretations in a single organisation wouldn’t be easy. The CGU, at least, knew in advance its intention and had a strategy to conquer the internal control organisation. That was, using its ministerial status and proximity to the president, not to mention the initial good reputation it had earned.

Another point that counted in favour of the CGU as the prevalent

institution was the ascension of anti-corruption activity to the governmental agenda. For the first time since the return to democracy the issue of corruption and its combat had been literally included in the Agenda, as the Presidential Message to the National Congress in the beginning of 2002 proved. The document stated that corruption was “an obstacle to the development”, its combat was “a moral imperative”, recognised the CGU as “an instrument for co-ordinating and monitoring corruption investigations” and that the anti-corruption institution was “a direct channel between citizens and the federal government” (Brasil, 2002a: 518-522).

Five long pages were dedicated exclusively to the CGU and its anti-corruption activities. Therefore, corruption and its combat started to be also a matter of policy. This scenario not only helped the CGU to act more independent institutionally to request the SFC, but also is an example of what Skocpol (1992: 526) pointed out as the effects of policy in the institutional configuration. That is, gaining agenda status the anti-corruption institution earned credentials to perform its duties and dispose about its configuration more autonomously.

It is important to note that the process of acquiring the SFC by the CGU was not publicised by the government. The enhancement of the anti-corruption institution that was once the flagship of the government against its critics passed without external notice. The contrast between the two occasions emphasises distinct intentions the president had in different situations. The analysis of the announcement of the CGU demonstrated a necessity of having an impact on public opinion. The improvement of the institution in the last year of Cardoso government, on the other hand, seems to be an act of attending an institutional demand.

These intentions, of course, are considered as determining. One could speculate other several intentions with the strategy; however, establishing

causal links other than those we have suggested to the event would sound pretentious due to the lack of evidences. An interview with the president, or the access of meeting reports could solve this. The shortage of evidences for further hypothesis and the absence of external publicity not at all suggest the process was smoothly operated. On the contrary, tensions and conflicts marked the initial mutual activity. This will be discussed in the next section.

In this section we have presented and analysed the CGU idea of acquiring the internal control body by incorporating its central organ, the Federal Internal Control Secretariat (SFC). We argue that the process of institutional change that has started with the idea was promoted endogenously and found support in previous decisions and circumstances generated outside the institution. Reasons for targeting the SFC may be found in its professional personnel, countrywide presence and in the information the agency had.

The transfer concretised in March of 2002, the last year of Cardoso government. This fact and the no publicity strategy the government attributed to the CGU expansion may suggest that the conditions surrounding the development of the anti-corruption institution were different to those of its announcement one year before. The example is evidence of an institution-driven change instead of an individual one.

6.2 – Internal rearrangement: clashes of forces

It is not difficult to perceive that for any institution the larger it is the harder to adapt to changes. The impact of changes, however, depends on the change itself and the foundations of the institution. Looking at the change promoted by the transfer of the large and old internal control structure to the small and new anti-corruption institution one could first suggest that the

impact would be proportional to the size of the structures. However, this balanced effect is not possible to be measured because, in the present case, the change is observed differently for each of the institutions.

For the CGU the change is internally promoted, planned in advance and implemented gradually. For the SFC the change is externally promoted, not planned and abruptly implemented. This research focuses on the change from the perspective of the CGU and concentrates on the impact of the change on the anti-corruption activity. Notwithstanding this focus, we understand that there is a benefit of looking at both structures and the way they have interacted and change in order to develop the CGU.

By assuming the SFC the anti-corruption institution was introduced of new rules. Following Streeck and Thelen (2005), the effect of this layering process did not displace the CGU. The result was a combination of rules and structures aiming at the original the CGU purpose of fighting against corruption. Such objective, despite indirectly presented in the SFC original mission, had not been propagated by the internal control organ.

The SFC, in the words of Domingos Poubel de Castro, its secretary at the time of migrating to the CGU, “was more interested in assessing public policies and programmes than punishing public managers” (Castro, 2009). This was a key point of discordance between both institutions as the SFC secretary was refractory to the idea of being subordinated to a correction agency (Government Informant 1, 2009).

In this section the argument to be discussed is that in spite of assuming a new structure and its functions, the CGU has not transformed into another new institution. This is intriguing in the sense that the assumed structure and functions were considerably larger and better established than the CGU. The internal control function and its central organ, as the Chapter 4 has shown, had been constitutionally discussed and reformed since 1988.

The claim of not being another new institution after the changes by no means signifies that the CGU is protected against new ideas. On the contrary, changes and innovation are at the core of the CGU development path. These are also results of clashes and conflicts. The following discussion points out how the differences between the CGU and the SFC have been accommodated and how the initial conflict helped to forge foundations of the CGU future development towards consolidation.

The acquired internal control structure

Before continuing with the analysis of conflicts generated by the acquisition, it is important to describe the internal control structure the CGU incorporated in March 2002. Such an analysis is crucial for understanding institutional interests before the event and institutional development later on. The institutional development influenced by the incorporated new structure will be timely discussed in subsequent chapters.

The National Constituent Assembly had dedicated considerable space for discussing the control function and, as a result, the 1988 Constitution is provided with a special section on the issue of accounting, financial and budgetary control. Notwithstanding constitutional provision, the weaknesses of the internal control function had been blamed on the most notorious corruption cases within the federal government. It was only after corruption crises and popular and political demand that the function was finally organised in 1994 with the creation of the Federal Internal Control Secretariat (SFC).

The Secretariat was implanted and developed within the ministry of finance and, assuming the role of central organ of the internal control function, had spread over the country. According to the Constitution the governmental bodies “shall maintain an integrated system of internal

control” with the objective of assessing the bureaucracy management, controlling government budget expenditures and protecting governmental assets (Brasil, 1998). The integrated system that comprised independent structures in the judiciary and legislative had the SFC as the central organ; however, the Secretariat had no power over other branches of the Republic.

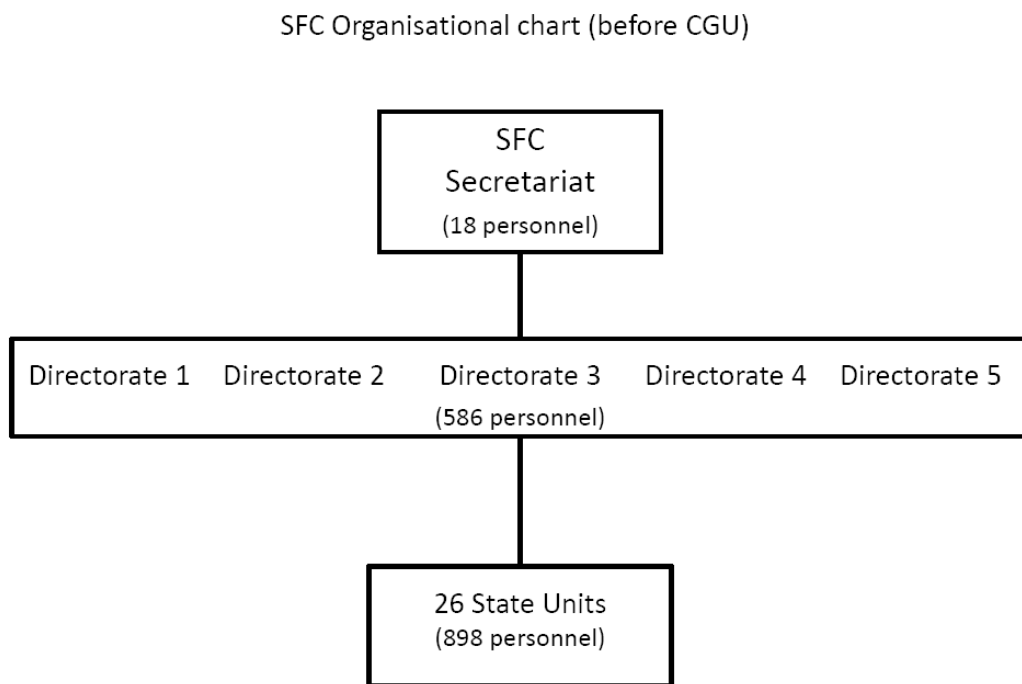
A constitutional mandate permitted SFC to conduct regular and annual inspections and audits throughout the federal executive. This mandate also permitted the Secretariat to audit and inspect whoever received federal public resources, including private, NGOs and other governmental entities (states and municipalities). The mandate, however, excluded from the SFC competencies states and municipalities own resources and the expenditures of the Congress and the judiciary. Its mission stated in every official document of “To look after the good and sound public resources application” had given the secretariat its dimension within the federal bureaucracy.

By 2001, in order to perform its tasks, the SFC counted 1502 personnel grouped in a professional career (Finance and Control) and distributed over headquarter and five directorates in Brasilia and 26 state units covering every unit of the federation. Technical particularities of the job and traditions, such as the limited discretion actors had in implementing rules, the work to be executed according to specific formal rules and accounting principles and its traditional low budget, had not attracted too much political interest for its appointing positions. Accordingly, from the secretary to the lowest appointing post, very few were occupied by external individuals.

At the time of the transfer process, the secretary himself and all directors, for instance, belonged to the SFC professional career. The SFC professionals had been recruited through highly competitive public examinations and were reasonably embedded in the secretariat mission.

Therefore, this qualified work force caught the CGU attention. Additionally, the national coverage the SFC offered was not to be overlooked.

Structurally, the SFC could be compared as larger as several ministries, but its organisation was relatively simple despite the personnel. The Figure 6.1 below shows the organisational chart of the secretariat while at the ministry of finance and before the transfer to the CGU.



Elaborated by the author.

Source: Brasil (2002b)

Figure 6.1 – The SFC organisational chart before the CGU

Such considerable structure acting independently could impose its will within many governmental bodies but the ministry of finance. Comparing to the structurally modest CGU, the SFC was a giant. The fact of a small structure acquiring a much larger one would call attention and sound strange. However, particularly considering public administration, the market

logic sometimes does not apply. Moreover, it is important to note that the CGU political support was higher and this made all the difference. As we have mentioned earlier and will return to the point next, the discussion process took place discreetly, involved very few actors and the CGU already had a special plan to accommodate the SFC structure. The SFC, by its turn, did not have a strategy before being assumed by the CGU. This accommodation, decided by the CGU only, was not without tensions but helped the institution to evolve (Government Informant 1, 2009).

Developing through conflicts

High level discussions that preceded the transfer took place behind the doors, and it was true even for senior SFC officials who only knew about the fact when the transferring decree was ready to be published, as one informant confessed (Government Informant 3, 2009). According to a respondent, the then minister of finance “was vehemently against the transfer of the SFC to the CGU” (Political Party Informant 1, 2009). The minister also “tried to persuade the SFC secretary to not facilitate the transfer, but he had nothing more to offer” (Government Informant 3, 2009).

Castro DP (2008) adds that the SFC personnel were not confident about the benefits the change could bring and the idea of a more independent function was unclear. Therefore, tensions would be expected in the process of accommodating the internal control body within the CGU. Considering this, March and Olsen (1986: 4 and 14) point out that

It cannot be assumed that conflict is solved through the terms of some prior agreement (constitution, coalition agreement or employment contract) and that all participants agree to be bound by institutional rules... There are tensions - basic assumptions on which an institution is constituted are never fully accepted by the entire society. Institutions operate in an environment populated by other institutions organised according to different principles

and logics.

Thelen (2004: 32) adds that institutions are “object of ongoing conflict” and that this conflict among actors shapes the development of the institution as they struggle to establish rules which structure outcomes more favourable for them. In light of this, the official motive for the integration was presented later in 2002 in the CGU Annual Report: “The objective of integrating the SFC into the CGU structure was to concede more efficiency and capability to the functions and units of administrative and internal control” (Brasil 2002b).

Institutional outcomes need not reflect the goals of any particular group; they may be the unintended outcome of conflict among groups or the result of “ambiguous compromises” among actors who can coordinate institutional means even if they differ on substantive goals (Mahoney and Thelen, 2010: 8). There were indeed differences between the two groups of actors.

As the new anti-corruption rules represented by the CGU was attached to existing ones without removing and neglecting them, the emergence of the CGU, we explained in Chapter 5, may be classified as a layering type of change according to the model suggested by Shickler (2001) and Streeck and Thelen (2005). The original set of anti-corruption rules, thus, has been changed in the sense that the CGU brought the issue to the agenda, the change transformed inaction into a ministerial organisation to deal with the problem and the activity gained an unexpected publicity.

With regard to the process of acquiring the SFC, it is also possible to classify the change as a layering type; however, we have to consider that the SFC is not the “new” rule from the point of view of the anti-corruption activity in Brazil. It was somehow part of the existing rule the CGU was attached to in 2001. From the restrict perspective of the CGU as an

organisation, the SFC might be its layering in the sense that internal control was an amendment to the original CGU structure.

An innovative aspect of this particular process of layering is that the actors who promoted it wanted to preserve the CGU original core by, say, moulding the layer (SFC). "Institutional challengers", as Mahoney and Thelen (2010: 17) put it, were by the side of CGU, however, they had not lacked "the capacity to actually change the original rules" which we are considering as the CGU itself. The event is an intriguing example of institutional challengers working "within the existing system by adding" old rules (SFC) alongside new ones (CGU). Mahoney and Thelen suggest the contrary, that is, adding new rules on top or alongside old ones. However, we agree that whatever the direction of the layering it can "leading to big change over the long run."

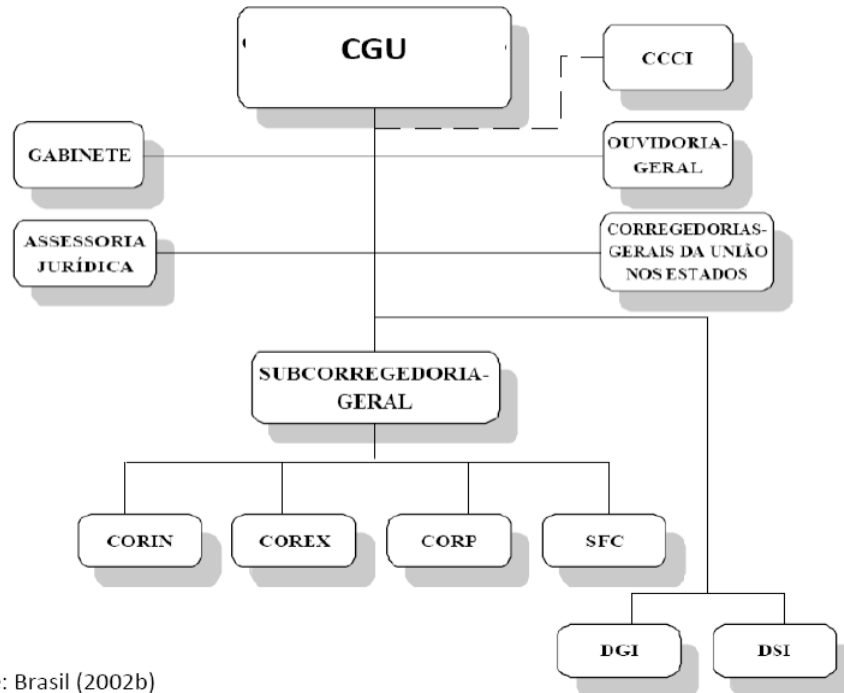
The CGU official intention with adding the SFC did not find agreement among involved actors. It was largely contested within the internal control before and after the transferring. A senior SFC official of that time revealed that "The real reason behind the discourse was that CGU wanted to transform the SFC into a 'house of prosecutors', favouring punishment instead of working alongside the public manager. The CGU also promised us an idea of organisation and failed to deliver it" (Government Informant 3, 2009).

That is, the SFC expertise was and is auditing and inspecting government expenditure and bodies, but the expertise of the CGU original members, particularly the first minister, was prosecuting. In other words, there was a clash between a house of auditors and a house of prosecutors and lawyers. The CGU promised to reorganise both bodies, transforming them in a real Comptroller, but this never happened in that way at that time (see Figure 6.2).

This critic makes sense if we consider that the prevailing institution would be the CGU, however, as we have mentioned before, there was little discretion over SFC constitutional activities the CGU was about to acquire. From the side of the anti-corruption institution there were complains about the “behaviour” of the SFC authorities. A respondent informed that the SFC secretary, even after the incorporation, was usually “inelegant with the CGU minister and acted in an insubordinate way” (Government Informant 1, 2009; Government Informant 14, 2009; Public Sector Informant, 2009). This might have precipitated his dismissal after almost ten years in the post, however, this and other key post rearrangements were not the sole modification perpetrated by the CGU.

Structurally, the original SFC sustained its label but lost the hierarchic control over state units and some directorates. As a result, its previous 1502 personnel spread over the country were reduced to less than 600 in the Brazilian capital. In the case of the 26 state units, despite the professional career continued to basically perform the same constitutional internal control functions, reporting to the minister instead of the head of the SFC represented a significant change. By the side of the CGU the institution had its personnel increased from 69 to 1676 by the end of 2002, thanks to the SFC contribution. The organisational chart below (Figure 6.2) shows the result of the rearrangement, which can be compared to the original structures of CGU and SFC depicted on Figures 5.1 and 6.1, respectively.

CGU Organisational Chart
(after incorporating SFC)



Source: Brasil (2002b)

Figure 6.2 – The CGU organisational chart after incorporating the SFC

Initial conflicts between the two groups of actors just after the transferring process were related to identity and power. As earlier observed, the CGU was born a ministry for co-ordinating and supervising anti-corruption activities, with focus on disciplinary actions. The internal control organisation, on the other hand, was modestly formed under some levels of hierarchy within the ministry of finance to deal with the disorganised bureaucracy. The former had all the publicity and presidential support a public agency could expect. The latter had always been told that its function was “internal”, thus the less it appeared the better (Government Informant 8, 2009; Civil Society Informant 2, 2009).

While the CGU nested at president’s next door in the Palacio do Planalto, the SFC, during ministry of finance times, was kept at distance from

the minister. In this regard, the SFC professionals used to say that the minister hardly received its secretary (Government Informant 8, 2009; Government Informant 12, 2009). Notwithstanding disadvantages, the internal and isolated aspects had helped the SFC to develop a proper identity, a career and a particular way of conducting its audits and inspections. Therefore, the SFC had it all but power and influence. The anti-corruption institution seemed to have those missing elements; however, it lacked history, career and identity.

What could be considered as a perfect combination sounded to the SFC's main actors an incertitude, particularly because the scepticism about the CGU longevity (Government Informant 9, 2009). There was no guarantee that the move would strengthen the function and there was a risk of jeopardising years of work on an internal control methodology (Government Informant 3, 2009). The transfer, however, could represent to the SFC a chance to become the most important part of a ministry and put behind the years in limbo at the ministry of finance.

There were interests at risk and this bargaining process that is characteristic of Brazilian political system (Figueiredo, 2001) was present, however, the main actors promoting and negotiating changes were at a level below of that of veto players. That is, it was not the president, nor the Congress negotiating directly. The CGU minister and her deputy headed the process (Government Informant 1, 2009). However, this not at all signified that the president was unaware of the question, on the contrary, as the research of Olivieri (2008) appears to suggest about the key role of the internal control for the president (political control of the bureaucracy).

In mentioning the presidency, it is important to point out that the transferring process happened in a presidential election year and the resulting structure would be a heritage for the next president who,

considering again Brazilian tradition, could be against the new arrangement. Thus, the SFC main actors concerns of another move and the CGU's preoccupation with its future were perfectly understandable.

Thinking in the future and in order to avoid a "national rebellion" of the former SFC state units and reinforce its intention, the CGU top officials went on visiting them. For most of the units it was the first opportunity of receiving a ministerial visit and the simple fact of being considered by the top authorities made the difference. This was of special significance for small state units, which were not necessarily heard by the SFC headquarter. Forming a new identity as an informal rule may be in part of the CGU strategy of approaching the state units. Additionally, it was through the state units that the anti-corruption institution would be nationally recognised.

In summary, both group of actors were conflicting to sustain their own continuity, which is not only a concern of institutions but also of their students. According to Morlino (2008: 188) "the basic questions for research on consolidation are who, how and why continuity is created and maintained." Maintained continuity for the SFC would mean to preserve its essence as the internal control body, that is, to sustain its methodology and principles of auditing and inspecting. For the CGU continuity would mean to consolidate the original idea of an anti-corruption institution.

Technically observed, the CGU had a comprehensive idea of the anti-corruption functions in which the disciplinary/enforcement activity would easily use internal control information without the bureaucratic expedient of formally requesting it. However, as an informant pointed out, "CGU authorities had no idea how the internal control process worked...the audit process is slow in nature and it was not possible to delivery information with the speed the minister required" (Civil Society Informant 1, 2009). No other result could be expected but conflicts.

Nonetheless, the transferring was a reality already and wherever the discontents were they had to abide the rules. Initial clashes proved that the inverted layering, in which the old structure is the “new” layer placed alongside the new one, was not sufficient to undermine existing rules. However, this intention was not clear in the movement promoted by the CGU. One thing is to subvert an original structure and change its rules and purposes, the other is to acquire this structure and adapt it in order to use the same rules and purposes in benefit of the prevalent institution. The latter option is more adequate to explain the change promoted by the CGU. Indeed, this was the outcome of the process.

The new configuration of the CGU presented in the Figure 6.2 depicts a fractured SFC with its former operational contingent under the direct hierarchy of the minister. However, the internal control function, which after the process was incorporated to the anti-corruption strategy, remained as the SFC competency. That is, the agency continued to be the main body responsible for technically establishing internal control rules. Additionally and what might be expected, the SFC personnel has been spread over the new CGU, which in essence helped to sustain the Secretariat. Administratively and not to mention the necessity to reduce “power”, the decision for dividing the former internal control central organ had the objective of avoiding the anomaly of a subunit alone be larger than the entire rest of the ministry.

Change promoters or institutional challengers were by the side of the CGU. These actors succeeded in their intentions to enhance the anti-corruption institution and to have a new component attached to it. However, as we mentioned before, this new component or layer represented by the SFC was an older part of the existing rules. Thus, to characterise this process of change as layering, according to the scholarship of Streeck and Thelen

(2005), is not automatic but possible. This is true because after attaching the SFC part of its structure was transformed, then turned into a new one. On the other hand, difficult is to define in which category to classify the “agents behind institutional change.”

For the process of change by layering, which is a promising strategy of change in political environments with strong veto players and low level of discretion, Mahoney and Thelen (2010: 25) suggest the term “subversive” as the variety of institutional innovator. The scholars put that

Subversives are actors who seek to displace an institution, but in pursuing this goal they do not themselves break the rules of the institution. They instead effectively disguise the extent of their preference for institutional change by following institutional expectations and working within the system.

Our layering process of change indeed occurred in such political environment, but it is not possible to identify CGU actors as subversives the same way the scholars presented. As change promoters, they had not the intention to displace an institution; rather they wanted it to endure. They also were sufficiently clear to show their intentions. This is true even for the layer they were adding to the CGU. Therefore, the SFC with all its potential was of CGU interest and the rearrangement promoted not at all denigrated the internal control. In this point, it is not a question to simply group actors into losers and winners because the outcome of the process, despite conflicts and some dismissals, were of benefit of all involved. And we might include the president as the beneficiary of the change because his original idea, even if it was unintentionally, prospered.

One could argue that it was only an internal administrative operation without further consequences to the anti-corruption function. Results, of course, were not immediately observed and, as the path dependence

literature supports, events in the past may be responsible for significant changes in the future. The impact of this change and its benefits were not promptly observed at the time of the transferring but became visible in the years on, as we shall discuss in subsequent chapters, which is in line with the position of Zysman (1994: 259) that “Institutions do not radically change with each shift in the balance of political power. Rather existing institutions are used for new purposes by new groups.”

In this section we have completed the analysis of a particular process of institutional change by layering that was the acquisition of the SFC by the CGU. The change fomented by CGU actors brought rearrangements to both organizations and was a result of conflicts and convenience. For considering institutional challengers as CGU insiders and observing the characteristics of the change, labelling them in any category suggested by Mahoney and Thelen (2010) was not possible. The resultant of the merge for both institutions was a divided SFC and a larger CGU in organisational terms, but when considering the aspect of the anti-corruption activity the outcome made it stronger with the adding of the internal control structure.

Conclusion

The chapter follows the narrative initiated in the previous one to focus on the developmental path of the CGU. Having analysed in Chapter 5 the emergence of this anti-corruption institution as a positive layering on the top of existing institutional rules in the Brazilian political system, we proceed to discuss its initial process of change. Change is the key word in this chapter and follows the concerns among institutionalism students who struggle to understand and explain processes of change that occur within institutional structures. Scholars are particularly interested in identify who are behind the changes and what motivated them. Accordingly, this part of the thesis

presents a contribution to the discussion with the analysis of the acquisition of the SFC by the CGU. This innovative process of change could be perceived in distinct ways by both institutions, the change promoter (CGU) and the layer annexed (SFC).

The process of change here analysed may be classified as layering, following Schickler (2001) and Streeck and Thelen (2005), but some particularities should be highlighted. According to the scholars, in the layering process of change a new rule or institution is placed on the top or alongside an old one. In the present case, is the old institution (SFC) that is placed alongside a new one and this old one is remodelled to serve interests of institutional challengers. Nonetheless, the interest of institutional innovators in our case is not to undermine the old organisation but to sustain it.

Foundations of this process of change, the chapter shows, are to be identified within the CGU with the help of previous events that happened in the context of the internal control. Our first claim is that the process of change has been developed and endogenously motivated, which reinforce the argument of Streeck and Thelen that change is often endogenous and in some cases is produced by the very behaviour an institution itself generates. Evidences for this assumption can be found in the process of approaching the CGU promoted to the SFC and in the complete absence of external events (crises or chocks) that could influence such a change.

Additionally, the idea of incrementing the anti-corruption institution by adding more structures seemed not to be in line with the neoliberal attitude of the main actor who promoted the emergence of the CGU in 2001. For the president, the idea of having the internal control closer would sound interesting, but in the last year of his government such a reform was not a main concern. This because, at the end of administration, his power was not

so strong to promote and bargain such a reform.

Institutional challengers succeed in convincing the president in promoting the change and, as they acted discreetly, did not call the attention of other veto players who could be interested in not reinforcing the anti-corruption institution. The change, however, has not been an entire pacific process as the analysis evidenced. The incorporated organisation, particularly its top officials had not been convinced about the benefits such a change could bring to them, thus their interests would certainly be affected.

The process brought conflicts of institutional identity (auditors against prosecutors), power (reducing structure) and also concerns about institutional continuity. These conflicts were mainly between the SFC old staff and the head of the original CGU. Here it is important to point out this motive that at the same time may be used as the reason to promote and to stop change. For the CGU, change in the form of an added structure with national presence and technical ability represented a guarantee of continuity. By the side of the SFC, transferring from its ordinary but pacific place at the ministry of finance to a new challenge in the new institution in the presidency had no guarantee of continuity.

Uncertainty may be the right word to describe the way the SFC considered the process. However, change promoters had no intention to displace the internal control institution. On the contrary, the change perpetrated by them privileged the old structure in the way that, despite rearrangements, the function was preserved. Therefore, the attitude of the CGU actors in doing so does not permit to classify them among the categories of institutional challengers suggested by Mahoney and Thelen.

The result of this first change was not a new institution in the sense that the CGU diverted its original objective of fighting corruption to become something different. The outcome of adding the SFC to its original structure

proved that the anti-corruption institution wanted to reinforce its original attribution. The institution proved once more that it took very seriously the rhetoric discourse of president Cardoso when launching the CGU one year before. It is possible to understand this process of institutional change as endogenously motivated, historically influenced and oriented for the continuity and endurance of the institution. The characteristic of the change also reveals the possibility of actors others than the veto players to promote change without being *subversives* in the way Falleti (2010) and Mahoney and Thelen (2010) pose it.

This chapter had the function to start presenting the ongoing process of institutional development of the CGU towards consolidation or “institutionalisation” (Huntington, 1968: 12). The example discussed is evidence of developing through change and corroborates the idea of that there is nothing static about institution. In the subsequent chapters we continue to analyse the CGU developmental path, now in a context of government transition and new actors.

7 - The Anti-Corruption Institution in a government transition

Transition of government is regarded to be the principal conductor of institutional change (Morlino, 2008; Thelen and Steinmo, 1992). Independently of who is taking power or how the power is taking, institutional rearrangements are always expected. With regard to anti-corruption initiatives in Brazil, the record indicates that change is the rule. Chapter 4 described how following presidents have dismantled several previous initiatives. That has been the case of the CÓDICI, ceased by Collor de Mello, and the CEI, terminated by Cardoso. Those organisations never become institutionalised because never gained the autonomy, resources, staff and procedures to endure. These are characteristics for considering institutionalisation (Huntington, 1968: 14; Hill, 1974: 1075).

In spite of no further reasons being given for their attitudes, the disembarkation of new actors and their ideas may represent the explanation for the tendency. Other reasons, however, such as the maturity of society and the improvement of democracy may be also investigated as forces to avoid such a tendency, particularly in our case in which a new anti-corruption organisation faces the challenge of a government transition less than two year of being created.

Before government transition that took place in 2003, we observed that the CGU had been *upgraded* with the addition of new structure and functions, which came from the SFC in 2002. We started discussing that the institution itself had promoted this change, among other reasons, to attend an interest of continuity. This interest of continuity was not only of the CGU executives,

but also of the career personnel. There were clashes between them because the idea each group had about the institution were distinct. Both of groups, as we will discuss in this chapter, approached the new government transition team to protect their own interests, but the outcome was the protection of the institution itself.

Defending the institution and its functions was also the context of the transition. Context or environment, we have discussed, are crucial in determining institutional change. We develop in this chapter the idea that there was a relative improvement of the quality of democracy in Brazil in the sense of people's organisation and participation, literacy and quest for information. This improvement has affected the interest and the attention of the public towards government actions, which was admitted by president Cardoso in his farewell in 2002.

We believe that institutional change is the result of an interaction of factors (individuals, context, organisation, rules) and they may happen not necessarily in purpose, they may be accidental. This not at all means that a decision, particularly political one, is free from interests. The trajectory of the CGU is an evidence of this interaction and the institution itself is also a result of interests. In this chapter we do not use any particular model for the analysis, although the development rest influenced by historical institutionalism and notions of path dependence. The intention of the chapter is to understand changes within the CGU in a transition process between two originally distinct governments – a neoliberal administration to a, say, leftist and *statising* one.

This analysis is crucial for the purpose of this research – studying the process towards the institutionalisation of the CGU. That is, to analyse the process in which the CGU has gaining value and stability, the two elements

Huntington uses to forge his institutionalisation idea. This is true because in consequence of the process of transition, the chapter will explain, important changes have been promoted within the institution. The government has change and so the role of the CGU in the public administration and in the society. Changes have been only possible because the conjugation of factors, again, context, transition and the institution itself.

In order to carry on the analysis the chapter is divided into three parts. The first focuses on the context in which the transition took place, here a comparative analysis is made between a period of ten years time to characterise the changes the country has passed, including the election of a president from a leftist party for the first time. The second part emphasises the strategy the institution itself has used towards the new government in order to influence its decision about the CGU, this part considers initiatives from career staff and the CGU executives. The final part focuses on the role of the CGU in the new government, the reasons for sustaining the institution and the changes promoted and intended by the new government.

7.1. Context of transition

We have shown in Chapter 4 some aspects of the return to democracy in Brazil and characteristics of the country's political system and institutions. Disregarding the observer's look, if at that context or the one that separates the end of the military dictatorship and the government transition in 2002-2003, it is possible to identify significant changes. The country, which arrived to the 21st Century, was more internationally open and economically stable than the one that the armed forces devolved in 1985. In line with this, Weyland (2005: 90), when comparing both periods, points out that, despite Brazil continues to suffer from serious structural problems (e.g. social inequality, poverty and corruption), the post-1985 country

[H]as faced fewer and less serious challenges, and the crises that did occur have been resolved inside the democratic institutional framework. Besides having a better record on sustainability, the new democracy also features higher quality on some important dimensions, such as popular participation, the vibrancy of civil society, the accountability of top political and government leaders, and the independence of civilian politics from military interference.

Referring to this context of consolidating democracy is important as it may help to explain the permanence of democratic institutions and functions such as anti-corruption. For the observer who is not well acquainted of Brazil, it is important to point that institutional instability was the rule during dictatorship and within a few years of regime's ending (Hagopian, 1996: 14). Thus, institutional sustainability was a political context that Brazilians were starting to get used to.

With regard to anti-corruption institutions, considering the past experience of ephemeral initiatives (see Chapter 4), the scenario was of uncertainty. Not an uncertainty about the necessity of anti-corruption mechanisms, but about the format and competencies of them. The government had already signed (29 March 1996) and ratified (10 July 2002) the Inter-American Convention against Corruption, with which agreed to "consider the applicability of measures within their own institutional systems to create, maintain and strengthen" anti-corruption bodies (OAS, 1996). The influence of this convention and other initiatives of the international anti-corruption wave to our case we have discussed in Chapter 4. They have helped to consider corruption no longer a taboo and motivated countries to discuss and face the problem. We argue their influence is real, but has not been determinant for the CGU initial arrangement.

Although anti-corruption "international instruments are but empty

shells” (de Sousa et al. 2009: 7), governments feel a growing need to pass a clear message to public opinion and international community about their intentions to boost anti-corruption. Therefore, as anti-corruption is not a neutral technical activity (de Sousa, 2002 cited in de Sousa et al. 2009), whichever the government the issue of corruption would be addressed.

Attention to the social context of the transition in 2002-2003 is essential for understanding politics and political change. Power and Roberts (2000: 236) argue that it is erroneous to restrain single-country studies to “actors, institutions and political processes and to disregard social and demographic factors altogether.” The scholars also point that this is particularly true for Brazil, “a nation of extraordinary diversity and dynamism”, and that “no analysis of the conditions for democratic sustainability in Brazil can be complete without an adequate exploration of the sociodemographic changes since 1985” (Power and Roberts, 2000: 238). It is not the intention of this research to explore in depth these social aspects; they are remembered here to signalise our position of defending the role of context in the institutional change. The Table 7.1 below provides data of selected indicators of social change that may have implications for anti-corruption measures, as they imply people’s capacity of demanding, participating and looking for information.

Table 7.1 – Sociodemographic indicators in Brazil – 1992-2002

Indicators	Years	
	1992	2002
Illiteracy (% age > 15)	17.2	11.8
Urban population (%)	75.59	84.14
Internet Access	Academic institutions only	7.8 million users
Media Freedom (Freedom House Index)	Free	Partly Free
Number of Civil society's organisations (not-for-profit)	95,000 (estimated) 168,563(in 1996)	275,895
Human Development Index (HDI)	0.739 (Medium human development)	0.777 (Medium human development)

Sources: IBGE, Rede Nacional de Ensino e Pesquisa, IBOPE, Freedom House and UNDP.

We have argued throughout this research that the genesis and change of institutions occur by motivation (external and internal) and respond to the environment where the institution is inserted. This is to say that to a change in the environment corresponds a change in the institution. The correspondence does not happen automatically, but it is possible to identify the relationship between the changes. Accordingly, Brazil of 1992 is not the same of the 2002's one. This not at all means all institutions and practices have changed proportionally, or that the nation's identity and culture are volatile. What the indicators' figures of the both years prove is that there is dynamism within the society, which may have influenced government decisions, regarding anti-corruption institutions and reform.

The indicators presented in Table 7.1 are basically those largely mentioned by the literature as important to motivate governments to look for anti-corruption reforms (Bracking, 2007; Doig and Theobald, 2000; Rose-Ackerman, 1999; Klitgaard, 1988). They are interconnected in the sense that one may be influenced by the increasing/reducing of the other. Illiteracy (level of education), for instance, may determine people access to information, which is necessary for people fully exercise their right of posing

complaints (corruption denunciations) and to look for more education.

Moreover, illiteracy may represent a constraint for the media, as Rose-Ackerman (1999: 167) puts it “with high levels of illiteracy the media can only play a limited role...people have low levels of education and little understanding of government operations.” The access of information in Brazil, as in many other countries, is better where the infra-structure and the knowledge are, thus urban areas favours this access. Despite the other reasons and consequences of the urbanisation of Brazilian population, this process depicted from the table may also contribute to the increasing in the information access and the pressure over governments. Urban areas are also places where the interaction of people is more evident, which may stimulate the organisation that may represent more power and pressure over governments.

Table 7.1 shows an impressive change within Brazilian society in a period of ten years. This particular slot of time was chosen because it separates two crucial moments of Brazilian democracy. The first, in 1992, the impeachment of the first president elected after the dictatorship, which was sacked from power for corruption. The second, in 2002, was the ascension to power of a left wing party’s candidate who was elected on a moralising and anti-corruption platform. The impeachment of Collor, as we discussed in Chapter 4, was less a result of people outrage than a lack of political support. The election of Lula, on the other hand, marked people’s dissatisfaction of the incumbent government. During Collor’s time the powerless executive’s anti-corruption structure had been persecuted and dismantled. Conversely, by the time of Lula’s election, after *ups* and *downs*, that structure had been changed, including the addition of the CGU.

Data from the table reveal that despite positive changes in some areas

(e.g. illiteracy and number of civil society organisations¹⁴), others stand still (e.g. inequality represented by HDI and freedom of press), but the balance may be considered positive. This is true particularly with regard to indicators of a proactive society (access to information and organisation). An environment where a mature, more informed and active society lives may represent a context of more demanded government, that is, a context which favours the vertical or societal accountability (O'Donnell, 2004; Smulovitz and Peruzzotti, 2000).

Theoretically, in such a context, governments tend to be cautious about *unpopular* decisions (e.g. closing down an anti-corruption agency) as citizens are more interested in what is going on in government and aware about the implications of government's decisions on their lives. In the scenario depicted from Table 7.1, 1992's data favoured what O'Donnell (1991, 1994: 59-60) once called "delegative democracy", that is, a context where the president is "entitled to govern as he or she sees fit" and where

Candidates compete for a chance to rule virtually free of all constraints save those imposed by naked, noninstitutionalized power relations. After election, voters/delegators are expected to become a passive but cheering audience of what the president does.

Francisco Weffort (1992: 108) supports O'Donnell idea and argues critically that 1992's Brazil was one of the "best examples" of that kind of democracy. Moisés (1995: 269) adds that at that time the country was markedly influenced by "inherited viciousness from the authoritarian regime, including poor political representation and lack of societal control

¹⁴ Among civil society organizations created in the period there are many anti-corruption entities, including the AMARRIBO - *Amigos Associados de Ribeirão Bonit* (founded in November 1999), which elaborated a nationally known guide to combat corruption in municipalities and the *Transparência Brasil* (founded in April 2000), the Brazilian Chapter of the Transparency International, which will have a significant role in the area and will build partnerships with CGU in the years to come.

over the executive and parliament.” Conversely, in 2002, according to the data in Table 7.1, the context seems to have changed, at least in the sense of the audience’s passiveness.

This is not to say that people are powerful enough to be considered a veto player, but they do matter. Kerstenetzky (2003: 139), in a research about democracy, inequality and activism in Brazil, found that the increasing number of civil society’s organisations is behind of more proactive citizens and works as a protection against “co-optation and political control.” Nonetheless, the scholar was not able to assure whether this *organisationalism* has brought equilibrium to the political participation.

Although indicators show a positive picture towards consolidation of democracy, the advances were not sufficient to increment the HDI the same proportion. Therefore, Brazil in 2002, as in 1992, continued to be one of the most unequal countries in the world. This situation ameliorated in 2007 when a HDI of 0.813 moved the country from “Medium” to “High human development.”

This context of improving democracy is also part of a transitional society that transition governments have to take into account. Indeed, that was the situation of Brazil in 2002. A presidential election year, which could represent, as usual, a moment of change and a locus of crucial debates. The year of 2002 would also represent the end of the government that tamed inflation, but had considerably increased internal and external debt. A government, which had closed down an anti-corruption commission, then suffered several corruption allegations, but in the end created the CGU.

The election year brought again the most important leftist party and its moralising discourse to the spotlight. In the agenda were, among others, corruption and egalitarian issues. With an audience of a more participative

and exigent society, eventual gains of the incumbent government seemed to be insufficient. It was not only the case of creating institutions to deal with problems but also the case of building institutions for delivering results. In this regard, more than never, recent created institutions, such as the CGU, had to respond to people's demand and prove to the governments (incumbent and incoming) they deserved to stay. Accordingly, the country witnessed movements from society and institutions towards the transition process that had the apex with the election of the new government.

After the election of the new government and in one of his final acts, president Cardoso summarised the context of 2002, which are of interest in this research

There are aspects apart from the numbers; they are about changes of structures and mentality [within society], which motivate the sense of responsibility we must have when dealing with the public good...I refer to the transparency of this government and the work of institutions such as the Controladoria-Geral da União, which receives from an open society, and in a daily basis, critiques and denunciations [about the government]...Everything is on the Internet today. If there is denounce, it is on the Internet, and every Brazilian may follow up it to know its status. It is transparency. Why is it transparency? Because the people are talking more about it, as a consequence, it raises the perception of corruption. However, what has risen is the people's awareness about the problem, and that corruption is harmful and should be denounced (Cardoso, 2002).

The new government and the transition

More than 90 million Brazilians voted for the 2002 presidential election (a voter turnout of about 80%¹⁵). Analysts argue that the opportunity

¹⁵ In Brazil, voting is compulsory for citizens between 18 and 70 years old and voluntary for those between 16 and 18, those older than 70 and illiterate people.

was like a plebiscite held to assess Cardoso's government and reforms (Carreirão, 2004). The result followed the descendant level of approval of the incumbent president, thus his candidate was defeated in the second round of the election. Over sixty percent of the voters said *no* to Cardoso and his candidate, José Serra, and *yes* to a new project. However, deciding for a new government and a new party in such a blunt way not at all meant the country was entirely comfortable with the decided change.

High internal and external expectations surrounded the then elected new government (Abrucio, 2007). This motivated by both the personal trajectory of the elected president and the long opposition life of his leftist party. For the fourth time the former metalworker and union leader Luiz Inácio Lula da Silva had ran for presidential election, and no other politician better represented the face of the ordinary Brazilian than Lula. His *Partido dos Trabalhadores* (Workers' Party or PT), founded in 1980 amidst the military dictatorship, grew up waving the flag for democracy, social justice and clean and ethical governments (Abrucio, 2007; Weffort, 1992).

Moisés (1986: 179), six years after the party's creation, summarised PT's traditional profile as follows: "a socialist, democratic, mass and fighter party...which had broken elitist political traditions, as it was created from the bottom and off the state, and it was the first successful experience of workers' political organisation." Moreover, Nylén (2000) points out that by the end of the century, the PT had become the institutional expression of the overwhelming majority of the Brazilian left.

The PT had a fame of being an intransigent opposition party, which had been against the 1988 Constitution, the Real¹⁶ economic plan and,

¹⁶ The Real plan, elaborated and implemented during Itamar Franco's government (1992-1994), brought stabilisation to the country's economy and reined the rampant inflation. The plan, continued by Cardoso, is regarded to be the ground where the actual Brazilian solid economy

surprisingly, the major opponent of the CGU proposition in 2001¹⁷. The party argued that the CGU was a political manoeuvre to avoid a comprehensive corruption investigation by the Congress (Genoíno, 2001). The opposition party was playing its role, as de Sousa et al. (2009: 7) remember “The incumbent party turns to anti-corruption campaign to refresh its image, while the opposition tries to use it against them.” However, the PT used to be the main and loudest voice against corruption in politics. Therefore, it was expected that the combat of the problem would receive a special attention in the new government.

It was not only expectations about what was going to happen to particular policies, but also to the state in general. Previous governments since democracy returned had had a crescent neo-liberal view of the state. This tendency reached the apex with Cardoso’s, whose dependency on and alignment with international financial organisations lead the country to a privatisation programme which reduced significantly the number of public enterprises – this considering Brazilian historical tradition (Abrucio, 2007; Hagopian, 1996). Moreover, the late Cardoso attention to anti-corruption may also be part of the neo-liberalism praxis, as Hindess (2009: 31) puts it “the global anti-corruption movement...plays a small, but nonetheless significant, part in the larger programme of neo-liberal reform.”

A PT government could represent a discontinuity in this tendency due to its *statising* discourse. Nonetheless, with regard to democracy, the election of Lula and the ascending to power of PT was another step towards its consolidation. It is said that the crescent moderation in its discourse, campaign and in the coalition composition contributed to diminish

stands.

¹⁷ See discourses of PT representatives in Congress just after the announcement of CGU on 02 April 2001 <http://www.camara.gov.br/internet/SitaqWeb/pesquisaDiscursos.asp>

resistances against Lula/PT candidature (Carreirão, 2004: 193; Santos, 2003).

Twelve years before, critics would argue, the election of the Worker's Party and its leader would have been a menace to democracy (Weyland, 2005). Regarding democracy and the party, Nylén (2000) points out that PT has contributed positively to the consolidation of Brazilian democracy in at least three important ways: 1) acting within the boundaries of democratic "loyal opposition"; 2) using the opportunities provided by formal democracy (electoral debate, parliamentary debate and concrete experiences of governing at the state and local levels) to openly oppose social and economic exclusion and the practices that perpetuate them and to champion more inclusionary practices and policy outcomes; 3) providing a nonviolent channel of participation for political activists and potential activists who reject Brazil's traditional phase of no ideological, patrimonial, and organizationally diffuse parties.

Despite some reactionary voices, the transition process happened smoothly and "even members of the military and the business community accepted the legitimacy of the election of a figure who had been anathema to them as little as ten years earlier" (Kingstone and Power, 2008: 1). The ideological spectrum in Brazilian politics narrowed decisively, and the deep gulf between left and centre-right was bridged sufficiently to make alternation in power possible. Therefore, Lula's successful campaign for the presidency in 2002 and the PT's takeover of government power in January 2003 did not trigger any threat to Brazilian democracy (Weyland, 2005: 119).

Thanks to a then recent created law, it was possible to the elected government to form a transition team, which worked together with the existing government until the Lula's inauguration (Costa and Andrade, 2003). The objective of the norm was to "preserve the society from the risk of

discontinuity of public interest actions” and “confer transparency and ethics to the governmental activities between the election results until the inauguration” (Brasil 2002a, 2002b). These initiatives may be taken for granted in more developed democracies, however, for the Brazilian political praxis, sharing information with the successor, particularly when it is a political adversary, was an innovation (see Chapter 4).

Proposing a normative transition of government in an “open day” basis was much more than an elegant gesture of the outgoing government. It was also an opportunity of Cardoso’s team to share concerns and guarantee that international commitments (such as financial ones with the IMF) would be respected by Lula (Filgueiras, 2003). The elected government, months before the successful election, had sent signals that its intention was not to promote a revolution in the government.

Indeed, on 22 June 2002, Lula heralded the *Carta ao povo Brasileiro* (The Letter to the Brazilian People), a discourse in which the PT’s leader revealed his government intentions just in case of being elected. In short, the Letter to the Brazilian People was an initiative for calming down the sceptical market, criticising the outgoing government and indicating that there would not be shocks. The document pointed out “necessary changes shall be done democratically and in respect of institutional landmarks” (Silva, 2002: 2).

A four-page letter addressed by a still presidential candidate could not be a guarantee or a commitment to a kind of government; however, it had a positive impact on political environment. Another point contributing to such a relief and that is worth citing is that PT was not running alone in the presidential campaign. A coalition involving 5 parties, including the centre-right *Partido Liberal* (Liberal Party or PL) formed the outgoing government’s contenders. In the end, in spite of PT being the major party, an eventual

Lula's government would not have a pure PT agenda.

According to Santos (2003) no candidate will succeed in such election if he or she sustains an extreme position (on the left or on the right). Therefore, Lula's victory may be explained by both the voters' move to the left and the centrist strategy of the winners (Santos, 2003). Moreover, the outcome of 2002 elections forced the elected government to negotiate from the beginning, as the original coalition conquered only 42.5% of the Câmara dos Deputados' seats. Thus, in order to form a majority in Congress, Lula had to adhere to the traditional *presidencialismo de coalizão* and exchange posts for support. As a result, 62% of the Câmara were in line with the new government 6 months after the inauguration. Therefore, the previous exaggerated unpredictability of a Lula/PT government for the democratic institutions was not justified, at least to some aspects of the Brazilian traditional politics.

In such a scenario, one would argue about the implications of this coalition to the Lula's campaign agenda and to the institutional dynamism we have been discussing in this research. A campaign agenda is for election and is not necessarily an effective programme of government, particularly in the case of Brazil (see Chapter 4). This is true because the benefits to be part of a government are very high, but the costs of negotiating this support to a common agenda are also high (Santos, 2003).

With regard to institutional dynamism, the signals sent by the incoming government, while not representing that everything would stay unchanged, revealed an expected low impact on key areas and democratic institutions, at least in the first year of government. Confirming Lula's intention, the CGU would have nothing to worry about in terms of continuity. The anti-corruption institution, or part of it, however, was not

entirely convinced of that. Thus, CGU actors started an earlier approach that will be discussed in the next section.

7.2. The CGU's strategy towards the new government

Future uncertainty may have motivated the CGU to looking for strengthening its foundations and this aspect may be the same reason by which the institution anticipated to the transition of government. That is, with the election's results and the future new government defined, but before it had assumed the power, CGU actors started an approach to the new presidential team who worked together with Cardoso's to prepare the transition. The innovative aspect of an elected government working within the incumbent in a particular structure attracted a wide lobbying range.

Thus, taking advantage of the opportunity were private and non-governmental organisations as well as the public service (unions and careers). The CGU was not alone in its lobbying intention for a stronger anti-corruption institution¹⁸, but its motivation towards the new government had a reason related to the institution own faith. Precedent rulers, including Cardoso in his first term, had proved there was strong probability that the anti-corruption institution would be markedly affected by the transition. Therefore, it was a prudent attitude the CGU assumed in foreseeing the tendency of change. Surprisingly, the initiative departed from a group formed by SFC individuals and not by originals CGU (the ones who founded the institution).

These actors were basically internal control professionals or experts

¹⁸ The transition team also received from the *Transparência Brasil* (TB) – at that time a chapter of the *Transparency International* – a proposal of an anti-corruption agency, which exceeded the reasonable model of the CGU. The proposal was not for reshaping the CGU, but to organise another independent and super powered agency. The first CGU minister of the Lula's era, Waldir Pires, in the interview for this research argued that the TB's suggestion was “not adequate for a new government” (Pires 2009).

with not necessarily the same minister's idea about the format of the CGU, in particular, and the anti-corruption function, in general. At that time, the recent internal control function assumed by the CGU was in a process of accommodating and the minister authority was not easily enforced because she would certainly leave the government when the new one arrives three months later. The new CGU actors, on the other hand, were tenure career members and would stay whatever the institution format. As they were dealing with a highly specialised area, these experts were trying to use their expertise to influence the policy in the area. Gutiérrez (2010: 60) nominates this initiative as *knowledge brokerage*, which is "experts' strategic use of knowledge and connections in order to gain political support for their policy proposals."

The transition government team received from the group a proposal that would change the institution and its relationship with the bureaucracy. The document intended to emphasise internal control function and the interaction between the activity and public managers, that is, the intention was to redirect the focus to management and auditing instead of punishment and prosecuting (Government Informant 3, 2009). Another informant revealed that "the group wanted a different institution to substitute the CGU; it would be a national body of audit to follow up public policies and inform the government about policy performance" (Government Informant 9, 2009).

Following Mahoney and Thelen (2010), this attitude for change could be described as *subversive*, in the sense that idealisers intended the displacement of the institution. In the previous chapter (Chapter 6) we discussed how the change represented by the incorporation of the SFC was organised and implemented by CGU actors. In that occasion, institutional challengers wanted to preserve the institution. Now new challengers,

however, seek another set of rules. Notwithstanding its expertise, the group intention would have to wait for the real agenda of the new government.

It is important to note that the CGU's strategy towards the new government was only possible because the formal structure of the transition process. The seventy-seven appointed positions formed a temporary but real new bureaucratic agency, which had competencies to know and interact with the others. An informant complemented that the transition process also benefited the CGU in the sense that its "future leaders had the opportunity to understand in advance the institution's structure" (Government Informant 15, 2009). This conferred to the CGU's move an aspect of professional/administrative lobby, rather than political. However, due to preconceptions of the Brazilian political tradition, in which public institutions are susceptible to powerful groups that manage to influence using their economic strength through hidden connections or clientelism (Santos, 2012: 14), any approach to the incoming government would be seen the other way. That is, political lobbying, a practice that in Brazil has no specific legislation. Indeed, it was the perception of some senior civil servants who witnessed the approach (Government Informant 9, 2009).

Anticipate the eventual changes of a country in movement, we mentioned earlier, should have been the real intention of the CGU in direction of institutionalisation. To achieve this, using the arguments of Huntington (1968: 12), the organisation has to "acquire value and stability." There is no doubt that the desire of the CGU was to be permanent (to acquire stability), meaning that it was "no longer a mechanistic entity, easily altered or eliminated" (Ragsdale and Theis III, 1997: 1282). This desire came relatively earlier for a recent created organisation, one would argue.

However, it is important to take into account, the CGU was not only

the individuals appointed in 2001, but also the larger group formed by the SFC career, now (and more importantly) part of a stronger organisation. The other element for institutionalisation, the value, which is the “prizing of the organisation for its own sake (its distinctive importance in society)” (Ragsdale and Theis III, 1997: 1282), seems to be partially dependent on the stability, and as such, the CGU again had to wait the years to come.

In line with this, and probably acquainted about the demands at that time, the former CGU minister (the first of Lula’s era), Waldir Pires, in the interview for this research, declared that “in order to be worthy of any merit, the institution must have its importance recognised by society” (Pires, 2009). Institutionalisation involves and is function of other sub elements such as adaptability, complexity, autonomy and coherence (Huntington, 1968). They were explained in the literature review and will be remembered in the next chapter.

Defending the CGU before the transition team was not only an initiative of the career staff, but also of its executives. The last Annual Report issued by the outgoing government is a good example of the intention of them in forging a necessary institution for fighting against corruption. Although supporting a concept and format that differed from those idealised by the new government, the Annual Report of 2002 planted a promising figure about the CGU. Compared to the previous one (2001), the 109-pages-document was more than the double in extension and stressed the achievements of the institution and the challenges it and the new government would have to face in order to keep the problem of corruption under control. Relevant in the document is the exhaustive mention about the importance of the institution to the society and how the CGU had been accepted within the bureaucracy.

The ministries' extensive support to the CGU's activities ratifies the firm determination for fighting corruption...moreover, the work of CGU reinforces the understanding that stimulating the citizen's participation is the better vaccine against deviations of conduct in the public administration...Up to now, due to the CGU's firm action, the institution has conquered the trust of the society and raised the public administration's interest to the importance of the control, disciplinary actions and the ombudsman function [anti-corruption activities] (Brasil, 2002c: 108-109).

The CGU's executives wanted to prove the institution had already acquired value when stressed their own view about society's opinion on the institution. They moved further to highlight that "the institution is a project of the State" (Brasil, 2002c: 109), meaning it was independent from governments. Whatever the function an official Report may have, this one was made public and may have served to guide the transition team.

Annual Reports (Relatórios de Gestão) are mandatory accountability documents to be submitted, together with financial reports, to the competent control body; they are useful, among other things, for the process of auditing and assessment of the public organisation, and by law they must be publicised in the organisation's websites. As they are internally elaborated and do not necessarily catch public attention, the CGU 2002 Annual Report gains more importance due to its content and the particular audience it intended to reach.

Another move made by the institution to promote itself in the last year of the outgoing government was to take advantage of any opportunity provided by the media and society's denunciations. This involved all the structure, as the former SFC's secretary pointed out "the orientation was to execute actions that caused the highest and immediate impact on the public. The minister had established objectives towards transparency of the actions,

increment of audits and the investigation of any allegation of wrongdoings” (Pinheiro, 2009). Again, it was an unusual attitude for a public service (with no bargaining budget and contract to distribute) in the last year of a government. Traditionally, slowing down the pace is the rule, particularly when there is no perspective for the executives to continue in the next administration.

The career staff strategy approaching physically the transition team and the attitude and message, in the form of the Annual Report, elaborated by CGU’s executives are evident examples of internal institutional reaction. These reactions were motivated by changes in the environment (government transition, society organisation/participation, democracy, not a crisis), but the initiatives came from the within. Both initiatives aimed to changing the institution. The first, from part of the career staff, that is former SFC staff, wanted a new set of rules, emphasising auditing and internal control (Government Informant 9, 2009; Government Informant 15, 2009). The other, from the executives, that is the CGU originals, wanted a stronger institution, where the auditing and internal control continued to work together with disciplinary action and ombudsman function, an institution to be transformed in part of the State (Cruz, 2009).

Despite the apparent conflict between both approaches, they supported a permanent anti-corruption institution. Additionally, it is not possible to assume that these initiatives happened uncoordinatedly, that is, the individuals acted independently of each other, this because career staff had to report to the minister and the Annual Report received information from the career staff.

Both initiatives demonstrate maturity from both sides and characterise the argument of Streeck and Thelen (2005) that institutional change is

emanated often endogenously. The episode of adding the SFC by the CGU explained in Chapter 6 and the movement of the institution towards the new government here discussed prove that a period of institutional inertia was not part of the CGU trajectory. This rejects, so far, the punctuated equilibrium model to explain the institution change and supports the assumptions of Thelen (2004) and Mahoney and Thelen (2010), who point out that endogenous and incremental changes approaches are better to understanding institutional path.

Perspectives from the transition team

The transition team comprised five thematic subgroups: management and government; economic development; social policies; public enterprises and financial institutions; and infrastructure. There was not a particular unit to deal with corruption and its control; however, the issue was transversal in all the groups. According to the transition regulations, each subgroup would elaborate reports by area, including administrative structure, budget, personnel, projects, emergencies, etc. The time provided to conclude the reports was limited, thus, whatever the analysis, it would be superficial and dependent on the data provided by the outgoing government.

As expected, there were tensions about the content of the reports and the use of them by the new government. According to the transition team coordinator, the PT wanted to know “the situation” of Cardoso’s government to guide the first decisions of Lula’s (Moraes, 2002). The intention was to expose the outgoing government’s “problems and difficulties”, which would be inherited by the new administration. The objective of this exposure was to reduce the initial demand over Lula’s government (Folha de São Paulo, 2002; Costa and Andrade, 2003).

Many sensitive issues should have been discussed in the reports, and corruption/anti-corruption was one of them. Moreover, there certainly were points¹⁹ to which the new government had neither a ready-to-use solution, intention to address nor plan to change, such as political reform, taxation and public sector economics. Keeping some characteristics of the status quo was a guarantee for the sustainability of the large coalition (Abrucio, 2007). For these reasons, the entire content of the documents has never been made public. Therefore, the analysis here is based on secondary sources (particularly declarations in press and interviews).

With regard to corruption and anti-corruption, the transition team made punctual diagnosis, instead of generalising the problem for all the administration levels. According to it, there were lack of control and serious corruption problems in contracts of the infrastructure area, particularly in the transportation sector. While the team found that corruption was facilitated by insufficiency of personnel, low salary and lack of professionalism in some areas, it also highlighted the great capacity and the quality of organised careers within particular administrative sectors.

Accordingly, the report on planning, management and budget pointed that “the high calibre civil servants organised in careers will be crucial to adequate the actual system to the new government priorities” (Folha de São Paulo, 2002). Apart from the rhetoric content of the message, the new government signalled, which would be confirmed later, about its intention to stop shrinking the state (privatisation and limited civil servants hiring) that was emphasised during Cardoso administration. The new government was not able to follow the international anti-corruption *manual*

¹⁹ Lula’s government was a continuity regarding taxes and economic (Couto and Abrucio 2003; Brami-Celentano and Carvalho 2007) and security (military) policies (Zaverucha 2008), for instance, but it was distinct in terms of foreign affairs and international relations (Almeida 2004).

that recommends a smaller state and reduced civil servant body as essential for succeeding in fighting against corruption (de Sousa et al. 2009; Rose-Ackerman 1999; Klitgaard 1988). It sounded as good news for the CGU; however, it was far from being clear the idea/model of anti-corruption idealised by the new government.

A member of the transition team and also public administration specialist, in the interview for this research, admitted that “the model of the CGU was carefully discussed and the transition team took into consideration all the suggestions presented” (Government Informant, 21). During the interview, it was possible to perceive that closing down the institution had never been an option, which differentiated the incoming government to the previous ones with respect to anti-corruption initiatives.

However, this by no means suggests that the decision about sustaining the CGU was made disregarding context and the institution itself. In accordance, the respondent added that “CGU had a good level of professionalisation, had found a locus in which to develop and shutting down the institution could bring political damage to the new government” (Government Informant, 21). It was clear that the new government had plans to the anti-corruption institution.

For the general public, the model of the anti-corruption institution was not of that importance. This was followed by the media coverage, which was more interested in the economic policy and speculating about who would be who to key positions in government. This may have benefited negotiations about the CGU (and others public bodies as well). In the words of the first CGU’s minister²⁰ of Lula’s administration “the elected president

²⁰ Waldir Pires had been the Republic’s general-adviser to the president João Goulart (1961-1964), federal deputy and governor of Bahia state. He became nationally known as the pension minister (Sarney’s administration) who ended the pension system deficit with an austere and clean

invited me to join the new government and I reply that my idea to the CGU was of a larger and intensive institution... 'do what you want to do' he said and offered me *carta branca* [no restrictions to act]" (Pires, 2009).

The declaration of Pires is an indicative that the new government had not an anti-corruption policy at that time, and so this had to be made by the appointed minister and the institution itself. At least in the first moment, it seemed that the CGU would be free from external pressure; besides, it was the intention of the CGU former minister to "rely on and valorise the CGU's career personnel" (Pires, 2009). Before Lula's inauguration, the CGU had a new model and plan of action that would change the anti-corruption institution again. A change "developed and only made possible with the contribution of dedicated CGU's civil servants" (Pinheiro, 2009; Pires, 2009). The only doubt about the new strategy was whether it would work. Details of the new strategy and the role of CGU within Lula's government shall be presented and discussed in the next section and in the subsequent chapter.

7.3. The role of CGU within the new government

Inaugurated on the 1st of January 2003, the new government positively innovated when it decided to preserve the main anti-corruption institution. Contrary to what had happened to the CÓDICI and CEI, closed down in the first month of the governments of Collor and Cardoso, respectively, Lula did not shut down the CGU. Rather, on the very first day, the Provisional Measure No. 103/2003²¹ not only confirmed the institution, but also created and added to the CGU a new unit, the Council on Public Transparency and Combating Corruption, thereafter Transparency Council (detailed in the next

administration. For this reason, he thinks, the president Lula invited him to the CGU.

²¹ Converted into the Law No. 10,683 on 28 May 2003.

section).

The real evidence that the government wanted to sustain and promote the CGU and anti-corruption activity to the policy level came a month later, in February 2003, with the *Mensagem ao Congresso Nacional* (Message to the National Congress). It was the first document of this type elaborated by Lula's government and framed his thinking about corruption and the policy his government would use to address the problem.

The initiative followed the previous government 2002's *Mensagem* to include corruption and its combat in the agenda, stressing the role of the CGU, but with significant particularities. In highlighting the position of the anti-corruption institution, both governments intended to catch attention, as de Sousa et al. (2009: 8) pose "while typically many parts of the government have responsibility for dealing with corruption, a single agency focuses and dramatizes a government's or society's concerns." To start with, the new government established that

The preoccupation with transparency, the control of public resources and the fight against corruption and impunity is in the essential core of the political proposal and programme of this government (Brasil, 2003, 23).

In the document, before proceeding to present the main actions, the government criticises what they call "a late and insufficient response to people's rage against impunity, and a defensive reaction to legitimate pressure from the National Congress to install parliamentary investigations [CPI]." Surprisingly, the critique was directed to the creation of the CGU. The intention of the document's passage was no other than justify the PT position at the time of the CGU announcement in 2001, as the now PT government had decided to embrace the anti-corruption institution.

Another point, which is a Brazilian politics (and politicians) defective

attitude, is the difficulty of new governments to admit or congratulate predecessors for any good initiative. Therefore, new governments commonly opt for closing down organisations or discontinuing programmes. When they identify that the benefit of keeping the initiative will be higher than the *cost* of closing it, the strategy is promoting cosmetic measures (e.g. changing name) or adding layers, concepts and changing the scope to imprint its own mark. This not at all means to say that the result of reshaping an idea is necessarily negative.

Lula's government wanted a brand new anti-corruption institution, former CGU minister Waldir Pires stressed (Pires, 2009). It can be also extracted from the PT Program of Government for the 2002 election (Programa de Governo 2002: 2, 16 and 24). As the context we have explained was not favourable for such a radical and risky measure, the alternative was to improve the existing one; in addition, veto players that were still in action at the Congress had approved the CGU. "It is necessary and urgent", the government pointed out, "to enlarge, restructure and strengthening the old CGU" (Brasil, 2003: 24).

The changes promoted by the new government in the first year did not deviate the institution from the original functions; that is, from combating corruption and wrongdoings, protecting public assets and controlling (auditing) federal public expenditures and programmes. In the first year, apart from the Transparency Council, no other unit had been added to the structure inherited from Cardoso. The career personnel were kept untouched and, with the exception of the minister, deputy minister and some other appointed posts, the majority of the managerial staff remained in the same positions. More important, the status of ministry and the localisation within the presidency structure had been guaranteed. In sum, essential rules regulating the institution had not been changed.

There is no intention here to defend the idea that automatic change is something mandatory and follow changes in the environment accordingly. Changes (essential ones) do occur as a consequence of moves in the environment/context, but they are not automatic and may take its time to be perceived. This is true particularly in context of democracy or consolidating democracy. We argue it was the case of Brazil regarding anti-corruption institution. Nonetheless, the new government, in the *Mensagem* of 2003 insisted they had “transformed” the CGU within one month of government. Then, and intriguing, one would ask, what was new about the CGU? Before giving answers to this question, it is important to note some points and analyse the question the other way: Why it was not possible to promote significant changes in the CGU structure? Is it an example of path dependence, increasing returns and positive feedback Pierson (2000) pointed out? Are there indications of new incremental changes within the institution the same way Mahoney and Thelen (2010) argued?

There is no doubt that the set of anti-corruption rules passed from Cardoso to Lula is the result of a long process of accommodation, crisis, setbacks and improvements in the area since the return to democracy. It was not only the rules that have changed, but also the context and society (Kingstone and Power, 2008b). It was no longer easy for any democratic government in Brazil to make and afford unpopular decisions such as shutting down a visible anti-corruption institution, as a Lula’s transition team member pointed out (Government Informant 21, 2009). The country was in a different phase, which may be associated with the argument of Skocpol (1992) who remarks the importance of temporal framework and political development in the understanding of distinct policies and institutions. These are the main reasons why it was not possible to promote significant changes in the CGU in the first moment.

Additionally, during transition process, it is worth mentioning, the possibility of having a fixed mandate for the head of the CGU was discussed and offered to the then future CGU minister, who promptly rejected the idea. According to a respondent, that suggestion “would be politically and legally easy to implement, but the future minister argued it would not be opportune and would remove from the president his prerogative of appointing and sacking ministers” (Government Informant 21, 2009). Minister Pires confirmed the offer and added, “accepting that was to create a ‘singularity’ within the executive, which was not prudent in the case of Brazil where political institutions were not sufficiently mature” (Pires, 2009). It seemed that the time of radical changes had passed.

Government members and policymakers revealed the difficulty in promoting a drastic turn in the anti-corruption institution in Brazil after the CGU. This is a case of path dependence “in which preceding steps in a particular direction induce further movement in the same direction” as Paul Pierson (2000: 252) puts it. This narrow conception invokes the idea of increasing returns (positive feedback), which suggests that the relative benefits of the current activity compared with other possible options increase over time and that the “probability of further steps along the same path increases with each move down that path” (*ibidem*: 252). As we mentioned earlier, the cost of exit or reject the CGU would be higher than the one of sustain the institution. Using the idea of Pierson not at all means neither that the CGU became an unchanged institution nor that it is a sticky organisation. Changes have been occurred but they have done based on the previous structure in an incremental way.

In previous chapters we showed that the CGU had been a layer upon the existing anti-corruption institution in Brazil and that changes have occurred within the institution when the process of acquiring the SFC took

place. This dynamism has not stopped with the transition Cardoso-Lula. Rather, it continued at and after transition, and persisted along Lula's government. Instead of being a locked in institution, incremental changes have occurred. Thelen (2002: 101) claimed that "in particular empirical cases...`sticky` institutions that persist over long stretches of time undergo subtle but very significant changes in terms of their form and functions." This understanding was further developed by Mahoney and Thelen (2010: I) in their theory of gradual institutional change that identified that

Once created, institutions often change in subtle and gradual ways over time. Although less dramatic than abrupt and wholesale transformations, these slow and piecemeal changes can be equally consequential for patterning human behaviour and for shaping substantive political outcomes.

There are reasons for defending this argument of gradual/incremental change in the case of the CGU, but not necessarily the same way or models presented by Mahoney and Thelen. This is true because the particularities of the case as we have already discussed and shall continue to see later in this research.

The proposed changes

Real changes of the CGU are only possible to identify when comparing Cardoso's with Lula's governmental anti-corruption agendas and praxes, and by observations of the institution's operational activity. As we have discussed (see Chapter 5), anti-corruption only came to the agenda later in the Cardoso's government and coincided with the creation of the CGU in 2001. Thus, presidents' intention with the institution was officially presented in 2002 (Cardoso) and in 2003 onwards (Lula) in the form of sections in the *Mensagem ao Congresso Nacional* (Message to the National Congress) of those

years.

Not surprisingly, the institution inherited by Lula was one in maturity process, or, as we have mentioned before, in process of institutionalisation. Despite the publicity the institution had acquired since its origin and the structural improvement received in 2002 after assuming the SFC, it would take time to the CGU to be completely assimilated within the public administration and by the entire public. However, the CGU seemed to have found open spaces where to develop; and this thanks to changes fomented by the sense of opportunity of both the institution itself and the government under which the institution has operated. Whatever the reasons, the kick off made by Cardoso was followed by Lula, each government with its own particularities in terms of orientation, function and structure. From now on the analysis will be centred in the changes promoted during Lula's government. In this section the discussion focuses on the proposed changes presented in the first months of government, and in the next chapter we shall see other developments in details.

What emerged from the transition team discussions as a proposal, which was formally presented in the first day of government were a slightly improved structure and a subtle change in the name. The structure improvement came with the adding of the Transparency Council and the subtlety the definitively adoption of the name *Controladoria* instead of *Corregedoria*. The term²² *Controladoria*, as the government defended, "far from meaning a change in nomenclature only, it represents ample scope and attributions" (Brasil, 2003: 24). Indeed the term is more encompassing than the previous one, as it was limited to the meaning of disciplinary actions.

²² We have been using the term *Controladoria* throughout this thesis as a matter of uniformity and to facilitate the understanding. Officially, CGU was born *Corregedoria* in 2001, changed to *Controladoria* in 2002, then *Corregedoria* again in 2002, and definitively *Controladoria* in 2003.

Controladoria means functions of control (auditing, investigation, surveillances), management and, in the government, ombudsman and disciplinary actions. This was a matter of contention between the SFC career personnel and the executives of the CGU in 2002 (see Chapter 6). At that time, the minister wanted to focus on disciplinary activities (*corregedoria*) and the SFC professionals supported the vision of a *controladoria*. Their movement towards the transition team had also this argument and, regarding this point, it seems to have been effective.

The Transparency Council was, and still is, a collegiate and advisory unit formed by voluntary (unpaid) representatives of the government and the civil society (NGOs, churches, unions, professional associations, etc.) disregard political affiliation, and established for the purpose of “suggesting and debating measures to improve methods and systems designed to control and enhance transparency in public management and strategies to fight corruption and impunity” (CGU, 2010). Conferring more legitimacy to the actions of the CGU and bringing society closer to the institution were the real intentions of the government with the Transparency Council.

The collegiate, however, had no power to implement or enforce the implementation of any regulation by the government and there were criticism about the legitimacy and capacity of some members (Civil Society Informant 5, 2009). Its suggestions could be introduced by the government, as it has really happened, but with no obligation. Nonetheless, the initiative of the government towards the CGU with the implementation of the Transparency Council demonstrated at least interest in the anti-corruption activity. In the words of the government “the Council will permit the direct participation of the society in the control, which is crucial for the efficacy of the fight against corruption and impunity” (Brasil, 2003: 25).

In line with this the government stated the intention to “face the problem differently, that is, bringing in the society and the citizen to a proactive position as a partner.” This, more than rhetoric was an indicative that the CGU would be more exposed and that its activities would not be limited to monitoring or co-ordinating, as it was the view of the predecessors. The idea was to transform the institution as more operational as possible. Organised was a process to hire, by competitive public examination, more 300 professionals to join the institution later on 2003. In its plan to expand the CGU, the government decided to not promote any budget or posts cut of the institution, “CGU was not only the unique governmental body to be saved from rearrangements cuts in 2003, but also had improvements in these” (Government Informant 14, 2009).

Saving the CGU from cuts had its purpose. This was a programme the institution was about to implement, the *Programme de Fiscalização de Municípios por Sorteio Público* (PFM) that would put the CGU literally on the road and on the media. By this programme, municipalities to be inspected would be selected through the lottery system in a regular basis and have all the federal resources received audited by the CGU. This was a special programme executed together with the regular activities of the institution. In 2003 there were seven events and 281 municipalities all over the country had been audited. The PFM has been a tremendous media success and has acquired strong opposition from the audited and similar support from the public. Due to its importance to the institution trajectory, the programme will be analysed in detail in Chapter 8.

With regard to transparency the institution started to improve the *Portal da Transparência* (Transparency Website) a mechanism by which any citizen may access and follow all the government expenditures, except those

protected by law (security reasons). There were also projects to expand under the supervision of the institution the national ombudsman and disciplinary system, projects that came into effect years later in the process of institutional development. In addition, the ambitious plan was to develop and strengthening partnerships with law enforcement bodies and other control organisations of the state, and international organisations.

The plan for the CGU was to gain visibility through expansion and diversification of the institution's activities. However, in the beginning of 2003, the intensive agenda had many contrary opinions. They were within the institution, in the government and in the opposition. This was not new for the CGU, an institution that had emerged amongst severe critiques from those who now has the task to protect it. New challenges the institutions would face in the years to come and with them the ongoing process of change and adaptation. This is what the next chapter will analyse.

Conclusion

The trajectory of the CGU as an institution is one that involves different processes of changes. Changes have occurred within the institution and in its context. The institution in its own role has promoted change and the context in which the CGU is inserted has forced change as well. The chapter has been developed in this sense, that is, that changes are always occurring and may or may not influence the institution. However, in order to understand changes and the institution itself one has to look at two sides, the institution and its context.

The CGU had been created in a context of neoliberal administration with a particular purpose of attending a presidential demand. As this

government is about to depart, giving place to another that in theory is different (*leftist and statising*) and that was vehemently against the purposes of creation the institution, concerns about the CGU have risen. In order to understand the event of changing governments the context may offer explanations. Brazil had improved its democracy in the previous ten years of the 2002 presidential election, and according to Kingston and Power (2008), the country was another Brazil. More participative society, significant reduction in illiteracy, more stable institutions and a crescent interest for information had transformed the context of 2002.

This permitted, among other reasons, such as the moderation in discourse, the Workers' Party (PT) ascending to power. The context also permitted that the elected worked together with the incumbent with a transition team government before the inauguration. This facilitated the access of lobbying, including the CGU's, which take advantage of the situation promoting two fronts of lobby, the career personnel and the executives. Independent of the interests of both groups, the initiatives have contributed to the improvement of the institution, or at least, have contributed to convince the new government about the importance of the institution.

Circumstances of the process, the context of the country and the very attitude of the CGU imposed a high risk to the new government in case of deciding for shutting down an anti-corruption institution, as its predecessors have made. The new government was well acquainted of that and, instead, decided to maintain the CGU and promote changes in the sense of improvements. This happened not only because the institution was crucial for the PT's anti-corruption programme, but also because the new government would benefit from the improvements.

The chapter complement the first phase of changes that have occurred within the CGU and open up the new era of changes (and development) under a new government. It is a contribution to the institutional scholarship as it reinforces arguments that institutions are not locked in and that change is something related to institutional development and not necessarily to institutional fall down.

8 - Towards institutionalisation

To become institutionalized, an organization not only must be able to defend itself against its environment but must have an offensive capacity also.

Larry B. Hill (1974)

Our historical institutionalist analysis so far, after revealing antecedents and discussing aspects that forged the initial steps of the CGU, brings us to the point of looking at consolidation. This sequencing aspect of the analysis, which is also revealed by the arrangement of the chapters, not only facilitates the understanding of both the case and argument, but also agrees with the theoretical discussion that launched the analysis in the Chapter 2.

We are interested in the institution itself and the manner in which it has been formed and changed. In this last chapter we are still focusing upon the dynamic of the institution. However, our interest here is explaining how the CGU, after another governmental transition, assumes its role as the Brazilian anti-corruption agency through innovative programmes²³, internal restructuring and external co-operation. In the words of the institution, “since its creation, the CGU has steadily improved its statutory structure and work processes to meet the institution’s mission more efficiently” (CGU, 2009: 1).

This consolidating process we regard as institutionalisation in the way

²³ Programmes are referred to here as institutional means to delivery the anti-corruption policy.

Samuel Huntington (1968: 12) pointed out: 'institutionalization is the process by which organizations and procedures acquire value and stability.' Additionally, in the analysis we critically apply the dimensions of institutionalisation suggested by Huntington, which are complexity, coherence, autonomy and adaptability.

Huntington's four dimensions are crucial for the analysis of the process of institutionalisation. They are integrated into the discussion of institutionalism we had so far in the sense of internal and external criteria for the process of change. According to Hill (1974: 1075), it is important to apply both criteria, internal (complexity and coherence) and external (autonomy and adaptability), to avoid a limited perspective for the analysis of the process of institutionalisation. This is true because the ambit of institutions is "two dimensional" (Huntington, 1968). Accordingly, besides the emphasis on the CGU's internal structures and capabilities, it is a matter of concern the organisation environmental relationships.

Structural and organisational aspects of the institution are those related not only to the physical structure and personnel, but also to the institution's programmes. In other words, a particular combination of activities designed to achieve specified goals. Innovative programmes have been suggested and implemented along the eight years of Lula's presidency (2003-2010) and they are crucial for the changes that took place within the CGU. That is, programmes conducted by the institution triggered institutional adaptation and structural/operational changes. It is important to note that all those new programmes have been engineered from inside the institution in an attempt to occupy open spaces. As it shall be discussed, the CGU itself has been the main driver of its own path. It is not to say that the anti-corruption institution is untouchable or exempt to political (external)

influence, but these initiatives (programmes) are evidence of two of those dimensions of institutionalisation: complexity and autonomy.

Based on the implications of programmes on the institution, the chapter discusses the CGU's institutional co-operation²⁴ with other governmental bodies (the Federal Police and the Prosecutor's Office). These initiatives have also influenced the institution internal organisation (formal and informal) and, consequently, its attitude before society and the way society see the anti-corruption institution. That have been mentioned, it is important to figure out that institutional interests are not only for internal implications, but also for influencing institution's external environment. The maturity acquired by the CGU through programmes and co-operations have been also used by the institution to launch itself as an anti-corruption reference. This is true not only nationally but also internationally, as the several international initiatives and agreements with multilateral and foreign organisations (OECD, UNODC, UNESCO, OAS and British Foreign and Commonwealth Office - FCO) have proved.

We are also interested in investigating what may be expected for the future of the CGU during the presidency of Dilma Rousseff, whose inauguration occurred on 01 January 2011, and onwards. In order to do so, Mrs. Rousseff's first Message to the National Congress is analysed, we also identify points that have not been reasonably attacked by the institution. This is important to point out because governmental transition is always a delicate situation for institutions. As we discussed in previous chapters, transitions have been of particular importance to anti-corruption institutions

²⁴ The institutional co-operation to be analysed is the interaction and partnership between governmental bodies whose anti-corruption activities may be interconnected. It is also important to be studied, as the other institutions are actors of the environment in which the CGU are inserted. Their interaction may affect the adaptability and autonomy of the CGU.

in Brazil. That is, they have been created, altered or closed down in these periods. However, as Rousseff's presidency may be considered in some extension Lula's continuity (and keeping the same CGU's minister is an evidence of that), it is possible to exercise some predictions for the anti-corruption institution.

The chapter is organised in three parts as follows. The first part deals with the new programmes implemented during the Lula's government and the implications of these initiatives to the organisation and its operations. The part also discusses the co-operation the CGU developed with other national institutions responsible for anti-corruption activities and the internal and external impacts of these joint operations. The second part expands the view about the institution focusing on innovative activities that approach the CGU to the academic area. This move is a clear attempt to not only apply but also produce, or contribute to produce, knowledge on the area of anti-corruption. This section also describes the international insertion of the CGU by discussing co-operation and agreements the institution developed with multilateral organisations. The last part of the chapter is reserved to discuss and investigate the future and possibilities for the anti-corruption institution during the presidency of Dilma Rousseff and onwards.

It is possible to understand from the issues discussed in the chapter that constant innovation is essential for an institution to evolve, but such a sequence of innovative initiatives is not always possible to keep under control. On one hand, the thesis, and the chapter in particular, contributes to defend the argument that a permanent institutional equilibrium is infrequent and that this disequilibrium is key for the institutional endurance. On the other hand, as an institution has limits (structural), delivering its promises or attending the expectations generated by innovations (disequilibrium) is a

challenge that, once not attended, may bring negative implications to the institution.

8.1. Building a national identity through programmes and co-operations

Approaching the public

New government, new strategy to take advantage of the CGU. The strategy had to be rapidly implemented, using the existing anti-corruption structure. The orientation was to explore “open spaces²⁵” the predecessor had left unattended in order to create new facts, which would favour the construction of a new face for the CGU. The strategy started to be developed during government transition just after the selection of the minister and aimed to “bring the activity closer to the society” (Pires, 2009). Notwithstanding the noble initiative of involving society, the strategy would consequently carry much of the CGU’s efforts away the traditional – and still vitiated – federal bureaucracy.

Whatever the initial plan, it had to be done under the existing rules, as the time of institutional deconstruction had passed. This made all the difference in the sense that, at least within the first year, the new government would have limited space to innovate. Such a limitation was characterised more by the anti-corruption institution than by the power the president and the CGU’s minister had. In other words, the innovation had to be done within the CGU and the institution itself would lead the change. This came in a form of a new programme to be implemented all over the country, focusing on small and medium-sized municipalities.

²⁵ To mention a common expression used by the current CGU top staff when referring to those areas or activities under the institution competencies but not previously attended.

Programa de Fiscalização a partir de Sorteios Públicos

The *Programa de Fiscalização a partir de Sorteios Públicos* (Random Audits Programme, or *Programme Sorteio* - PFS) was nationally announced and included in the Message to the National Congress in February 2003. The initiative aimed to comprehensively inspecting and auditing federal resources expended by local governments selected at random by the same methodology of the state Lottery in an open-to-the-public event. The focus of investigation was on federal resources transferred to municipalities (expanded later in 2004 to include states) and not on the expenditure of their own revenues.

President Lula, addressing to “people interested in combating corruption” during a PFS event stated that he saw the PFS initiative “with enthusiasm, firstly because the innovative aspect of the programme and secondly because its main objective of preventively investigating instead of condemning and punishing” (President Lula, discourse, 12 May 2003). The PFS event was also an opportunity for the president to regard highly the CGU: “In the past it was not recognised and was underestimated, but now the CGU is going to work whatever it is necessary”.

Waldir Pires, the then CGU minister, declared the *Programme Sorteio* was a “watershed in the trajectory of the CGU” (Pires, 2009). He was right in the sense that with the programme the institution turned to a *de facto* national-wide body going to the innermost part of the country. It is important to note that the SFC and the CGU had been doing inspections and audits in municipalities in a regular (and discrete) basis as part of their ordinary duties²⁶, but not in such an intensity and comprehensiveness way

²⁶ An audit is an examination or follow up of records, financial accounts and the management of public agencies and resources. An inspection is an investigation conducted to collect data for public policy and programmes assessment. While the audit emphasises processes and documents

suggested by the *Programme Sorteio*. That is why it is important to analyse this programme in this thesis

The CGU's white papers²⁷ summarise the programme as follows

This programme is a random sampling-based mechanism through which regions are selected to be inspected in detail for how they are using federal funds released by agencies of the federal administration, either directly or through transfers, under any form, to agencies of state or municipal administrations and to any other legally eligible agencies or entities.

The effectiveness of these random sampling-based inspections as a corruption-inhibiting tool is ensured by the fact that, even when no irregularities are detected in the inspected regions, the process stimulates public administrators to adopt stricter control practices to ensure the correct use of public money. After all, nobody knows who will be chosen next.

Operationally, a team of about 10 CGU's auditors would arrive in a municipality and for 1-2 weeks conduct investigations on the execution of all federal funded public policies and programmes. Whoever the executor (local government, NGO etc.) the CGU team would investigate. Due to a natural local governments' dependence on federal resources, they would be the main focus of investigation. The task would expand the ordinary audit process as it would stress the contact with the local public. Considering the municipality selection, planning, fieldwork and reporting the whole process would take about two months to complete. The transparency of the process, from selection to reporting, would be the key behind the *Programme Sorteio*. Such a transparency would also purposely expose the institution in a way never seen before.

The first *Programme Sorteio* event (or simply *Sorteio*) took place on 03

(efficiency), the inspection look at results and realisations (efficacy / effectiveness).

²⁷www.cgu.gov.br/english/AreaAuditoriaFiscalizacao/ExecucaoprogramasGoverno/Sorteios/index.asp

April 2003 when five municipalities, representing the five Brazil's geographic regions, were randomly selected. This number were later stabilised in 50 per *Sorteio*. In the end of 2003, after seven *Sorteios*, a total of 283 local areas spread over the country had been audited and inspected by the CGU, using the new approach. The figures are impressive²⁸: R\$1.5 billion (£0.55 million) of federal public resources audited, 14 thousand of inspecting procedures and 2.5 thousand of audit reports were produced as a result of the *Programme Sorteio* in 2003 (Brasil, 2004). These figures are as important as the publicity the institution acquired with the PFS, which turned the CGU up in the society.

A *Sorteio* brings anxiety and expectation to municipalities (Ferraz and Finan, 2008: 708). The anxiety, from the side of local politicians (and their national counterparts), whose administration could be possibly questioned. The expectation, from the population to finally see any kind of investigation in their local area. By the side of the institution, the *Programme Sorteio* has profoundly rearranged its operations. The CGU was accustomed to interact mainly with public officials and other governmental structures at the federal, state and local levels. It was a bureaucracy-bureaucracy relation, which had prevented the institution from taking advantage of society in the process of investigating. Receiving reports and denunciations of corruption by post or through the Internet was quite impersonal and did not establish real bonds between the institution and the public. Living the public reality, personally receiving denunciations and reports and talking about them with citizens approximated the CGU to society. This helped raising anxiety, but also contributed to exaggerate expectations.

What to expect from the *Programme Sorteio* was also unclear within the

²⁸ Numbers are even more impressive by the end of 2010, when 1800 (32%) of Brazilian municipalities and R\$16 billion (£6 billion) of federal resources had been audited under the PFS programme (Hage 2010).

institution. It was not only because the operating aspect of the new programme, which was a novelty among the CGU professionals. The other reason was a lack of belief among those professionals (Government Informant 3; Public Sector Informant). Some found it difficult to convince the population about the government's intentions²⁹. Many others simply thought that putting so much effort on such an unusual programme was literally worthless (Government Informant 10; Government Informant 17). This was essentially because of the technical basis of the *Programme Sorteio*. To thoroughly complete an auditing/investigating process in such a limited time was at the limit of "being reckless, to say the least" a CGU professional confessed. The institution was not entirely ready for the *Programme Sorteio*, but this was not the first time adaptation had to be the rule. Indeed, adaptation was at the core of the CGU's endurance.

Our argument and the literature review we have discussed show that the development of an institution is a matter of a continuous and dynamic process of changing (Thelen, 2002; Mahoney and Thelen, 2010). The CGU's trajectory proves that. The changing process we are advocating is institutionally driven, and this is true even when considering that the ideas or propositions originate outside the organisation, as it was the case of the *Programme Sorteio*. The new programme had to be also adapted within the institution. Had the programme been implemented entirely according to the original idea, the figures we presented above would be duplicated.

Doubled would also be the tensions generated by this and, proportionally, the detrimental impact to the other CGU's activities. "My intention was to investigate 100 municipalities in each *Sorteio*, reaching about 1000 a year", the former CGU minister Waldir Pires pointed out (Pires, 2009).

²⁹ To convince the public was not a formal orientation from the institution, but it was implicit as the

His political plan had to be moulded by technical reasons. Here, again, as it was discussed in Chapter 6, the CGU professionals applied their expertise to influence the policy (knowledge brokerage). The institution changed to attend the ministerial demand, but it was also changed to conform to the organisation.

In order to understand the institution's perception of the changes brought by the new programme, it is worth citing a declaration of a former key CGU senior professional:

The substantial change occurred within the institution with the *Programme Sorteio* was the swift of attention of our operations. There was almost complete disdain for ministries and federal agencies audits. This was true because the sudden turns of our main focus to municipalities and denunciations. In my opinion, this move was purposely implemented to avoid exposure of future cases of corruption in the federal administrative sphere (Public Sector Informant, 2009).

This position was amply commentated among CGU professionals at that time. It is partially true in the sense of changing the institution's main focus; however, there is a lack of consistency in it when considering the blinded-eye to the federal administration. First, the institution was (and is) obliged by law to audit annually the federal administration bodies and report it to the Brazilian Court of Audit (TCU)³⁰. Second, such an alleged plan of deviating the control attention from Brasilia would not be sufficient as a manoeuvre to prevent the disclosure of corruption.

It would be necessary closing all the other transparency mechanisms and making an *agreement* with all the professionals involved. Besides, to believe in this manoeuvre is to believe that the new government had a

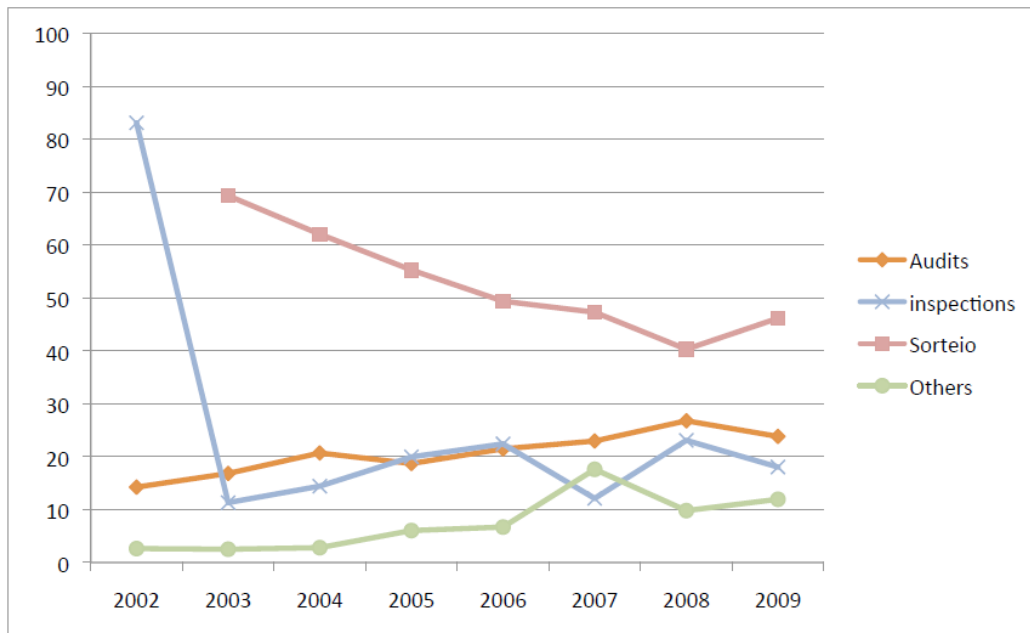
contact with citizens would be more frequently.

³⁰ The Brazilian Court of Audit is the country's supreme audit institution, which has the UK National Audit Office (NAO) and the US Government Accountability Office (GAO) as peers.

corruption policy in mind instead of an anti-corruption one. Cases of corruption affected Lula's government indeed, but not as a result of changes in the anti-corruption institution. The informant's intention, which we agree, is much more to point out the position of the CGU's professional body in protecting the institution and preserving its rules. In other words, that was an exercise of esprit de corps.

As true as physically two objects cannot occupy the same space at the same time, the *Programme Sorteio* and CGU's traditional activities had to come to an agreement. Traditional activities (annual audits³¹, regular inspections and follow ups) did not stop being done, what was reduced was the time available for them. The implication of this to the quality of the job may be questionable, particularly with respect to the ratio staff/volume of work, which in the first year of the implementation of the *Programme Sorteio* was inadequate. The graph below (Figure 8.1) demonstrates the operational resources dispended by the institution to its activities before and during *Programme Sorteio* times.

³¹ These are related to audits of accounts to verify the correct use of public funds by federal organizations and entities.



Source: The CGU Annual Reports 2002 to 2009

Operational resources are a compound of financial, human and structure resources applied in an activity.

The percentage of operational resources is based on the number of "control actions" or "service orders" (OS) assigned to each activity in a year. A control action refers to a detailed assignment or order to audit, inspect, scrutinise or analyse document or data. While one OS is generally used to audit an agency, dozens of it are necessary to perform a Sorteio.

Figure 8.1 - The distribution (in %) of the CGU operational resources 2002-2009

The graph in Figure 8.1 shows a snapshot of the strategic move the institution made from 2003. Instead of focusing majorly on "internal affairs", that is, on the federal executive agencies and bodies (financial and value for money audits and inspections), the CGU went out to approach the public in municipalities (*Sorteio* and denunciations). "According to the minister, the bulk of corruption was in the local level" (Public Sector Informant, 2009). It is possible to expand this simple view and associate the move with the statizing characteristic of the new government. "We had to be there, the people had the right to know there was such an institution...for the first time in the Republic's history the people mobilised themselves to help the control activity as a result of the CGU's *Programme Sorteio*", highlighted the former CGU minister, Waldir Pires (Pires, 2009).

Moreover, mobilising the public had another function, which was engaging as much support as possible to the anti-corruption activity and to the CGU itself. This is in accordance with the literature about corruption that points out the crucial role performed by society in combating the problem (Della Porta and Vannucci, 1997; Jonhston, 1999; Rose-Ackerman, 1999). In short, the move was much more strategic than the simple distribution of activities could show.

There is no doubt about the risks such an exposure may cause, and this is particularly true for a new institution. Not meeting the expectations is only one of those, which is well explored by Doig et al (2005). Other risks include affecting interests of actors (including veto players) and bringing unbalance to the distribution of attention (budget, media space, presidential agenda) and responsibilities within the public administration. The former is associated with the massive visibility of wrongdoings the exposure of an anti-corruption institution's activities may bring. As we have explained in Chapter 4, the pork barrel relationship between the National Congress and municipalities in Brazil is something that many would not like to see publicised. Regarding the latter risk, harmony is not always in place when different agencies and administrative bodies of the bureaucracy dispute issues of budget, prerogatives and the president's time. This is particularly true for the Brazilian federal bureaucracy, a large conglomerate of structures, as this thesis has previously described.

It is not the intention of this thesis to explore in depth the implications of the *Programme Sorteio* beyond the CGU. The programme has been studied and its impact on municipal elections and voters' behaviour (Brollo, 2008; Ferraz and Finan, 2008), level of local corruption (Vieira, 2009) and performance of policies (Aguilar, 2009) has been reasonably explored. For the

CGU, the programme made all the difference. Its success and convenience for the anti-corruption institution may be proved by its longevity and sustainability after a change of minister and during the second mandate of President Lula.

The existence of such a nationwide programme forced the government to hire through competitive public examinations hundreds of new professionals for the CGU. Accordingly, the staff, which in 2003 was 1700 professionals, rose to 2700 in 2008. Those new professionals were attracted not only by a visible and consolidating institution, but also by a salary well above the public service's average. The attractive package helped to bring to the CGU well-qualified individuals, many with masters and some doctorates. For the institution, the best point was that a considerable number of professionals would be formed based on its new characteristic, that is, less internally (federal bureaucracy) and more externally oriented (national actions).

A constant presence in municipalities opened new avenues for the institution. The findings (and information) the CGU encountered under the *Programme Sorteio* and the relationship the institution established with locals (governments and society) contributed to the development of new programmes and actions. These new programmes and actions (to be discussed subsequently), which may characterise a movement towards the independence of the institution and its main role in the anti-corruption policy in Brazil, by no means make the institution a real agency in the sense of complete autonomy. That is, this measure of institutionalisation suggested by Huntington (1968: 20) "is the extent to which political organizations and procedures exist independently of other social groupings and methods of behavior." In this particular, therefore, despite advances, there is a long way

to go for the CGU.

Programmes of Olho Vivo and Fortalecimento da Gestão Municipal

Performing audits and inspections combined with the *Programme Sorteio*, the institution perceived, contributed to establish the CGU. However, the institution also knew that acting only with this anti-corruption strategy the CGU would be, by the end of the day, *only* another investigative body like ones at state and local levels³². The institution wanted to innovate in order to move forward. The *Programme Sorteio* had its role, but what next.

Following international anti-corruption initiatives³³ such as the well-known ICAC Hong Kong and provisions on international conventions, the CGU adopted the three-pronged strategy of prevention-education-enforcement. The emphasis would be on corruption prevention and education, which were unexplored areas in Brazil. There would not be competition among other investigative agencies in these areas; therefore, the institution could once again claim originality. Moreover, the strategy was not only a move for occupying open spaces, but also for gaining society's trust and prove to the public service, particularly to administrators, that the CGU was there to help.

This idea of institutional development by occupying open spaces helps explaining the trajectory of the CGU and is defended by its administrators and professionals (Pires, 2009; Government Informant 4, 2009; Government Informant 7, 2009; Government Informant 10, 2009; Government Informant 11, 2009). This argument may be supported by the

³² In Brazil, state and local level anti-corruption bodies, called *Tribunais de Contas* (Court of Accounts), rarely move forward from document examination and are said to be politically oriented.

³³ It is assumed here considering the similarities of strategies, even though the institution in its

observations of Kreps (1990), Pierson (2002) and Thelen (2004), which reject the idea of a permanent equilibrium within the context of a given institution. The institution itself found its way through changes towards consolidation.

Nonetheless the institutional development, the CGU's programmes and moves seems to have been strategically designed in order to avoid *big conflicts* with veto players. Considering that it would be possible for an anti-corruption institution, the strategy worked at least during the necessary time for the institution's consolidation. It seems that the CGU was not confident enough about its political sustainability capacity, as the former CGU minister pointed out "the institution must proceed step by step, gaining people trust first and not confronting" (Pires, 2009). A respondent also added that the action of the CGU was "to catch attention far from political conflict area" (Public Informant, 2009).

In our case, big conflicts are those generated by attempts to change the status quo in areas where veto players are comfortably established. Regarding corruption in Brazil, the campaign financing and the relationship between the private sector and the Congress is the big conflict zone (see diagram in the Figure 8.2). The ties and *agreements* developed there may explain much of the corruption found within the bureaucracy, as discussed in the Chapter 4. For this zone, the CGU cautiously did not develop a particular strategy. There are legal and competencies limitations, but the true is that the institution preferred not to move towards this zone. The option was to explore in depth the spaces found in municipalities. Even though this is not a conflict free area, the impact (political and administrative) on the institution would be affordable. Consequently, two other programmes were developed: *Olho Vivo* and *Fortalecimento da Gestão Municipal*, in September

official documents does not explicitly affirm it.

2003 and in June 2006 respectively.

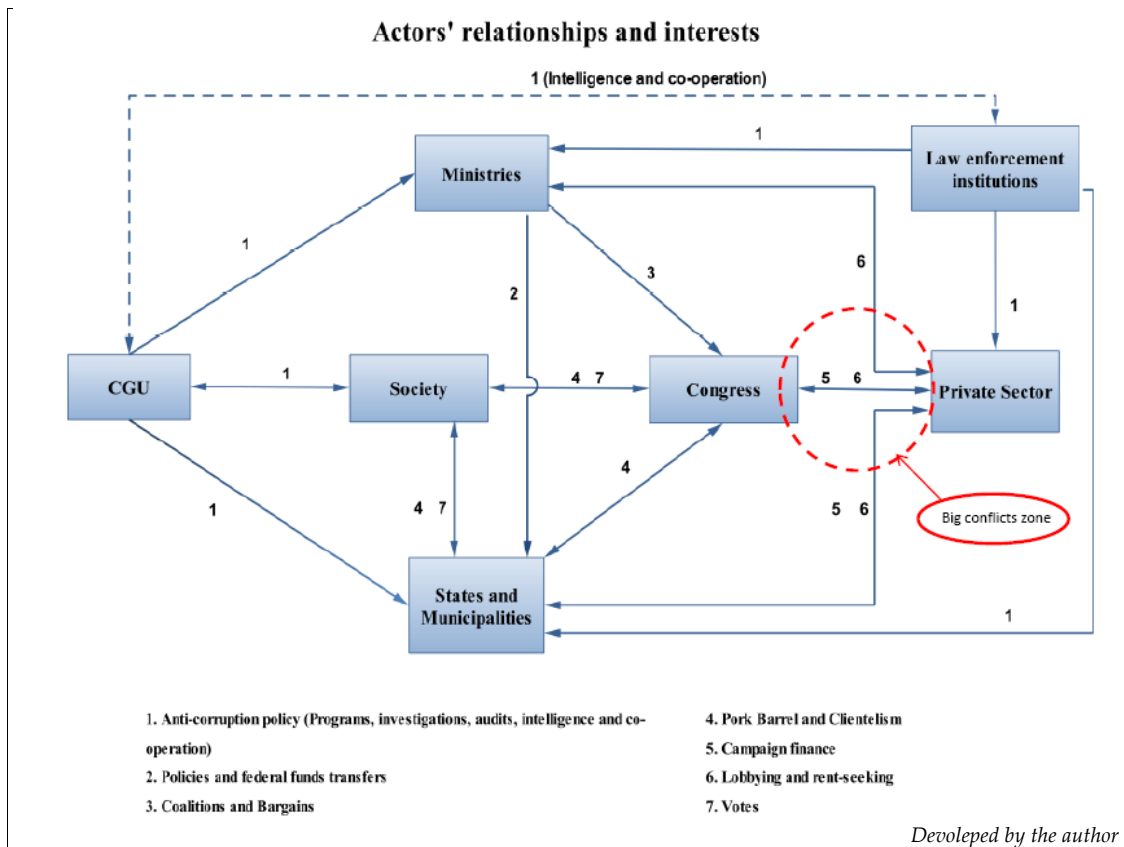


Figure 8.2 – Actors' relationships and interests

The *Olho Vivo* (Open Eye) is an educational programme and was created to enhance public awareness about corruption and to foster their participation into control activities and vertical accountability. In the CGU' words

The *Programa Olho Vivo no Dinheiro Público* (Open Eye on Public Money Program) is one of CGU's initiatives focused on preventing corruption, promoting transparency, and stimulating social control. Through it, CGU began to take preventive measures, guiding and training municipal public agents, council members and local leaders in how to prevent and minimize the occurrence of improprieties³⁴.

Five interconnected actions are within the programme: on site

³⁴

<http://www.cgu.gov.br/english/AreaPrevencaoCorrupcao/AreasAtuacao/FomentoControleSocial.asp>

education, distance learning, educational material elaboration and distribution, libraries formation support, technical co-operation and partnerships with ministries and universities. From 2004 to December 2009, the Open Eye programme promoted 174 on site educational events, involving 1.382 municipalities. An impressive number of individuals has been mobilised and trained: 7.176 local civil servants, 8.305 local citizens councillors, and 8.652 local community representatives.

The *Fortalecimento da Gestão Municipal* (Public Management Strengthening Program) is a technical and cooperative programme and was developed looking at the control weaknesses of local administrations. While the Open Eye programme deals with the citizens and operates disregarding the local government, the Public Management Strengthening focuses on the local bureaucracy and is implemented by municipalities' request provided that they fit the requirements (registration, population and randomly selection). From 2006 to 2010, 134 municipalities has been selected and participated in the Public Management Strengthening. Both initiatives were created with the federal public policies and programmes control in mind. These policies and programmes had seen their legal control provisions constantly unattended by those responsible for it: the citizens' councils³⁵ and the local administrations.

Strategically, the CGU aimed to extend its presence to opportunities beyond the ordinary process of controlling (audit and inspection). It was clear that the CGU, as an anti-corruption institution, was moving independently. However, this move and its impact was not only limited to technical issues. Programmes such as *Sorteio*, Open Eye and Public

³⁵ Citizens' councils are a mandatory requirement and formed by groups of individuals selected among the organised society (unions, churches, professional associations) and appointed by the local government.

Management Strengthening are technical³⁶ in essence, but they may have a political connotation, particularly when executed in municipalities where local leaders are in conflict.

The presence of the anti-corruption institution may be seen (or propagated) either as an evidence that a municipality's administration is in trouble or that this administration is trying to make things more transparent (Ferraz and Finan, 2008: 708-709). The CGU's capacity to control this is also limited. First, because the institution cannot intervene in local issues, and second, because of lack of political ability of most of its staff. However, as an institution, the CGU may "define the range of choice and shape political and social behaviour" (Pierre et al, 2008: 232). The challenge was (and has been) how to do this without exercising such an intervention.

The kind of political and social behaviour the institution is looking for moulding took generations to be formed. Previous chapters reasonably discussed this behaviour, which is characterised by the Brazilian traditional politics and the lack of society's organisation and participation. However, it is also discussed that society is changing. The CGU and its attitude towards corruption are evidence of this changing, as it is assuming the institutional role of promoting changing or shaping behaviours.

The anti-corruption institution itself is aware about difficulties in promoting such a change, as the outcomes of its diversified programmes seem to show. The CGU's structure and norm have been used and adapted for this end of shaping behaviour pro vertical accountability and anti-corruption. What is more important in this positive direction is that the institutional attitude has been forged within the institution. This argument

³⁶ They are technical in the sense that they are based on special skills and knowledge applied by professionals in specific field, with the primary objectives of training, supporting and informing.

by no means exempts the institution from political support for the implementation of its programmes.

Institutional co-operations

Institutional co-operation among Brazilian governmental bodies has always been a matter of clash of competences. How to succeed without invading the other's area or without being excessively influenced by/dependent on the other is the challenge for the institutions involved. In many occasions, signing a co-operation document is the only procedure to guarantee the flow of a bureaucratic process in which more than one institution is involved. In the case of anti-corruption activities, the co-operation is a new phenomenon that surged as a result of the CGU's operations. Before the CGU, the existing institutions (law-enforcement bodies) used to work in an isolated basis, each one doing its job without a co-operative sense. However, the initial co-operating objective affecting the CGU was not the exchange of investigative know-how, rather it was a matter of the CGU's teams security.

Therefore, in 2003, after threats of violence to CGU professionals during inspections under the *Programme Sorteio*, the institution was forced to call the Federal Police (PF) for help. This call resulted in an Administrative Co-operation Agreement signed in 2004 (Acordo de Cooperação Administrativa n.º 01/2004 – CGU and MJ/DPF). Threats happened by anonymous phone calls, the CGU team being followed by suspect cars, and persons trying to intimidate the team in action (Government Informant 16, 2009). After that the CGU issued many official documents to the PF requesting protection (Officials Documents n. 200304292, 200304383,

200304841, 200304292, 200433277, 2004433558). Note that it was an unplanned initiative that only took place after *Programme Sorteio's* implementation. Even though the requisition of the PF had been necessary to implement further criminal investigations, the use of the law-enforcement body was not common before the *Programme Sorteio*. This co-operation, then, may be regarded as an example of sequencing (future events determined/regulated by past choices).

Sequencing is of particular importance in our historical analysis. This has already been mentioned in the literature review when, for instance, discussing contributions of Pierson (2000, 2004) to the subject. Pierson focuses on how the order of particular events matters crucially for the eventual outcome. Moreover, the trajectory of the CGU is full of examples where sequencing is identified. The filling up open spaces process, the same that has occurred with the CGU, is an example used by Pierson to illustrate his argument. Therefore, what may explain the move of the CGU towards co-operation with other institutions are basically the decisions of going to the field through the new programmes. Going to the field revealed to the CGU that the institution had not everything to attend society's demand and that the implications of expanding anti-corruption actions were unpredictable.

Therefore, the CGU "realised" its environment was composed of other institutions it could take advantage of those. The institution started to guide its activities by including "ongoing coordination with the control and inspection agencies of the Brazilian State" (CGU, 2009: 3). The security co-operation with the Federal Police was later developed to an operational partnership involving both institutions working together in a complementary basis. That is, CGU finds and points out the problem (public money deviation, collusion), next the information is shared with the PF that

starts monitoring targets, then a joint team of the CGU professionals and police officers perpetrates intelligence operations. The combination of auditing and inspection expertise with police procedures and law enforcement power culminates in arresting, temporary imprisonment, prosecution and media spectacle.

The co-operation between the CGU and the PF has resulted in more than 30 special operations since 2004 (CGU Annual Report 2004; Mensagem ao Congresso Nacional 2005). For each operation there is a massive media exposure, which brings dividends to both institutions (and to the government as well). The public feels happy seeing on TV corrupts being handcuffed and put behind bars – even though it is just for a while. The joint-actions have been an operational success³⁷, but they are perceived differently for the different institutions.

Another co-operation was developed with the Federal Prosecutor's Office (and State Prosecutors) and started in 2004. This initiative was also motivated by the intensive presence of the CGU in the field and the consequent production of reports and evidences proposing judicial investigations of individuals involved in corruption. The formal objective of the partnership was to facilitate the flow of documents between the institutions and accelerate the analysis of cases by the Prosecutor's Office. Informally, the CGU wanted to provide an answer to the public who found the anti-corruption institution limited. That is, the CGU would present a partner that could solve its lack of enforcement and bring the courts closer. Due to the co-operation with the CGU, the Prosecutor's Office has submitted

³⁷ That is, considering the longevity of the co-operation and the attention the operations mobilize, actions are kept in secrecy and there is no explicit dispute for space between CGU and PF. It is commented among CGU professionals that in many operations the Federal Police unduly takes all the credits. However, this thought is less motivated by the PF attitude than the media coverage, which exacerbates imprisonments.

to courts 2452 judicial procedures since 2004. For the Prosecutor's Office, the advantage of the co-operation was having an inexhaustible supply of cases and quality evidences it could use in its capacity. Moreover, the Prosecutor's Office would be in the spotlight, taking advantage of media interest.

For this research, what is more important about exploring the co-operations are the implications of this to the CGU. There is no doubt that the co-operations have enhanced CGU's visibility and its operations (Public Sector Informant, 2009). However, there are criticisms about such a fast-growing, as it might result in incapacity of the institution to attend external demands generated by "overexposure" (Civil Society Informant 4, 2009). Internally, the anti-corruption institution had to adapt to new demands and responsibilities, as working together with a police body and the Prosecutor's Office involves more secrecies and criminal investigatory procedures. This adaptation or change as outcome of co-operations may be divided into formal (norms, structure) and informal (attitude).

Examples of change are that CGU professionals became more discrete and confident about possibilities of their work, new procedures were developed to attend particularities of the co-operations and others adapted to particular demands. Concerns about the quality of the CGU work (reports and procedures) and the institutional responsibility of being a reference in anti-corruption are also new characteristics of the institution the co-operations influenced. New internal structures have been created, such as subunits of special operations and specialised teams to work together with the PF and the National Prosecutor's Office. This unitis have been created to attend partners demand and respond to an ongoing internal movement for innovating (we will discuss about this later in this chapter).

A new and stricter ethics code has been implemented to protect the

information held by the institution and “control” the exposure of its career professionals. That is, CGU professionals to have another activity (job) must receive previous authorisation from the CGU minister. In the case of a lecturership position, the content of the lecture/class must also be previously informed to the institution. All of this in the name of the protection of the sensitive information held by the CGU and to avoid risks to the institution operations.

The exchanging and access to a massive content of sensitive information transformed the CGU into a strategic body and one of the “most empowered institution in Brasília” (Civil Society Informant 2, 2009). That is, the CGU has privileged access to information that may control the bureaucracy (see the discussion about the SFC in chapters 6 and 7) and hold the competency to analyse governmental bodies and agencies accounts and management. This attracted media and motivated an internal preparation to respond to it.

This section revealed that the CGU new programmes and co-operations contributed to the complexity dimension of institutionalisation. New demands from citizens and the PF and the Prosecutor's Office promoted internal adjusts both qualitative and quantitative, which resulted in an even more complex institution. In the words of Huntington (1968: 17-18)

The more complicated an organization is, the more highly institutionalized it is. Complexity may involve both multiplications of organizational subunits, hierarchically and functionally, and differentiation of separate types of organizational subunits...In addition, an organization which has many purposes is better able to adjust itself to the loss of any one purpose than an organization which has only one purpose.

The expanding strategy, however, was not limited to the Brazilian borders, as the next section shall discuss.

8.2. Moving forward and innovating

The CGU international

What we are considering as the CGU international are the incursions of the institution into the world as another initiative of adapting and specialising. In other words, this initiative is another step towards institutionalisation. In the discussion that follows we present an institution that identifies opportunities and takes advantage of these, even when its structure seems to have been used for government (country) promotion abroad. The impact of the politics in the institution is clear, but what matter in this particular case is not the intended interest of the government with the institution, but the form the institution react to this governmental call. Again, the institution (structure, norms and organisation) is the leading actor in this thesis; however, as we have been discussing it since the introduction, the institution does not live in the vacuum.

Moving abroad was not an original idea of the CGU. It was not part of the initial strategic plan designed by its administrators to establish the institution (Government Informant 1, 2009; Government Informant 14, 2009). Neither it was the idea of the CGU's professionals to transform themselves into a global reference in controlling and anti-corruption (Civil Society Informant 1, 2009; Government Informant 3, 2009). The institution, by tradition, has adapted itself to a context, not that the context transformed the CGU, but that the institution was alert to the changes. And the changes were consequences of Brazilian foreign policy objectives and priorities under Lula, particularly the “active engagement in forging regional and global partnerships and alliances oriented to the promotion of economic and social development” (Vaz, 2004: 2).

The country's foreign policy has become more “assertive”, which has

helped the country “claims leadership in Latin America more forcefully” and plays “a more active role on global issues” (The Economist, 2010). The institution has taken advantage of these opportunities and expanded its activities (CGU, 2009: 21). This expansion started with the ratification³⁸ of the United Nations Convention Against Corruption in 2005, which has provisions for following up the implementation of the document by the signatories. It is worth mentioning the initiative of the country, and the institution in particular, in hosting the IV World Forum on Fighting Corruption³⁹ in June of the same year, after signing an agreement with the British Foreign and Commonwealth Office - FCO.

To permit the CGU to be included in the process towards global recognition, the government was convinced that the anti-corruption institution had something to offer. This convincing process was based not only on the favourable personal relationship between the CGU minister and the president, but also on the innovative programmes the institution had developed and implemented so far. Five years of ongoing development forged a structure like no other in the area in which Brazil was most interested in investing/influencing, that is the South (Latin America, Africa and part of Asia).

It is not to say that anti-corruption would be a new commodity, but according to the common sense about grown-up democracies that want to be example or followed, preoccupation on fighting corruption is crucial to gain respect and to be accepted in the club. The following demonstrates the main

³⁸ Brazil has also ratified the Organisation of American States Convention Against Corruption in 2002 and the OECD Anti-*Bribery Convention* in 2000, however, at the time of those ratifications, there was not a particular and structured local organisation to follow-up those conventions implementation in the country.

³⁹ The Forum is a joint venture whose international organising committee includes the United Nations Office of Drugs and Crime, World Bank, OECD, Inter-American Development Bank, Organisation of American States and Transparency International. In Brazil, the event congregated 103 international delegations from all continents.

changes and the initiatives the CGU implemented to help its world insertion.

In light of this, in a publication addressed to the international community, the CGU stated that

International cooperation, emphasis on measures to prevent corruption, and greater public transparency complete the set of guidelines based on which CGU acts. International articulation derives from the realization, which today is unanimous, that in a globalized world corruption cannot be faced isolatedly, within the borders of each country. Articulation among nations, either bilaterally or as made possible by the coordinated actions of international organizations, as expressed in the many existing international conventions designed for this purpose, has strongly contributed toward the advances registered so far. (CGU, 2008: 3)

According to the UN Convention Against Corruption, which have been negotiated since 2002 and entered into force on 14 December 2005, states parties

Shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability...ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: (a) Implementing the [anti-corruption] policies...and, where appropriate, overseeing and coordinating the implementation of those policies; (b) Increasing and disseminating knowledge about the prevention of corruption. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Therefore, the government and the institution have always had international references for their anti-corruption proposals. Indeed, the UN Office of Drugs and Crime - UNODC has been the main international partner

and supporter for the CGU. It was during the preparatory meetings (2004 and 2005) for the IV World Forum in June 2005, which first put the CGU professionals in contact with foreign colleagues from the UK, the US, the Netherlands, Argentina, South Korea and South Africa. These contacts helped professionals and administrators to establish an international networking that would be important for actions later on.

The partnership with the UN yielded a co-operation for auditing and inspection techniques improving, social control mechanisms implementation, training seminars and research and studies with national and international consultants. The objective of the UNODC with the initiative, in the words of its representative in Brazil, was “to prepare and transform, as soon as possible, the CGU into an excellence centre in the Latin America for combating corruption” (Giovanni Quaglia, 2005: 1).

Let alone the impressive words' rhetoric, the co-operation has really opened, equipped and showed the institution. As a snowball, other contacts have been established. Therefore, since 2005 CGU representatives have made 25 international visits⁴⁰ to expose the country anti-corruption programmes, to participate in discussions about the problem and to help other countries building their own programmes. The CGU has also received visits of delegations from India, China, Costa Rica and Russia particularly interested in its enterprises.

Moreover, several other international events on controlling and anti-corruption have been hosted by Brazil since then. The aperture motivated CGU professionals to improve their profiles with foreign language training and postgraduate degrees. The institution itself found it difficult to attend all

⁴⁰ Countries visited include United Kingdom, United States of America, Netherlands, Belgium, Austria, France, Italy, Portugal, United Arab Emirates, Qatar, Indonesia, Angola, China, Peru, Uruguay, Guatemala and Paraguay.

internal and external demand, thus established a new unit in January 2006, the Corruption Prevention and Strategic Information Secretariat (SPCI). The new subunit and its particular initiatives, which in the opinion of a respondent “is more the CGU's foreign affairs office than an operational body”(Government Informant 8, 2009), shall be discussed in the next section.

Being internationally recognised, at least among those professionals and multilateral organisations, was another tool the institution has used to defend itself, its programmes and the government anti-corruption policy. This was of particular importance in 2005 and the following year due to the corruption scandal known as *Escândalo do Mensalão*⁴¹ (big monthly allowance scandal) that affected mainly the president's party, but seems to produce no consequences to the CGU. Positive views from abroad could be presented instead of local headlines incisively questioning the government. The scandal may be also viewed as an event to strengthening the anti-corruption institution, as no serious government wants to do the contrary. However, the institution continued its path indicating professionals to compose international committees, exchanging knowledge and professionals, establishing international co-operation, organising discussions and supporting researches and studies on corruption.

Corruption as a global phenomenon and the necessity to the nations to look at the problem globally may have been reasons for including or the self-inclusion of the CGU internationally. There is no doubt about the characteristics of the problem and that it has no boundaries; however, it does not imply or even force international co-operation. What are usual in this

⁴¹ The *escândalo do mensalão* was an scheme of vote buying in the Congress that involved politicians, civil servants and businesspersons. The scandal culminated in the sacking of prominent figures from the government, resignation of congressmen and the embarrassment of many. The process ended in 40 persons being prosecuted, the decision or final sentence is due to be presented in 2013 by the Federal Supreme Court.

area are countries to contract foreign consultants/organisations to help forging local anti-corruption programmes. In this regard, de Sousa et al (2009) point out the anti-corruption as an emerging business, which involves professionals and organisations keen on selling their services and expertise. Taking part in the business of course was the intention of the CGU, but money may have been of less importance. First, the institution is not “selling” but co-operating. Second, it has not been clear about the balance of this trade, whether the CGU (Brazilian anti-corruption) is having a surplus or a deficit. To sum up, it is worth citing the CGU minister⁴²

If we have been highly rated by the UN, OECD and the OAS as a country that has embarked on a serious and persistent effort of transparency, to prevent and combat corruption and impunity, it does not go unnoticed by the international community. Instead, add points to the image of our country.

The shift in a policy motivated changes within the institution. Intriguing in this case is that the policy that contributed to internal changes in the CGU was not the anti-corruption policy. Let alone the packet to adhere to economic/political blocks, such as European Union, that involves anti-corruption measures a country must implement, there is no empirical evidence nor theoretical examples to support a direct relation between foreign policy and anti-corruption, and the same could be said about the use of anti-corruption as an instrument of foreign policy. Therefore, what happened to the CGU may be considered as a collateral effect of the rearrangement of Brazil in the world. In the end, the government was a positive opportunist to use the preliminary success of the CGU programmes and innovations to present worldwide that it was dealing with the problem. In that sense, President Lula, discoursing during the IV World Forum in 2005, pointed out that he wanted Brazil “to be recognised and an example

⁴² Mr. Jorge Hage on <http://www.cgu.gov.br/Imprensa/Noticias/2009/noticia01209.asp>

not only on Football but also on the fight against corruption.” The institution, by its turn, uses the space to put both feet on the international scenario.

A new special subunit

Contrary to the case of the Federal Internal Control Secretariat (SFC), which was an existing organisation incorporated with all its vices by the CGU (see Chapter 6), the Corruption Prevention and Strategic Information Secretariat (SPCI) was strategically engineered and developed within the institution. As we have suggested in the antecedent section, the SPCI came as a necessity for the CGU to attend a crescent internal and external demand. The unit would be a place for innovation and, compared to the SFC, formed majorly by new career members and some professionals originated from outside the CGU.

The configuration of the SPCI would reflex innovative managerial concepts, such as the name of positions. That is, instead of chiefs or co-ordinators, managers. Instead of being a career-only space, the unit was open to some competent professionals from other organisations. With this sense, the subunit would have a reduced structure and, consequently, be the smallest secretariat within the federal public administration. The SPCI would be responsible for some of the most important programmes executed by the institution and would concentrate/co-ordinate all the international initiatives of the CGU. The accommodation of the SPCI, however, would not be easy and generate discomfort among other subunits within the institution, as the group interviews revealed.

Institutional challengers – or those who seek to change an institution (Mahoney and Thelen, 2010) – were within the CGU. They were career

professionals and appointed senior officials working within the institution and they found that the only way to attend the new demands would be creating a specialised subunit. The new demands appeared, for instance, after provisions in the international conventions, which recommended signatory countries to organise particular structures to dealing with anti-corruption. Another new demand was internally produced, when institutional challengers realised they needed a proper space to innovate, as the SFC would be a place of resistances (see Chapter 6). The strategy would reduce the power and influence of the SFC⁴³ on the programmes and permit the CGU “concentrates all the actions of preventing corruption and strategic information in one subunit...allowing the institution to organise an intelligence unit, which will put Brazil together with the preventing corruption vanguard countries” (CGU, 2006). Therefore, from January 2006 the CGU chart was reorganised the way presented in the Figure 8.3 below (note the indication of the SPCI).

⁴³ As we have discussed in Chapter 5, the SFC, despite reduced in size, has been reasonable accommodate within the CGU and is the institution’s largest unit, however, the majority of its well skilled professionals and administrators had another view about technical issues of the anti-corruption. Therefore, “salutary” conflicts between them and the CGU top chiefs were not unusual.



Source: CGU

Figure 8.3 – The CGU Chart as of 2006 onwards

An internal rearrangement may be understood in different ways; however, it seems to exist a consensus that there is no institutional change without impact (Mahoney and Thelen, 2010). The risk of promoting a new subunit was to create a divide within the institution and, consequently, jeopardising the CGU plans, as the new one catches all the attention and efforts in the beginning, and sharing them is a problem among Brazilian public administration components. Notwithstanding this tradition, after 5 years of the SPCI implementation the opinions of CGU professionals vary. A senior figure of the SFC remarked that the

The SPCI is important and focuses on the outside (not properly the executive's public administration) in another dimension of control, but the interaction between the SFC is real...we belong to the same career and work together, supporting the label CGU not SFC. All the actions are developed towards valorising and promoting the identity CGU" (Government Informant 3, 2009)

The informant carefully posed at the same time a different-but-

together situation for the subunits and brothers-in-arms attitude for the career professionals within the institution. The first has the intention to remember that the internal control niche of the SFC has been protected and it is worth preserving it for the sake of the CGU objectives. The second intends to show that, no matter the results of the enterprise, there is a career behind the actions. Mentioning the words career and identity is key in this moment for the process of institutionalisation, this because they are related to sustaining the complexity of the institution. A highly ranked civil servant pointed out that the CGU identity is found mostly in the regional offices than in the headquarter where the clashes between the areas used to be more frequent (Government Informant 4, 2009). He added that the frequency of clashes has been reducing, but there was room for improvement.

The meaning of identity referred to here is the sense of belonging the career professionals are pursuing in working at the CGU. The three groups interviewed presented such a sense of identification to the CGU activities as a whole and not only to a particular activity performed by a particular unit, such as the SFC or the SPCI. It is possible to say after triangulating respondents information that the clashes are an instrument of power used by high ranked civil servants within the CGU, but this instrument have not been replicated by the newcomers. Such a clashes are located in the headquarter because the subunits are there. Regionally, the structure of the offices does not permit such a situation. There are no strong divisions, professionals are in small number, and the work is more integrated.

A former SPCI secretary revealed that the bulk of CGU resources goes to the activities of internal control (inspection and audits), which are organised by the SFC; however, corruption prevention actions (the SPCI

expertise) catch more visibility and interests⁴⁴. What is the real impact of this is not easy to measure, but the SFC is always trying to compensate this visibility unbalance by attempting to influence the appointing of regional offices chiefs (Government Informant 6, 2009; Government Informant 9, 2009; Groups Interviews). The SFC is not usually succeeding in its attempts, but internal arrangements provide the internal control unit a voice at least to present a non-objection for the indications.

In this particular issue, it is important to remember that the CGU regional offices used to be hierarchically subordinated to the SFC (See Chapter 6) until 2002. Therefore, the attitude of the SFC may be seem as past reminiscences. It is also evidence that changes within an institution is incremental and take long to be accommodated or assimilated by the entire body. This assimilation in the case of the SPCI implementation was harder because its very own characteristics. Thus, the correctional (CRG) and the ombudsman (OGU) subunits were less affected because their reduced power and influence within the institution. Moreover, they were subunits that had been developed together with the CGU and not “forced” to take part on the institution, as it was the case of the SFC in 2002.

During interviews with three groups⁴⁵ of CGU career professionals about questions of identity and interaction we found that the implementation of the SPCI has motivated a constant debate within the institution. They confirmed the motivations for the secretariat as a response to international legal provisions and part of a “phenomenon of world attention to the corruption prevention and combat.” They agreed internal clashes are due to disputes for space (power), but this is not a problem that has affected the

⁴⁴ Interview with Mr. Marcelo Stopanovski on 06 February 2009.

⁴⁵ Interviewees groups were composed by around 20 individuals in total divided as follows: 1 group from professionals working at the SFC, 1 from professionals working at the SPCI and 1 working at

institution significantly. They suggested that old and formed structures (SFC) suffer more in such a process. However, they pointed that the interaction within the CGU is a reality and, as a consequence, most of the personnel found themselves belonging to a single institution. This is particularly true for the new career members, those who entered the institution from 2005. The argument for this is that the CGU has been emphasizing the issue of an integrated institution during the new professionals training.

It has been observable that the SPCI is shaping the role of the institution in the anti-corruption policy, as the most CGU innovations comes from there. This role is characterised by assuming more responsibility in the process of policy-making and keeping the corruption problem constantly in the spotlight in order to justify its presence in the presidential agenda. The secretariat has helped the institution to open new fronts in the battle against corruption, such as calling the private sector with an ethical programme, looking for children and teenagers to be involved in the process of corruption prevention and implementing advanced technology to follow up the public expenditures. Keep moving seems to be the strategy, which was depicted from the 2011 Annual Report. In the document the institution stresses their eight priorities, five of them related particularly to the SPCI such as international articulation, improving co-operation, transparency, and institutional strengthening (CGU Annual Report 2011).

8.3. The future

Another transition

After nine years of continuous development (eight of them under the same government coalition) the CGU was at last correctly mentioned during

the CGU Regional Office in the state of Bahia.

presidential candidates' debate in October 2010. The fact happened when candidates answered questions about their anti-corruption proposals. It was interesting to realise the issue of corruption was still demanding attention and that the anti-corruption institution was recognised as such. Even though candidates remembered the CGU, there was no guarantee that they were confident about particularities of the institution.

The rhetoric of the presidential campaign debate would be ratified (or not) only with the inauguration of the new president. In the case of PT's Mrs. Dilma Rousseff, who was succeeding her party colleague and supporter Lula, the expectation was that she would keep her words and would look at the anti-corruption institution the same way at least. Nevertheless, both new and transition governments are sensitive moments for institutions in democracies (Morlino, 2008). Seabra (2011: 1) adds that

In any post-election context, overall policy changes are usually bound to happen. Although far from absolute, new governments tend to bring forward new priorities and, more importantly, take under consideration new underlined variables, which inevitably end up shaping any intended course of action. Comprehensive reviews of past approaches or previous decisions are thus frequently in order.

The history in Brazil is an example of that, particularly for institutions involved in the fight against corruption. It was true, as we have discussed in previous chapters, for the transition Sarney to Collor and Itamar to Cardoso. Anti-corruption structures have been dismantled or closed down during presidential transitions and this "tradition", which was not followed by Lula, is like a ghost among those veterans who suffered the changes during those periods in Brazil. In the case of Lula to Rousseff, the fear may be not of dismantling or closure, but of a stop over the ascending trajectory of the institution (Civil Society Informant 1, 2009; Government Informant 3, 2009).

The first signals on her intention about the CGU were revealed when Mrs. Rousseff decided to keep the same minister and structure of the institution. The elect-president, at the moment she personally asked the minister to stay, she promised to “work on” the CGU anti-corruption bill propositions (Hage, 2009). The anti-corruption institution, thus, would continue under the same directive group since Lula’s first year (the incumbent minister used to be deputy minister from 2003 to 2006). Administrative continuity within an institution, however, does not mean the same space and facility for growing the CGU found during Lula’s years. As Seabra (2011: 1) points out, the “first two months of Dilma's Presidency appear to indicate that 'policy continuation' is not without its subtleties.” Dilma Rousseff is considered to be an exigent administrator who demands results from all her subordinated (Folha de São Paulo, 2007). And results or how to present results for an anti-corruption institution is a complicated thing (see the subsequent section).

Fighting against corruption and the CGU received the same relevant treatment by the president Rousseff in her first Message to the National Congress, on 02 February 2011. She posed the institution in the centre of the combat, but privileged the actions done up to her inauguration and the results of the CGU programmes and co-operations. It was more an act of accountability (full of numbers) than her presidency's intention about the anti-corruption institution. If we have to consider solely the Message and the permanence of the CGU minister, we have to accept that the position of the CGU is guaranteed in the new government. However, one could argue that it is too early to come to such a conclusion. As an informant pointed out,

[...] the susceptibility of an institution is dependent on the kind of government...in our presidentialist system the executive can everything and sometimes one hero appears and messes all up,

thus, it is impossible to predict what is going to happen with the 'government conceptions' (Civil Society Informant 3, 2009).

In the February 2011 Message to the National Congress, it is not possible to find concepts about corruption and how the problem fits in the new government programme the same way we found in Cardoso's 2002 and Lula's 2003. This may be a signal of maturity of the new government, that is, the new government take it for granted that the problem is already understood by the Congress/public and does not extend on it. On the other hand, this attitude may demonstrate the objectivity of the new administration and its obsession for presenting numbers instead of words⁴⁶. We may also speculate that anti-corruption and the CGU, for the new government, are issues that gained deserved recognition, so no need of introducing.

It is also prudent to signalise that the president has no particular idea about the institution yet. Anti-corruption is on the agenda, but there are other main priorities, as stamped on the government official mark: *País rico é país sem pobreza* (A rich country is a country without poverty). Therefore, the CGU itself is again responsible for its future and is in its hands the opportunity to sustain the presidential confidence/support. Possibly, the time has arrived for the CGU to looking for assessing its programmes more carefully and to present convincing results. The focus may change from programme-building to programme-assessing. It is not to say that there are no results or positive data to justify the institution and its programmes, the 2011 Message to the National Congress is full of them. Moreover, the institution has found its niche in the government and in the bureaucracy, but nothing is forever in politics (and this may be applied to institutions as well).

⁴⁶ President Rousseff is known for her dedication to targets and results and does not like very much of conceding interviews or appearing on the media. This behaviour is contrasted to Lula's, who

Our argument about the future of the CGU is in line with we have discussed in the thesis. That is, the institution to sustain its position should keep changing and adapting to its context (avoiding equilibrium in the sense of a static structure). This is not only applied to the incumbent government, but also to the following administrations. The time, however, is on the CGU's side, many respondents pointed out and the path dependency approach would support. Therefore, the longer the institution lasts, the harder it will be to the following governments to put an end to the CGU.

There are many implications in ceasing such an institution, we have previously discussed, but it is reasonable not to think in something locked in. The political transition from Lula to Dilma may have been quieter to the CGU compared to the previous moment between Cardoso and Lula ten years ago, but another political cycle begins with Dilma and the anti-corruption institution will certainly be internally and externally contested. In Brazil, a new president, due to his/her power, can make a big difference. However, based on institutional perspective, we know and have discussed it here, there are limitations in this.

A long way to go: corruption after the CGU

Today, the CGU is engaged in waging a systematic effort against corruption ... To this end, the institution has emerged as a typical anti-corruption agency, emphasizing the formulation of strategies and policies to prevent and combat this scourge.

CGU, 2009: 1

A way (probably the best) to exercise about the future of an institution is to look at its results. The clearer and more objective the results are, the better and easier the assessment will be. Nonetheless, depending on the institution, the hard task is to define results. Considering an anti-corruption

used to explore at maximum the media channels.

institution, the pursuing objective is to change people's behaviour facing corruption in order to reduce its occurrence. In theory, establish such an objective is not the problem. The challenge is how to assess it. How to measure people's behaviour before corruption? And what about corruption? The indexes at hand nowadays are indicatives, but they are not enough, thus the criticisms (Abramo, 2005: 36; Thompson and Shah, 2005: 27; Roca and Alidedeoglu-Buchner, 2010: 3). The head of the CGU has always been (vehemently) against traditional indexes, such as Transparency International's (TI CPI) and World Bank's. This may be in function of Brazil is not in good position in both of them, but the criteria used to develop the mentioned indexes are questionable (de Sousa et al, 2009) because they are not clear, the organisations keep their sources in secrecy and they are based on individual's perceptions.

The CGU argues that indexes do not take into account what have been done by governments and that the impact of a successful anti-corruption operation exposed in the media may be dubious. That is, on the one hand may show that the anti-corruption institution is working and that corruption is being curbed. On the other hand, the media may cause the impression that corruption is rampant and there is no solution for the problem, so public opinion may vary, depending on the interaction between individual and the news. In this case, looking at indexes only is not a good way to view the problem and to analyse the performance of the anti-corruption institution.

The CGU has not developed strong indicators for assessing its performance, particularly efectivity, that is, the impact of its actions. What can be observed from the analysis of the Annual Reports is that assessment has emphasised planning and delivering of actions instead of the impact of them on corruption, and society (CGU Annual Reports 2009, 2010, 2011). The

institution does not use other indicators for measuring corruption, and it seems lack of will (Public Service Informant 1, 2009). Evidence for that is the very structure of the organisation, which does not present, say, a special division for study, statistic or performance analysis (Annual Report 2011).

Our task in this thesis is not to assess the CGU's performance; this is an object to be investigated by future researches. However, based on the actuation of the institution so far, the limited publications that try to evaluate the CGU, and the scenario of corruption in Brazil we can point out that there is a large room for improvements and a long way to go in order to meet anti-corruption objectives and keep corruption under control.

The combat of corruption in Brazil has changed since the establishment of the CGU. That is a fact, which is not only an internal perception, as Bo Mathiasen, UNODC representative pointed out

It is a fact that the Brazilian government has taken important steps forward against corruption. For instance, the Transparency Portal initiative and the sacking of more than 3.000 corrupt civil servants by the Office of Comptroller General [CGU] are evidences of the country's concern about the public money and that civil servants shall be accountable to the public. However, Brazil can be more daring in the sense of improving legislation against corruption and the organised crime⁴⁷.

The change may also be perceived when we consider that corruption is a governmental issue under permanent discussion; therefore, corruption is on the agenda since 2002. Fighting against corruption is not only rhetoric; it is also a matter of public policy and programmes, as this chapter presented. Notwithstanding this context, corruption is still one of Brazil's serious problems in all government levels (federal, state and local) and sphere of

⁴⁷ *Anticorrupção – É hora de ousar*, available at <http://www.unodc.org/southerncone/pt/imprensa/artigos/2011/01-02-anti-corrupcao-e-hora-de-ousar.html>

power (executive, legislative and judicial). This may be concluded from international and local corruption indexes and studies.

According to the 2012 Transparency International Corruption Perception Index, Brazil ranks 69th out of 174 countries with a 43 score, a performance slightly better than the 73rd (out of 185 countries) of the 2011's. The Index scores countries on a scale from 0 (highly corrupt) to 100 (very clean). The score and rank of Brazil indicates a serious corruption problem, according to the Transparency International (Transparency International, 2012).

The World Bank Governance Indicator – WGI is another largely used parameter. It is a more consistent indicator because it not measures corruption or its level only. The intention is assessing governance, which, in the words of the WGI developers, “consists of the traditions and institutions by which authority in a country is exercised” (Kaufmann et al, 2008: 1). Considering the Control of Corruption dimension of the WGI, the performance of Brazil (percentile rank 0 – 100) was steadily from 1996 (50) to 2008 (58), situating Brazil in a halfway through taming corruption (Kaufmann et al, 2008: 1).

Latinobarómetro measures the evolution of the problem and the progress of institutions in reducing corruption in 18 Latin American countries. Brazil presents a relatively positive performance in this particular aspect. The percentage of respondents saying the country was progressing in reducing the problem jumped from 59% in 2005 to 69 in 2006, but dropped to 63 in 2007 (Latinobarómetro 2003 – 2007).

In a comprehensive public opinion poll conducted in 2008, the Federal

University of Minas Gerais – UFMG⁴⁸ surveyed 2,421 individuals in different regions of Brazil. UFMG expanded the poll to identify not only the perception about corruption, but also on operations conducted by the state apparatus (Federal Police, CGU, and Prosecutor’s Office) and media relation. The main findings are as follow.

- 75% of respondents believed that instead of corruption cases what had improved were the actions against them;
- 70% found impunity and inobservance of the laws the main factors of corruption, 68% believed that new laws and severer punishments would help reduce corruption;
- 63% were aware about major corrupt scandals;
- 38% associated scandals to the present government;
- 60% believed in the impartiality of the media;
- 72% were aware about governmental agencies operations against corruption, among them 86% considered the operations effective

In 2009 Datafolha Institute carried out another poll on corruption and ethics in Brazil. The survey assessed not only public institutions and the perception of corruption, but also the society. The Congress, the Presidency, and ministries lead the institutional corrupt ranking. A massive 92% found that there is corruption among deputies and senators, 88% mentioned that corruption is also in the Presidency and ministries followed by 87% and 81% for state and local governments respectively (Datafolha, 2009).

Analysing the institutional and democratic context that involves the Brazilian control institutions, Olivieri et al (2011: 19) argue that

As regards democratic advances, one cannot deny that the accountability process undergone by Brazilian government institutions [the CGU, the Prosecutor's Office etc.] has become increasingly complex in terms of the number of institutions

⁴⁸ UFMG – Pesquisa de Opinião Pública Nacional Centro de Referência do Interesse Público

involved and the extent of control actions. This is a very positive phenomenon, especially if we take into consideration Brazil's political and bureaucratic tradition of Patrimonialism, lack of transparency, and unaccountability. In this sense, Brazil's trajectory is in line with that of many developing countries' (and other Latin American countries), in terms of a strengthening of control actions and bodies towards the promotion of democracy and efficient public services⁴⁹.

The analysis of Olivieri and colleagues demonstrates an institutional dynamism and shows a specificity of Brazilian system, that is, the multiplicity of bureaucratic instances that "ensure a balance between powers." These particularities we discussed in Chapters 4 and 5 when dealing with the history and context of Brazilian political system. In this sense, it is also important to recall the ideas of institutional dynamism and complexity Thelen, Mahoney, the Colliers, Pierson and others defended and that were studied in this thesis. In their way, the scholars agree that institutions are dynamic in the sense that structures and norms change and adapt themselves before the context and due to an ongoing process of conflicts and reactions. As a result of this dynamism, the criteria of adaptability and complexity appear to confirm the argument of Huntington (1968) for institutionalisation.

More can be extracted from the analysis of the OECD⁵⁰, which considers that the creation of the CGU "has been a core element of the federal government's strategy to enhance integrity and prevent corruption." The multilateral organisation adds the country's "efforts to create a culture of integrity and prevent corruption" and that "progress made by the federal

⁴⁹ Olivieri, Cecilia; Azevedo, Clovis Bueno de; Teixeira, Marco Antonio Carvalho and Oliveira, Vanessa Elias de (2011). *The democratic control of public management in Brazil: the constitution of control institutions and the dilemmas of public policy*. Paper presented at the IPSA-ECPR Joint Conference "Whatever Happened to North-South? February 16 to 19, 2011. São Paulo.

⁵⁰ OECD (2010), "OECD Integrity Reviews: Brazil: Managing Risks for a Cleaner Public Service: Preliminary Main Findings and Proposals for Action"

government of Brazil during the past decade provides a sound basis for advancing integrity management in the coming years.” These words sound a good feedback and may be contrasted to the corruption indexes results discussed above, but coming from an international organisation like the OECD may signalise that things are changing (or something may be in a good path) in Brazil.

While corrupts and corruption seems to “never sleep”, the same should be the case of the anti-corruption institution. The CGU seems to be aware about this, but it has not been as fast as the “bad guys”. The implementation of programmes focusing on the society’s awareness and the intensification of the institution’s presence in the media and physically on the field are very important initiatives against the problem. The same may be said about the co-operations with anti-corruption peers and the internal specialisation of the organisation. Innovation is the key; however, as the Figure 8.2 above demonstrates, there is an area that the CGU feel apart.

The area of big conflicts or the relationship between politicians/the Congress and the private sector (financing campaign), we consider it, is an impenetrable zone for the CGU so far. Our argument is that the more this area is let alone, the more corruption and corrupt feels comfortable to act. The institution, in its capacity of anti-corruption policy co-ordinator, has proposed several bills to improve the activity and to curb corruption. None of them related to financing campaign⁵¹.

We agree institutions cannot extrapolate their competencies, particularly when competencies have political interests as limits and when it

⁵¹ Constitutionally, the CGU, as an executive’s institution, has no competencies of investigating the legislative and the interaction between its members and the private sector. The private sector is also another area the institution cannot act directly. As campaign financing is a matter of legislative decision/negotiation and involves the private sector, the problem is not properly discussed by the CGU.

represents crossing boundaries established by spheres of power. It is a matter of courage and confidence for an executive's institution to touch upon a legislative issue, particularly one that is responsible for the *status quo* and that is probably responsible for the ascending to power of the institution's supporters.

Even though such an institution being the CGU that has an ascending trajectory and that seems to have counted on presidential support since the beginning a decade ago. Our analysis has shown that the institution has capitalised this presidential support in its benefit. The ability of the institution to protect itself, using technical arguments and keeping information and knowledge, and its strategy of filling gaps has helped the CGU to forge its unusual path. The institution itself, meaning the organisation, its personnel, norms and operations, seems to be the one that is more benefited from the strengthening of anti-corruption in Brazil. It is not to say that the problem of corruption has been used only to institutional purposes. Rather, unprecedented advances have taken place in the country in the matter of fighting against corruption, but the existence of explicit corruption cases in areas where the CGU is toothless may indicate that something must be done.

The institution is mature enough to move in this direction and the future of anti-corruption (and corruption) in Brazil depends on this attitude. Our argument here is that if nothing changes (in the area of actuation of the CGU) we will have a limited anti-corruption institution that works very well within the executive but is very timid when the issue went out its boundaries. The self-protection instinct may be also applied in the case of an institution, and it is worth, but the image the CGU has built the past ten years is not of a limited institution. On the contrary, the expectations have

always been higher, and while corruption cases are controlled on one side (executive), on the other (legislative, financing campaign), where the source of the bulk of Brazilian corruption is, scandals are still surging.

To associate these cases with the failure of the anti-corruption institution is easier than one could think, then, with a contrary public opinion the capacity of the institution to innovate and convince may be undermined. As these elements of public support and capacity to innovate may be related to the dimensions of institutionalisation (autonomy and complexity), the value and stability acquired by the CGU in the previous ten years may be also at risk. It is not to say that the CGU is turning a blind eye to the financing campaign as the main source of corruption, the very CGU minister has already mentioned that⁵², but that the institution is not taking advantage of innovating in this area.

We are criticising a position that seems to be not so active in one side. However, we agree there are concerns within the institution towards pursuing even more visibility and influence. Evidence is the *Estratégia Brasileira Anticorrupção*⁵³ (Brazilian Anti-corruption Strategy) launched in November 2009. The strategy aims to “look at corruption as a risk and not as an heritage and to reinforce the strategic aspect of its combat, developing specific public policies”. The strategy, an initiative of the CGU, however, has not been entirely implemented yet, but has suggested an anti-corruption law for the private sector and developed an good governance seal to be used by corporations. This proposed change in the anti-corruption and consequently in the institution CGU may have to wait for the accommodation of the new

⁵² In an interview to the electronic newspaper *Valor Online* just after being confirmed in the position, the CGU minister, Jorge Hage, defended changes in the financing campaign legislation. He supported the issue to be analysed as another mechanism to combat corruption. Interview available on <http://www.valoronline.com.br/impresso/politica/100/363969/para-jorge-hage-falta-ao-pais-apresentar-corruptos-a-cadeia>

⁵³ <http://www.cgu.gov.br/Imprensa/Noticias/2009/noticia21509.asp>

government. However, it is an indication that institutionalising is an ongoing and dynamic process.

Conclusion

This chapter provided an analysis on how important it is to an institution to constantly change and innovate if it wants to endure. This process of institutionalisation, we agree, presents better results when the institutional challengers and ideas of change come from the within the institution. The analysis also suggests that even with these pre-conditions the institutionalisation is not an easy task and is subjected to clashes and interests' disputes, being this either internal or external. Limitations are everywhere, therefore, institutional challengers should take advantage of all opportunities to move forward and implement their planned changes. It is also important to anticipate difficulties and avoid conflicts the institution is not confident it may challenge. An institution is not an environment free from influences, thus, more important is to adapt strategically to the changes in the context than permit the context manipulate the institution.

Our case, the *Controladoria-Geral da União*, in spite of not being entirely institutionalised in the sense provided by Huntington, it is strategically oriented towards institutionalisation. That is, the CGU has attended the dimension of complexity, coherence, and adaptability but lacks autonomy. In the year the institution is celebrating its tenth anniversary (2011), looking back at its trajectory one could identify this orientation. Developing through programmes and co-operations, the CGU found its way filling up spaces no other institution had did. A change in orientation, focusing more on the outside borders of the federal executive, looking at the public in municipalities, the institution at the same time conquered new followers and supporters and avoided conflicts its incisive presence would facilitate in the

federal executive.

From the co-operation with law enforcement agencies (Federal Police and Prosecutor's Office) the CGU became more visible, respected and confident about its importance for the anti-corruption activity. The partners have identified in the joint-venture a way of rationalising their activities. For the CGU, being together with those agencies meant access to a considerable volume of sensitive information, which has transformed the institution into a strategic body of the executive. Consequently, partnerships changed the institution and the way the CGU interacted with the external public and media.

With visibility provided by programmes and co-operations, the CGU found itself in the middle of a foreign policy change, which conducted the institution to look at its activity with a global perspective. A more opened Brazil with interests of influencing its area of ascendancy (Latin America, Africa and part of Asia) used the institution as an instrument of real publicity about the anti-corruption measures the government had implemented and as an example of the country good governance attitude. The institution benefited from this policy change and signed partnerships with multilateral and foreign organisations. Since then, with the auspices of the UN, the CGU has exchanged visits and knowledge with international experts and professionals and has presented its programmes as anti-corruption innovations.

Nothing but changes has occurred within the institution as a consequence of the international insertion. They are knowledge and specialisation for professionals and visibility and reputation for the CGU. Structurally, a new unit surged as a necessity for attending the demands. This new secretariat (SPCI), by its turn, has motivated internal changes and

clashes. The dynamic of changes and their consequences have been well assimilated by the institution, which has strategically posed itself as an proactive actor in the anti-corruption area.

Notwithstanding a deserved confidence, the CGU has faced another government transition, which represents a risk period for all institutions, particularly for anti-corruption institutions in Brazil. The government changed, but the institution stood: minister and structure. The new president revealed she has interest in keeping the institution, however, a message to the Congress proved she desires results. Our argument is that the institution should look at this carefully, moving from programme building to programme assessing. Another move, we conclude from the analysis, is attacking areas the CGU has let alone for competencies restrictions, such as the campaign financing and private sector. From November 2009, with the Brazilian Anti-corruption Strategy, the institution once again has proposed changes by innovating. However, the new strategy is not an effective measure yet.

To sum up, institutionalising is an ongoing process of innovating. The trajectory or example of the CGU is an evidence of that, but the institution history also shows that the process has a limit and this limit is not easy to detect.

9 - Conclusions

In this study the trajectory of a particular anti-corruption institution has been explored. In this regard, the origin and changes of the Brazil's Office of the Comptroller General (CGU) were examined as an example of a process towards institutionalisation. It was an exploratory and descriptive research where a combination of methods of archive and document analysis and group and elite interview were applied. These methods were complemented with the fourteen-years professional experience of the author as a civil servant working at both the Federal Internal Control Secretariat (SFC) and the CGU. We are interested in the institution itself and the manner in which it has been formed and changed. Two research questions were developed and answered in the thesis: (1) Why and in which context has this particular institutional arrangement (the CGU) emerged? and (2) How has this institution been persisting over time?

Historical institutionalism indicates the crucial theoretical approach of the study in the sense that the institution is considered as a concrete legacy of a historical process (Thelen, 1999). Moreover, the institution influences and is influenced by individuals' conduct. The CGU as an institution is considered a proactive actor. And institution is regarded to be the norms, processes, the organisation and the relations of its individuals. Looking at the dimensions of complexity, autonomy, coherence, and adaptability proposed by Huntington (1968), the study assesses the institutionalisation process of the CGU. The institutionalisation is not taken for granted in the case. It is an ongoing process for the years to come to prove.

Theory of mechanisms of institutional reproduction and concepts of

institutional evolution and change has also been analysed. In this regard, the study focuses on path dependence, increasing returns, positive feedback, institutional layering and institutional conversion. These mechanisms and concepts are observed in the trajectory of the CGU, as they are processes that can be set in motion by a shift in the environment. The CGU has faced different shifts in its environment, and they are characterised by government transitions and structural changes.

Both the historical approach and the mechanisms of reproduction have been used considering our argument of an institutional dynamic path. The institutional dynamic of the CGU has been presented as a sequence of changes, adaptations and innovations that are responsible for the endurance of the anti-corruption structure. We also assumed the historical argument of sequencing when forging the background and context where the CGU emerged. Therefore, we started our analysis in chapter 4 looking at the Brazilian political system, its traditions, institutions and characteristics, and the international context of a global anti-corruption wave. Corruption is presented as an aspect of this political system, and experiences for combating the problem that surged previously the CGU has also contributed to the institution itself.

We found that the process of democratisation, which has taken place in Brazil since 1985, is responsible for the stabilisation and maturity of political institutions. The return to democracy permitted a new constitution and the development of mechanisms of accountability that, even in the presence of a rampant corruption, forged the basis for the construction of the CGU. For different reasons, anti-corruption initiatives have been implemented and altered by every government since the return to democracy. It is possible to identify in the initial model of the CGU a great

deal of borrowing of these experiences of construction and deconstruction. They are the structure linked to the presidency office, limited autonomy, a small advisory body focused on the functions of co-ordination and supervision instead of operational. The SFC, one of those accountability mechanisms created due to the country democratisation, would be incorporated by the CGU in 2002, and today is a crucial subunit of the institution. There is no doubt that the CGU is also a result of this process of democratisation.

The world has faced, what we call, an international anti-corruption wave since mid-1990s. International donors, development organisations, academia, NGOs, and governments alike have changed their view and approach about corruption. The problem is no longer a taboo and as a result international conventions have been enacted, donors' commitment of combating corruption has improved, and governments have requested more support in their efforts against corruption. This international context, we argue, has also forged the ground for the CGU development. It is not to say that international context was determinant for the institution, but that it influenced and facilitated aspects of the CGU trajectory.

In chapter 5 we focused on the emergence of the CGU, the very moment when the institution is launched and its first steps. The intention with the chapter was to investigate the real promoters of this decision. Why such a structure was suggested and implemented. We found that the functionalist approach is not sufficient to explain the CGU, since the function of the institution, as an actor's interest only, is very limited. In this regard, it is worth citing Thelen (1999: 400): "functionalist perspectives will not take us far, since they skirt the issue of the origins of institutions and the all-important matter of the material and ideological coalitions on which

institutions are founded.” In the chapter 5 we defended a broad view about the origin of the CGU. The institution was not only an actor’s choice, but also a result of historical conditions and motivated by a particular context. Our argument is that the CGU is an anti-corruption institution that was proposed in the first instance not to curb a crisis of corruption, but to solve a crisis of the president’s image.

We identified that change within the CGU has been crucial for the institution development. In this regard, the chapter 5 dealt with a major change faced by the CGU: the incorporation of the Federal Internal Control Secretariat (SFC). The process of incorporating the SFC may be understood as a kind of layering (Streeck and Thelen, 2005; Schickler, 2001). Some particularities, however, should be pointed. In the case, an old institution (the SFC) is placed alongside a new one, that is, we observed the inverse of the process suggested by Schickler. Moreover, the old institution is remodelled to serve interests of institutional challengers (the CGU). Surprisingly, the interest of the CGU was not to undermine the SFC but to sustain it. This process of change was perceived in distinct ways by both institutions, and was processed through conflicts of institutional identity, power and also concerns about institutional continuity. The claim about the process of incorporating the SFC is that it was a change developed and endogenously motivated within the CGU. This reinforces the argument of Streeck and Thelen that change is often endogenous and in some cases is produced by the very behaviour an institution itself generates.

Changing governments is regarded to be a delicate moment for institutions (Morlino, 2008). The thesis provided evidences that this is true in the case of Brazil, particularly for anti-corruption structures, as we have observed in chapter 4. Notwithstanding this tradition, chapter 7 brought a

distinct outcome regarding the experience of the CGU when facing its first government transition. Instead of being dismantled, the institution was strengthened during the transition process Cardoso's to Lula's government. Instead of being forgotten, the CGU was highlighted in the president Lula's agenda. The context of the country and the attitude of the CGU imposed a high risk to the new government in case of dismantling the anti-corruption institution, as previous government had made, we founded. The research also identified that this happened not only because the institution was crucial for the Worker's Party anti-corruption programme, but also because the new government would benefit from the improvements. This may be associated with the concepts of increasing returns and positive feedback we discussed in the literature review. The findings are evidence that institutions are not locked in and that change is something related to institutional development and not necessarily to institutional fall down.

Having survived the transition, the CGU started a process of innovating that is associated in this research with the move towards institutionalisation. In chapter 8, with the help of the institutionalisation dimensions suggested by Huntington (1968), we identified and discussed the strategy used by the institution to acquire value and stability. Innovative programmes, co-operations, international insertion, restructuration and approaching the public have been the institution strategy to gain complexity, coherence, autonomy and adaptability. We found that those four dimensions are not completely observed within the CGU, they vary in level. The chapter 8 has also corroborated our argument of institutional development through changes and innovation. We found that this strategy of development not necessarily means changing in purposes, rather, it is essential for preserving the essence of the institution. In our case, the essence of the CGU is being the

centre of the anti-corruption policy in Brazil. In this regard, we also found that this is not an easy task, as dealing with such a sensitive issue brings together conflicts of interests. The institution, however, has been cautious enough to avoid big conflicts with veto players, which, we assume, may be one of the reasons (not the more important) for its endurance/persistence so far.

9.1 Contributions and limitations

After four years researching this intriguing case and focusing on a singular institutional trajectory, it is possible to offer theoretical contributions to the institutional literature, and present technical contributions to the anti-corruption activity. The contributions, however, are not without limitations, which we are confident do not invalidate the results we have found with the research. This study's initial ambition was to understand the CGU, questioning where the institution came from and where it is going. In doing that, the study was original, as the trajectory of the world largest anti-corruption institution had never been studied before. The originality may also be observed in the application of the institutionalist approach in the analysis of an anti-corruption institution. The study, therefore, is filling a lacuna in this area.

It is also worth mentioning that the study adds to the research on corruption, as it focuses not on the problem itself but on the structure against it. The study addresses a gap in research into the anti-corruption institutions, which lacks a substantive origin and change approach. The study is not limited in describing the anti-corruption structure; rather, it explores motivations and developments of this structure. Previous studies concentrate on the problem and present a snapshot of the anti-corruption structure. This is not sufficient to understand the institution, and this research has proved it.

According to Doig et al (2005: 4), in developing countries anti-corruption structures have a short life cycle that starts with high and unrealistic expectations and ends with disillusionment. This because there is no sustained support, there is a gradual displacement of the anti-corruption as a high priority and political commitment.

The study shows that this life cycle may be different. The trajectory of the CGU started like Doig and colleagues suggested (initial high expectations), but took a different path. Instead of being dismantled, the CGU was strengthened by increasing budget and structure (e.g. the SFC). Instead of losing support, the institution gained a leading role in the anti-corruption policy in Brazil (presented in the Messages to the Congress and leading the Anti-corruption Strategy). This experience, the study discussed, was due not only to veto players' interests but also to the institution itself in the sense that the CGU was the main conductor of its innovation and changes.

The study corroborates the historical institutionalist approach when presents the CGU as a concrete legacy of historical process. The institution has not emerged from de vacuum and it was not a mere idea that came out of a president's mind. The study revealed that it is possible to accept a kind of rational choice act when announcing the CGU, but it was a product of a context and was implemented considering previous experiences. The return to democracy in 1985, the new Constitution of 1988 and the ongoing process of democratisation partially transformed the country and its institutions.

Therefore, it helps to move the study of anti-corruption institutions beyond rational choice and the principal-agent model. The thesis establishes the need to foreground context in order to explain the genesis, structure and success/failure of an anti-corruption institution.

Previous anti-corruption initiatives, disregarding their real objective, forged the grounds for the CGU. It was more than that if we consider that the main operational body of the CGU is the SFC, an initiative implemented in function of the Constitution and after anti-corruption investigations by the Congress in a period that preceded the CGU. For the historical institutionalism the study also reinforces the idea of the institution influencing and being influenced by individuals' conduct.

In spite of assuming a historical perspective, the study contributes to the literature in the sense that an institutional analysis may be benefited from borrowing from different perspectives. This is particularly true if one analyses the dynamic of an institution. It was perceived that a single perspective is not sufficient to explain the entire story. That is, institutional origin and change are different moments, as such; conditions that favoured the origin certainly will not be in place pushing the changes. The case of the CGU presents this dynamism where individual's interest, context and the institution itself merged to produce changes and consequently development. It is not to say that everything influences everything, but that a factor may be prevalent at a particular moment of an institution. The study is an example that an institutional exploratory analysis, the one that take in consideration an evolutionist perspective, is better than the one that limits its analysis to a closed frame.

The exploratory analysis performed in this thesis found that, conditions given, the institution might be the conductor of its own path. In this regard, the study revealed that the CGU institutional challengers, the ones who are responsible for triggering changes (Streeck and Thelen, 2005), are located within the institution in most of the time. They may be in different groups and have not necessarily shared the same idea, but their

intention is to keep the institution. The CGU is an example that accommodating different ideas within is with conflicts, which corroborates what Thelen suggests that the institutional development is a process of “ongoing conflict”.

The study revealed that institutional challengers purposes and interests might change depending on the context. That was the case for a group of challengers located in the SFC during the period of government transition, just after the incorporation of the SFC by the CGU. They worked for a particular CGU configuration, which would transform the institution into another one. After the transition, challengers decided for the CGU, but worked to protect their knowledge and expertise from the within of the institution.

This study case may be another evidence that generalisations about countries and institutions, particularly anti-corruption institutions, should be cautiously presented. Anti-corruption institutions are not largely studied in the sense of their origin and change, as we perceived in chapter 3, so it is necessary more in-depth study and contextualisation of other examples in order to propose a broader generalisation.

Considering regions, such as Latin America, generalisations about countries are a common place, which has contributed to misunderstand about the region. Every country has its own particularities and context, and this may be observed by the analysis of Collier and Collier (1991). In this regard, the research has not the intention to generalise about the process an anti-corruption structure should follow towards institutionalisation.

However, the study may be used as a source for comparative analysis about different anti-corruption structures in Latin America and elsewhere, in developing countries or more advanced societies. That is, studies may use

the historical institutionalism instead of rational choice to look for reasons of anti-corruption institution origin and development. Studies may also focus on conflicts and forces from the within, instead of focusing on the political (external) dimension.

The generalisation the research may present is that, in a democratic context, an institution is dynamic and that, in the analysis of the process towards institutionalisation, distinct aspects and actors are involved. The analysis should not be limited to a single approach.

Technical contributions may be also extracted from this study. For those anti-corruption professionals, the research evidences that the organisation of staff in a strong career, the co-operation with national and international agencies, the development of programmes and the visibility/publicity of the organisation are crucial for the process of gaining value and stability. The institution, disregarding its format, should adopt an ongoing innovation approach, and identify open spaces where a new programme may be applied. Combating corruption is a matter of persistence, the less you act, the more the problem grows. The public should be the main target in the sense of programme delivering, as in order to be helped the institution must be known. In the regard of acting, particularly in places where there are strong veto players, the study evidences that it is important to anti-corruption organisations to adopt a strategy of convincing instead of confronting during the process of institutionalisation.

A single research, like this one, is limited to explain all the questions that may surge regarding a complex process of institutionalisation. The study has a limited view about the impact of the CGU to the different sectors of the Brazilian society. It was not possible to carry on a large survey to cover public opinion other than those directly involved in the CGU operations. For

a limitation of agenda, it was also not possible to contact professionals from the international organisations that co-operates with the CGU. It would be important to have an outside perspective about the institution. This was partially solved by analysing international organisation reports and interview of donors' representatives.

The study did not present an assessment of the CGU, in the sense of performance indicators evaluation. This because those indicators are not available and developing and applying them would demand another thesis. Therefore, our concept of succeeding is much more related to persistence and stability than performance. Alternative to a, say, direct assessment would be the use of corruption indexes, but as we discussed, there is more contention than consensus about them.

If on one hand the limited academic literature about both the CGU and the institutionalisation process of anti-corruption organisations was a push to this study, it was a limitation for a deeper analysis, on the other. We have used triangulation approach to partially solve this. The study is the first tentative about the CGU trajectory, as such, we took the risk of being a pioneer studying the institution in such a comprehensive way. Ultimately, we understood possibilities of failure, but focused on the potentialities of this challenge, we are confident that this research may prepare the way for others interested in studying anti-corruption institutions and institutionalisation.

9.2 Future research directions

The first step has been done towards understanding this complex process of origin and change of an anti-corruption institution. The results and limitations of the study are the starting points directing future researches. As such, we identify that a comparative analysis between

different anti-corruption initiatives from different countries are necessary. It would not be a descriptive analysis, but a comparative trajectory analysis in order to identify causes of success and failure in the process of institutionalisation.

Another interesting field for research that would complement the results of this study would be the institutional assessment. Developing anti-corruption institutions performance indicators other than corruption indexes are more than necessary to the evaluation of these institutions. The assessment of anti-corruption programmes, such as the CGU's may partially solve the problem.

After a comprehensive study and discussion using historical institutionalism as the main approach focusing on the structure, one interesting option for the future research would be to analyse the behaviour of major actors (veto players) according to each change occurred within the anti-corruption institution. This research would focus on the rational choice perspective to identify the relation between structure change and individual interest.

From the institutionalisation point of view, further researches may test each of the four dimensions suggested by Huntington in an isolated way. Which one is more important for the process within an anti-corruption institution would be an interesting research question. This suggested research could solve the intriguing point of when to consider institutionalised the organisation.

Corruption, as a field of research, would benefit from a study comparing the level and type of the problem and the structure available for combating it. Considering that corruption is different for different countries and contexts, this would be a study to identify the type of corruption that is

more sensitive to a particular anti-corruption structure.

From the political point of view, the present study opened a possibility not confirmed that the anti-corruption structure has a potential to be used politically. In this regard, a future research focusing on this matter would be interesting. To what extent a well-structured anti-corruption organisation is subject to manipulations is another intriguing and fruitful question.

From the Office of the Comptroller General (CGU) point of view, the study may stimulate internal debate about the institution and trigger the promotion of further researches. The institution has this intention to discuss the issues it is involved to and to promote the development of knowledge in the area.

To conclude, this study, we strongly believe so, shows important research possibilities in the fields of anti-corruption, institutionalism and institutionalisation. More than a singular research, which is part of a programme for conceding a degree, the study was developed with the serious intention to contribute to the knowledge.

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Annex

List of Interviewees

Note: The interviewees in the list below include those whom the researcher was able to meet in Brazil in a fieldwork in January-March 2009 and those who sent their answers by e-mail afterwards in 2009.

Name	Position=	Organisation
Amauri Serralvo*	President	Brazil's Lawyers Association (OAB) Special Commission Against Corruption
Bruno Speck	Professor	The University of Campinas
Claudio Weber Abramo*	Executive Director	Transparency Brazil
Damásio Linhares Neto	Financial and Control Analyst	CGU
David Fleischer	Professor	The University of Brasília
Domingos Poubel de Castro	Accountant and Budget Manager	SEBRAE
Fernando Antunes	Under-secretary for planning	Brasilia Health Secretariat
Francisco Carlos da Cruz Silva	Chief	CGU – Bahia State Regional Office
Francisco Gaetani	Under-Executive-Secretary	Ministry of Budget and Planning
Francisco Moreira da Cruz	Consultant	Ministry of Industry, Development and Foreign Trade
Francisco Whitaker*	Social Activist	Brazil's Catholic Bishops National Conference Justice and Peace Commission
Gláucia Elaine de Paula	Special Advisor for Internal Control	Ministry of Justice
Ivan Kakimoto	Assistant	Nation Ombudsman General
Jaine Mailde Cirqueira	Executive-Secretary Advisor	CGU
Jorge Hage	Minister	CGU
José Wanderley Pinheiro	Secretary	Federal Public Prosecutor's Office Audit Secretariat
Leonardo Castro	Finance and Control Analyst	CGU
Luiz Hamilton de Queiroz Pontes	Special Advisor for Internal Control	Ministry of Budget and Planning
Luiz Alberto dos Santos	Under-chief of Governmental Policies Analysis	Presidency of the Republic Chief of Staff Office
Luiz Navarro	Secretary-Executive (Deputy Minister)	CGU
Luiz Pedone	Professor	The Federal Fluminense University
Marcelo Nunes Neves da Rocha	Chief	CGU National Disciplinary Board
Marcelo Stopanowsky	Secretary	CGU SPCI
Maria Celeste Guimarães	Parliamentary Advisor	Chamber of Deputies

Mariana Delgado de Carvalho	Co-ordinator	Ministry of Justice Transparency Programme
Oscar Maurício Azedo*	President	Brazilian Press Association
Paulo Rubem Santiago	Congressman (Deputy)	Chamber of Deputies
Raildy Azevedo Costa Martins	Special Advisor for Internal Control	Ministry of Social Assistance
Roberto de Figueiredo Caldas*	President	Public Ethics Committee of the Office of the President of the Republic
Roberto Vieira Medeiros	Advisor	CGU National Disciplinary Board
Ronald da Silva Balbe	Director	CGU
Valdir Agapito Teixeira	Secretary	CGU SFC
Vânia Vieira	Director	CGU
Vicente Paulo dos Santos da Silva	Finance and Control Analyst	CGU
Wagner Rosa	Director	CGU
Waldir Pires	Former minister	CGU
Wilson Calvo	Chief Parliamentary Advisor	Chamber of Deputies
Group 1 (Seven individuals)	Career professionals	CGU SFC Infrastructure Directorate
Group 2 (Nine individuals)	Career professionals	CGU SPCI Corruption Prevention Directorate
Group 3 (Seven individuals)	Career professionals	CGU – Bahia State Regional Office

=Position is defined as of the time of the interview, which varies for each interviewee.

*Member of the CGU Transparency Council