



Weakening constitutional rules through anti-corruption and impunity discourses: Analyzing the impact of the “Operação Lava-jato” (Car Wash Operation) on the presumption of innocence in Brazil

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Abstract

We use a sociolegal perspective to critically analyze how narratives supporting the need to reduce and punish corruption in Brazil, particularly the ones deployed in the course of the “Operação Lava Jato” (LJ – Car Wash Operation), influenced the weakening of the presumption of innocence. Originally deployed to investigate a criminal organization using a network of gas stations and car wash companies for money laundering, the LJ was rapidly transformed in a major law enforcement operation, and it was used to unravel endemic corruption found in private and state-owned companies. Using a variety of communication resources, the Federal Prosecution Office in charge of the operation developed a set of strategic tactics to promote the discourse that the rule of presumption of innocence was one of the main motives behind the high levels of corruption and impunity in Brazil. This narrative, for example, influenced the Brazilian Supreme Federal Court (STF) during the judgment of the case involving Brazilian former president Luiz Inácio Lula da Silva. The social pressure caused by the use of strategic communication tools was crucial to lead the court to overrule the meaning of presumption of innocence. The article examines how these tools were able to promote social traction and how they can be used to influence and shape the meaning and effectiveness of legal rules.

Key words

Strategic communication; judicial influence; Car Wash Operation

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Resumen

Utilizamos una perspectiva socio-jurídica para analizar críticamente cómo las narrativas que respaldan la necesidad de reducir y castigar la corrupción en Brasil, especialmente las desplegadas en el curso de la “Operação Lava Jato” (LJ – Operación Autolavado), influyeron en el debilitamiento de la presunción de inocencia. Originalmente implementada para investigar a una organización criminal que utilizaba una red de estaciones de servicio y empresas de lavado de autos para el lavado de dinero, LJ se transformó rápidamente en una importante operación de aplicación de la ley y se utilizó para desentrañar la corrupción endémica en empresas privadas y estatales. Utilizando diversos recursos de comunicación, la Fiscalía Federal a cargo de la operación desarrolló un conjunto de tácticas estratégicas para promover el discurso de que la presunción de inocencia era uno de los principales motivos detrás de los altos niveles de corrupción e impunidad en Brasil. Esta narrativa, por ejemplo, influyó en el Tribunal Supremo Federal (STF) de Brasil durante el juicio del caso que involucra al expresidente brasileño Luiz Inácio Lula da Silva. La presión social causada por el uso de herramientas estratégicas de comunicación fue crucial para llevar al tribunal a revocar el significado de la presunción de inocencia. El artículo examina cómo estas herramientas pudieron generar tracción social y cómo pueden utilizarse para influir y dar forma al significado y la efectividad de las normas legales.

Palabras clave

Comunicación estratégica; influencia judicial; Operación Autolavado

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1. Introduction

The presumption of innocence is a right established in the Brazilian Constitution and enshrined in the legal system. It states that “one can only be found guilty after all appeals had been dismissed” (article 5, item LVII) (Federal Constitution of Brazil, 1988) and had been historically interpreted to prevent the provisional execution of a condemnatory sentence. Following this constitutional rule, since 2009 the STF has developed a jurisprudential rule disallowing the enforcement of criminal convictions until the decision is unappealable, particularly the ones establishing imprisonment.

The ongoing law enforcement initiative LJ serves as a vital campaign against corruption and money laundering by criminal organizations. It strategically targets networks formed between politicians, government officials, and prominent businessmen. Initially, it aimed to probe a criminal organization utilizing a complex web of gas stations and car wash companies to obscure the origin of illicit funds, but quickly expanded into a significant law enforcement operation.

The Federal Prosecution Office (MPF) effectively employed a range of legal and communication resources to develop strategic tactics for the LJ. Their primary contention was that the challenge in prosecuting corruption cases nationwide resulted from the presumption of innocence rule. Consequently, they advocated for a flexible application of this rule, allowing the provisional enforcement of appealable condemnatory decisions, despite the clarity of the textual rule, to prevent malpractice.

This strategic narrative significantly influenced the STF during the contentious 2016 trial involving former president Luiz Inácio Lula da Silva. The adept use of strategic communication tools generated substantial social pressure, leading the court to reverse its prior stance and permit the provisional imprisonment of defendants who still had the option to appeal their sentences.

The present article scrutinizes the application of strategic communication resources in legal proceedings, investigating their potential to mobilize public support and shape the interpretation and effectiveness of legal concepts and guarantees, particularly the rule of presumption of innocence. It analyzes the controversial narratives utilized to influence the application of this principle, ultimately exploring how strategic narratives now challenge other criminal law safeguards in Brazil.

To accomplish this, the article provides an overview of the presumption of innocence rule within the Brazilian constitutional framework, focusing on significant rulings by the STF. It briefly introduces the structures of the Brazilian Judiciary and criminal court procedures, outlining their core elements to emphasize the rule’s significance. Subsequently, it delves into the historical background of the LJ and its ramifications on the Brazilian legal system. Lastly, the article highlights how specific actors involved in the LJ utilized strategic communication mechanisms to sway public opinion, creating a market of loyalties that ultimately shaped critical constitutional rulings, leading to a partial relaxation of the presumption of innocence as a constitutional rule in Brazil.

2. The presumption of innocence rule in Brazil

Also known as the presumption of non-culpability, the presumption of innocence rule is recorded in item LVII of Article 5 of the Brazilian Federal Constitution as follows: “no one will be found guilty until the final sentence of the condemnatory criminal sentence” (Federal Constitution of Brazil, 1988). The Federal Constitution establishes a golden rule for an accused to be found guilty, which only happens with the closure of all appeals possibilities in the criminal procedural context. The concept of “*res judicata*”, in turn, comes from the Law of Introduction to the Rules of Brazilian Law (LINDB – Law No. 12,376, 2010, which amended Decree-Law No. 4,657, 1942). *Res judicata* occurs when there is no longer any appeal of the judicial decision or in other words, once the jurisdiction is exhausted, with the filing and judgment of all applicable appeals. In consonance with the constitution, Brazilian legislation establishes that the status of culpable in criminal proceedings can only be ascribed to an individual when it is not possible to appeal, because there is no applicable remedy.

Due to a break with the dictatorial regime that prevailed in Brazil from 1964 to 1985, the intention of the Brazilian Constituent Assembly from 1986–1987 was to draft a constitutional text that reliably portrayed this departure from authoritarianism. Unprecedented in the Brazilian imperial (1824) and republican (1891, 1937, 1946, 1967) constitutions, the presumption of innocence inserted in the 1988 Federal Constitution was directly drawn from the text of the Universal Declaration of Human Rights, proclaimed by the United Nations Organization in 1948, which established that “Every person accused of a criminal act is presumed innocent until his guilt is legally proven in the course of a public process in which all necessary guarantees of defense are protected”. With a small change in the wording, the presumption of innocence found in the International Covenant on Civil and Political Rights (1966) and in the American Convention on Human Rights (Pact of San José of Costa Rica, 1969) are both incorporated into Brazilian domestic law in 1992.

2.1. Brazilian Supreme Court and the presumption of innocence rule

The history of the presumption of innocence in the STF is turbulent, even if we consider only the period after the promulgation of the 1988 Federal Constitution. We do not find it necessary to retrace the entire historical path of court discussions around the presumption of innocence, because what the STF decided in terms of concentrated control of constitutionality is enough to understand that the debate is far from over. For example, even after the move to enact final executions of a sentence only until after all appeals have been completed, Law no. 13,964, of December 24, 2019 (also known as “Anti-crime bill”), introduced a modification to the Brazilian Criminal Procedure Code that allows for condemnatory sentences handed down by the Jury Court – which, in Brazil, is used for rulings on intentional crimes against life – to be subject to immediate sentencing in cases in which the penalty applied is greater than 15 years, regardless of the existence of pending appeals.

However, despite a constitutional change in the understanding of fundamental rights and guarantees related to criminal law and the criminal process, it did not significantly alter the practical aspects of criminal proceedings, while always adhering to the presumption of innocence rule. Notably, the Brazilian Federal Constitution encompasses

around 30 out of 79 normative provisions in Article 5 that are directly or indirectly connected to criminal law. In this complex landscape, attempting to interpret the constitutional text within the social, economic, political, and judicial context, where issues of urban violence, militia formation, organized crime consolidation (often within criminal factions), and the expansion of drug trafficking prevail, creates a challenging scenario.

This amalgamation of circumstances, always within the framework of the presumption of innocence, hinders the average citizen's ability to grasp the broad and general scope of constitutional norms and comprehend that the criminal process should be expedited, sometimes at the expense of fully respecting the due process of law or exhausting all possible appeals.

More important than establishing the constitutional interpretation regarding the normative content rule of the presumption of innocence – impossibility of serving a sentence on a provisional basis before the final judgment of a conviction – the decision rendered by majority vote in October 2019 within the scope of Direct Actions of Constitutionality no. 43, n. 44 and n. 54 emphasizes the need to pacify the understanding of the content of the constitutional rule. “Credibility of the judiciary's decisions”, “need for greater protection of society”, “slowness of the justice system”, “combating impunity” are expressions that frequently appear in the votes of the Justices who were defeated in this trial.

And these same minority arguments used in the decision that gave an “interpretation of the constitutional rule according to the Federal Constitution” were considered in a majority form by the STF in the ruling of Habeas Corpus n. 126,292, in February 2016. In this decision, it was established that it would be possible to start the execution of the sentence after confirmation of the second-degree ruling, without this being an offense to the constitutional principle of the presumption of innocence. In the argument of the majority decision, it was clear that the maintenance of the criminal sentence by the second instance ends the analysis of facts and evidence that established the convict's guilt, which authorizes the beginning of the execution of the sentence. This decision changed the understanding of the STF, which since 2009, in the judgment of HC 84078, conditions the execution of the sentence on the final judgment of conviction, but exceptions the possibility of pre-trial detention. Until 2009, the STF understood that the presumption of innocence did not prevent the execution of a sentence confirmed at second degree.

3. Fighting corruption through strategic narratives: The origins and rise of the LJ

This section explores the evolution of the anti-corruption narrative in Brazil from a socio-legal perspective. It examines the foundational elements that have supported the crusade against corruption and how this concept, deeply ingrained in the country's social consciousness, has evolved into a potent political tool. The development of the car-wash operation is then discussed, starting from its legal origins, its communication strategy, and its transformation into an ideological political movement. Lastly, the section evaluates the narrative structure of combating corruption, emphasizing the necessity for more adaptable constitutional rights and guarantees. In this context,

corruption in Brazil shifts from being perceived as mere dishonesty to becoming a constitutional protection that prevents the punishment of corrupt individuals.

3.1. *Strategic communication framing*

Although the study of strategic communication traces its original application in the defence and military areas, current scholarship notes its deployment by different governmental and non-governmental actors like government civil branches and civil society (Monroe 2015). While the academic use of the term had been part of a very significant and established literature, only recently has it began to take an audience, and promote its desirable effect, either in tangible or intangible approaches, , there are four mechanisms: physical force, patronage, purchase, and persuasion (Cutlip *et al.* 1995, 24)—the last tool embodying the use of communication to “promote the acceptance of ideas. Indeed, persuasion is the essence of strategic communication” (Hallahan *et al.* 2007, 24).

Based on more recent research (Heide *et al.* 2018), strategic communication practices rely on three key elements. Firstly, the communication instruments and practices developed under the strategic communication frame are intentionally and meticulously designed and deployed to achieve specific and well-defined objectives and goals. They are not haphazard or casual; much like modern marketing communication, they are directed towards specific targets and outcomes. The second crucial element is its interdisciplinary approach. To act strategically, communicators must venture beyond the traditional boundaries of communication disciplines and encompass diverse activities such as public diplomacy, psychological operations by the military, and social marketing (Hallahan *et al.* 2007, 27). This approach also entails engaging in activities like audience analysis, goal setting, message strategy, channel selection, and program assessment to ensure effective operations.

The third element is the growing use of technological platforms to deploy strategic communication artifacts. Despite embodied with a sense of solidity, a platform also exists in the electronic realm and can be defined as a “mechanism that allows for the presentation of information in a way it facilitates its promotion and accessibility and aids its legitimacy” (Price 2015, 195). The combination of electronic platforms, big data applications and strategic communication practices are the core elements supporting the rise of “the engineers of chaos and the algorithmic politics” (Empoli 2020), the empowerment of the “dog whistle politics” (López 2015) approach, and the strengthening of practices exploring the development of communication strategies based on loyalty markets.

Price (2015, 12) points that a market for loyalties will be the result of a context where actors compete for power exploring the development of a “cartel of imagery and identity among themselves”. In this context,

The ‘sellers’ in this market are all those for whom myths and dreams and history can somehow be converted into power and wealth – classically states, governments, interest groups, business and others. The ‘buyers’ are the citizens, subjects, nationals, consumers – recipients of the packages of information, propaganda, advertisements, drama and news propounded by the media. The consumer ‘pays’ for one set of identities or another in several ways that, together, we call ‘loyalty’ or ‘citizenship’.

Payment, however, is not expressed in the ordinary coin realm: It includes not only compliance with tax obligations, but also obedience to laws, readiness to fight in the armed services, or even continued residence within the country. The buyer also pays with his or her own sense of identity. (Price 2002, 32)

Strategic communication practices explore this “market of loyalties” and use well designed platforms to deliver messages promoting the communicator’s agenda, either if it is an anti-immigration reform as promoted by Viktor Órban in Hungary, or Mateo Salvini in Italia (Empoli 2020), or as pointed in this article, the seminal use of strategic communication practices by law enforcement actors to create a market of loyalties supporting their narratives promoting the need to change or even abandon constitutional guarantees in order to fight corruption in Brazil.

3.2. Fighting corruption and political strategies in Brazil

The narratives of Brazilian corruption are deeply rooted on its history and are used ambiguously to either justify the country’s lack of economic development and its social inequalities or motivate the rise of politicians and political parties. The origins of the country’s systemic corruption practices are linked to European colonisation and the early connections made between indigenous people and the explorers. The early trade arrangements were built in the exchange of expensive resources like gold and silver by priceless objects like mirrors and wooden tools. Later this relation expanded to the payment of bribes in exchange of Pau-Brasil and the indication of rival indigenous tribes that would be suitable to be captured and sold as slaves (Bueno 2019). More than five hundred years of these corrupt and exploitative practices, and their underlying rationale were embedded in Brazilian society and during the last five decades they were transformed rhetorically in one of the most powerful political artefacts. Not surprisingly, the fight against corruption narrative, fueled by the LJ communication strategy, was the cornerstone of the far right and conservative movement’s rise to political power in Brazil. The LJ operation’s imagery proved to be a significant and influential factor in Brazil’s 2018 presidential elections. Numerous candidates, even those lacking prior political or public service experience, capitalized on this imagery to vie for positions in the executive and legislative branches. (Lopes *et al.* 2018, Rodrigues 2020, Lagunes *et al.* 2021). For candidates lacking traditional political experience, embracing the LJ imagery allowed them to project an image of being outsiders who were untainted by the prevailing corruption in the political establishment. By positioning themselves as agents of change, they sought to appeal to the electorate’s desire for a fresh start and a departure from the status quo.

The crusade against corruption is an old subject in Brazilian elections, but it is directly connected to the democratization process which started in the middle 1980s. During the military dictatorship and its regime based on violence, torture, and censorship (1964–1985), there was no room to question any government or political wrongdoing. Not surprisingly, shortly after the enactment of the Federal Constitution in 1988, during the first direct presidential elections in 1989, an inexpressive and unknown politician, representing a small Northeast state, rose meteorically to the presidency using the

promise to hunt down maharajas (“marajás”, referring to corrupt public officers).¹ Since then, the narrative of fighting corruption has been at the centre of Brazilian political discourse and practice.

Despite its omnipresence, the narratives around corruption and its political use were sidelined during Fernando Henrique Cardoso and Luis Inácio Lula Silva presidential terms as a consequence of their achievements. The fight against corruption narrative would have a prominent comeback in the Dilma Rousseff’s presidency. It was the call for punishment of the corrupt left-wing government and the members of the “Partido dos Trabalhadores” (Labour Party)

Nevertheless, in this new context the use of corruption as a political discourse was particularly different. It was rebooted and promoted by the rise of an unexpected set of new agents, the ones coming not from the political, but from the Justice Arena. The society’s demand for an anti-corruption super-hero, a righteous paladin, a corruption punisher was firstly embodied in the figure of Joaquim Benedito Barbosa Gomes. An ex-Justice of the STF and the first black people to hold its presidency, Barbosa was nominated to the court by Lula da Silva, rose to prominence in the public imaginary during the judgment of a high-profile corruption case that took place during former president Lula da Silva term. During the “Mensalão” Case judgment, Barbosa took a very critical approach to corruption and reporting the case pointed to harsh sentences to all politicians involved in the corruption scandal. Not surprisingly, he was associated to the super-hero Batman (Fig. 1 and 2) and also pointed as a presidential nominee. However, he decided not to run for the 2018 elections due to strictly personal issues (Machado 2018).

FIGURE 1



Figure 1. News post from 2012.

¹ The former President Fernando Affonso Collor de Mello has renounced in December 1992 just before he was impeached by the Brazilian Congress because of corruption. In May 2023, as a Senator, he was convicted of corruption and will have to face imprisonment (STF 2023).

FIGURE 2

Figure 2. Social media post from 2012.²

The shift from a political to a legal narrative was later reinforced through the LJ operation and the rise of two new anti-corruption heroes: the ex-Federal Judge in charge of the case, Sergio Moro, and the coordinator of the operation, the Federal Prosecutor Deltan Martinazzo Dallagnol (Fig. 3 and 4).

FIGURE 3



Figure 3. Social media post during a public demonstration – “Sérgio Moro, we are with you”.

² “Batman is for the weak, my hero is black and uses a black cape!” (all translations by authors).

FIGURE 4



Figure 4. Social media portraying Moro as a superhero.

The ascent of new legal and political figures, particularly those identifying as corruption crusaders, alongside the propagation of the myth of a political Messiah and the calculated publicization of the LJ investigation and criminal proceedings, bolstered a far-right political discourse that culminated in the election of Jair Bolsonaro. Despite being an old-school politician, Bolsonaro adopted anti-corruption policies and appointed former Judge Sérgio Moro as the Minister of Justice. These political maneuvers signaled a noteworthy shift in the utilization of the fight against corruption narrative, which, though now centered around the judiciary branch and criminal procedures, did not completely forsake its primary goal of political empowerment and dominance. Moro, by the way, had some sort of ‘experience’ in this kind of communication, as himself published a paper about the fight against corruption in Italy in the 1990s and the main role of media to gain public opinion support (Moro 2004).

In this instance, the actors involved amplified their focus on combating corruption as a means to drive political transformations. They employed strategic legal communication strategies to identify a common adversary – the Constitution – rallying public opinion and enhancing their prospects of assuming the roles of national saviors and implementing their political agendas, as explored further in the subsequent sections.

The presumption of innocence is a fundamental legal principle in democratic societies, enshrined in the Brazilian Constitution. It ensures that an individual is considered innocent until proven guilty in a court of law. This principle is crucial for protecting citizens from wrongful conviction and upholding justice. However, in the context of high-profile corruption cases, this presumption can be perceived as a barrier by those who are eager for swift justice, especially when legal processes appear slow or inefficient.

The narrative of combating corruption, as used by figures like Bolsonaro and Moro, might have involved portraying the constitutional protections, such as the presumption of innocence, as lenient towards criminals or as obstacles in the swift administration of justice. This portrayal could have been used to rally public support for their cause,

framing themselves as capable of overcoming these ‘obstacles’ and effectively dealing with corruption.

3.3. *The rise of the LJ operation*

Since 2013, Brazil has been going through a series of movements with strong popular appeal in order to change its controversial political practice and the endemic corruption. One important example of this boiling social environment was the breakup of street protests that emerged with impressive force in June 2013, prior to the hosting of the Confederations Cup in Brazil, an important preparatory event for the 2014 World Cup. These popular demonstrations were called “Jornadas de Junho” (June Journeys), and were originated by the decision to increase the public transport fare in the city of São Paulo by 20 cents of Brazilian Real (Almeira *et al.* 2017, Oliveira and Machado 2019).

The “Jornadas de Junho” had enormous popular support and halted not only the city of São Paulo, but also several cities throughout Brazil. Initially the movement coordination was assumed by the MPL – Movimento Passe Livre – that organized demonstrations on different days in early June 2013. As the demonstrations gained momentum, protesters’ demands began to become diverse, ranging from the freezing of public transport tariffs to general dissatisfaction with the political class (Almeira *et al.* 2017). Police violence used to repress the demonstrations and silence media representatives covering the street demonstrations was an important catalyst for the movement connecting different protesters and supporting its spread throughout the country. On the other hand, the use of violence by some protest groups, particularly the ones referred as “black blocks”, drew even more attention to it, particularly grabbing the political class focus.

The movements had apparently no coordination, focus or a set agenda. After the initial stages a non-partisan movement emerged, basically formed by young people with strong social-media appeal and a very generic set of demands. The Movimento Brasil Livre (Free Brazil Movement – MBL) seeks to assume the leading role in the protests. However, by promoting demonstrations against the Dilma Rouseff government and the Workers’ Party, it is now treated as right-wing, defending conservative agendas (Oliveira and Machado 2019). Demonstrations organized by the MBL that happened all over Brazil raise a loud voice against the construction of new stadiums for the 2014 World Cup, wanted the end of some legal privileges granted to political actors, the end of police violence and police reforms, the end of corruption and impunity, and social reforms (Bello *et al.* 2021).

The Ministério Público Federal (Federal Prosecution Office), and the Polícia Federal (Federal Police) were listening to these angry calls coming from Brazilian streets and they took advantage of the moment to invest in advertising in order to increase their investigative powers and also to insist that only they could put an end to rampant and endless corruption (Bello *et al.* 2021). So, in 2014, the Federal Prosecution Office and the Federal Police began to publicly run the LJ. This law enforcement operation, branded by the Federal Prosecution Office as the largest operation to fight corruption and money laundering in Brazil, used communication resources – especially billboards, TV interviews and a hot site – to strategically promote the narrative that the constitutional guarantee of presumption of innocence was one of the key elements supporting the widespread culture of corruption offenses in the country, by influencing the outcomes

of legal proceedings and supported impunity. Under this rationale the application of the constitutional rule of presumption of innocence should be limited, allowing for the provisional execution of condemnatory decisions.

This strategic communication narrative influenced the Supreme Federal Court during the controversial judgment of the case involving Brazilian former president Luiz Inácio Lula da Silva in 2016. The social pressure caused by the use of strategic communication practices were crucial to lead the Court to overrule its former guidance and to allow the provisional imprisonment of defendants still able to appeal of their condemnatory sentences.

4. Car Wash Operation, strategic communication and the weakening of the presumption of innocence

This section presents how Federal Prosecutor Deltan Dallagnol and the former Federal Judge Sérgio Moro, who was in charge of the operation until October 2018, developed a set of strategic communication tactics to promote a narrative supporting that the rule of presumption of innocence was one of the main motives supporting the high levels of corruption offenses noticed in the country and the main cause of impunity in corruption cases. It indicates how the selection of this particular narrative, and the use of social media promoted the social traction that was needed to put pressure on the STF and prompt the controversial weakening of the presumption of innocence constitutional rule.

The key element grounding the LJ operation legal rationale was a discourse shift. Perceiving the need to influence public opinion the coordinators of the operation began to create a well-designed strategic communication narrative (Sá e Silva 2022) based in three main elements: a) selecting a public enemy, an emblematic individual to be the face of corruption in the country, particularly one that could draw attention and symbolise the need to reform the political and legal system; b) shifting the lenses from corrupted officials to the legal system, particularly from the human factor and all its ethical and ethereal aspects, to a much more concrete and mundane one, the legal system and the existing framework (Stochero 2019, AE 2019); c) using social-media and public presentations – as it was during Operation Mani Pulite, in Italy (Kerche 2018, 237) – to openly promote this strategy and create traction supporting their political and legal objectives. With greater precision, the operation established two highly tangible and sensitive targets that could be readily propagated in public opinion: i) the former president, Lula; and ii) the narrative that attributed the primary cause of corruption in Brazil to the insufficient enforcement of anti-corruption provisions in criminal law, particularly linked to the Constitutional guarantee of the presumption of innocence. These two elements were massively promoted via social-media channels and media conferences as pointed in the figures below.

FIGURE 5



Figure. 5. Mr. Dallagnol presenting in a press conference the results of the investigation.

Shifting the lens from corrupt actors to the legal system, particularly pointing to the Constitution, and its guarantees as key factors promoting corruption was a key development in the Lava Jato. It was the result of a very designed strategy that perceived that the traditional approach linking corruption punishment to the ethical failure of the politician was not being effective, and at the same time did not cause a significant bad perception in the public opinion. For a long time, a popular saying “rouba mas faz” (or “steals but delivers”) prevailed--accepting the rationale that the politician is corrupt but develops good policies in favour of their communities. At the same time, the Constitution, particularly the presumption of innocence rule, was constantly associated with the high levels of criminality, the lack of enforcement of criminal law provisions and the public feeling of impunity by some legal scholars, police officers and legal actors more inclined to the war to crime and harsh punishment doctrine (Marques 2016). This perception slowly gained traction in public opinion and promoted support for another popular saying that “Bandido bom é bandido morto” (“A good bandit is a dead bandit”). Under this rationale, there was no need to promote presumption of innocence (Ávila and Roque 2019, 638).

Once the narrative was set, the operation began to signal to the public its arguments using a “dog whistle approach” fueled by social-medial posting, media conferences and press releases. In fact, the investigation has its own web page where it displays not only its activities but also well elaborated press releases promoting its achievements (Federal Prosecution Office 2019). This approach was a key element to promote the operation rationale and could be observed clearly in the way it was replicated through news outlets and social media, as pointed by Cioccarri (2015). In her research the author investigated the number of times the LJ made the front page of one of the most important newspapers of the country (*Folha de São Paulo*). During a 13-month period the LJ made the front page more than 60 times (Cioccarri 2018, 65) as pointed in the graphic bellow. Not surprisingly, the news about LJ were only displaced from the front page during the period of May to July 2014, when the country was hosting the FIFA World Cup.

TABLE 1

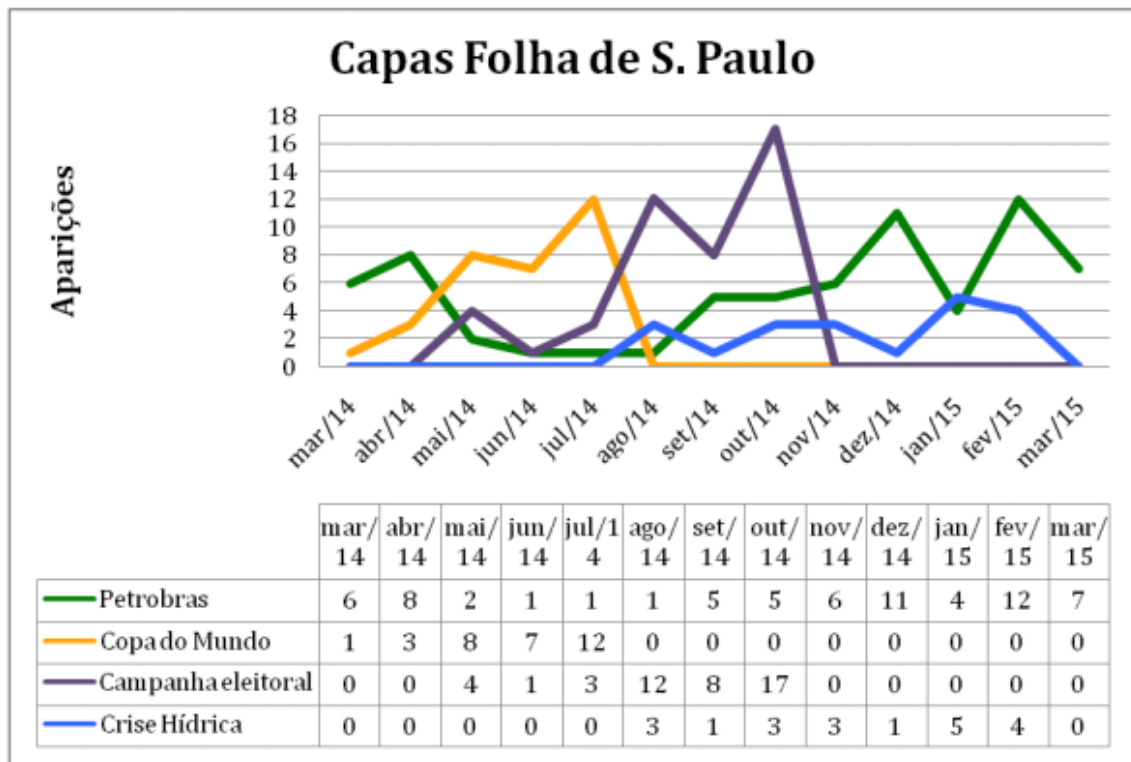


Table 1. Newspaper headlines during Car Wash Operation.
(Source: Cioccarri 2015).

This strategy also fed a prolific and very active network of profiles and community in social media channels like Facebook and Twitter. Only one group page, the “Apoiamos a Operação Lava Jato”³ (Fig. 6) has more than 270,000 followers. Deltan Dallagnol⁴ – former coordinator of the LJ in the Federal Prosecution Office – and Sérgio Moro⁵ – the former Federal Judge in charge of the case – accounts on Twitter (now X) have more than 1.7 million and 4.4 million active followers and more than 18,000 Tweets combined.⁶ The communication fostered a high level of public engagement and grounded social demonstrations supporting the operation every time its narratives and illegal practices were questioned by politicians, academic scholars or even in legal challenges (Fig. 7 and 8)

³ <https://www.facebook.com/ApoiolavaJato/>

⁴ <https://twitter.com/deltanmd>

⁵ https://twitter.com/SF_Moro

⁶ Data checked on August 2023 on the following addresses: <https://twitter.com/deltanmd> and https://twitter.com/SF_Moro

FIGURE 6



Figure 6. Social media community supporting the Lava Jato Operation.
(Source: ApoiolavaJato [Facebook page]).⁷

FIGURES 7 AND 8



Figures 7 and 8. Public demonstrations supporting the Lava Jato Operation.
(Source: Mesquita 2019, Rodrigues *et al.* 2019).

These communication mechanisms were key elements to promote the idea that the Constitution, particularly the presumption of innocence rule – and not the corrupt politicians – was the core element promoting corruption in Brazil. It replicated with an interesting twist and very effectively the “dog whistle approach” traditionally used in politics, as described by López (2015) in the legal context. The main actors masterminded the operation using all communication strategies to point the enemies to their followers, and the crowd following their guidance put forward through different channels of social pressure until their objectives were achieved. Somehow, the LJ put in place a dog whistle way of operating the law.

This approach was put to test in 2016 and performed exceptionally well as the STF, under social and media pressure, overruled its former guidance, weakening the presumption of innocence guarantee and allowed the provisional imprisonment of defendants who were still able to appeal their criminal convictions. The case used to operate this shift

⁷ <https://www.facebook.com/ApoiolavaJato/>

was the judgment of corruption charges against former president Lula, which had a great impact on presidential elections in 2018, since he was unable to run because of the criminal conviction. Rodrigues (2020, 248) points that the strategic moves related to Lula's conviction – and also the change of understanding of the presumption of innocence rule – are concentrated in the timing of the criminal prosecutions against him as well as the others defendants' prosecutions, whose plea bargains served as key evidence in convicting Lula.

5. Final considerations

The “Operação Lava Jato” was originally deployed to investigate a criminal organisation using a network of gas stations and car wash companies to “clean” illicit resources. It rapidly was transformed in a major law enforcement operation aiming to fight criminal organisations practicing money laundering and corruption, particularly targeting offenses practiced by networks established between politicians, government officers and high-profile businessman.

During the operation the Federal Prosecution Office developed a communication strategy to promote that the ‘the presumption of innocence’ rule was one of the main drivers supporting the practice of corruption offenses in Brazil and that it should be modulated to authorise the enforcement of appealable decisions. This strategic narrative influenced the STF during the controversial case involving Brazilian former president Lula in 2016. The social pressure caused by strategic communication tools was crucial to lead the court to overrule its former guidance, allowing for the provisional imprisonment of defendants who were still able to appeal.

Despite all the strategies used, LJ has been suffering constant defeats, mainly after the leak of conversations by the Telegram application, which involved the former judge Sergio Moro and the public prosecutors who acted in LJ criminal prosecutions. As a result of this leak, the defence of ex-President Lula filed for judicial requests in the STF requesting the annulment of all convictions imposed on Lula, demonstrating that such conversations violate the judgment rule that must be made by an impartial judge. Judicial measures were recently handed down, and resulted in the annulment of the convictions. What remains unclear is whether the apparent defeat imposed on LJ results only from the correctness of recent judicial rulings or if there was a fatigue on the part of the media when verifying that neither corruption nor impunity were resolved by it.

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