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UNIVERSITY OF  
TURNING A BLIND EYE? A Moral and Theological Examination  
of Corruption in Current Portuguese Culture

Fabiano Lourenço Aleluia Fernandes, BA

A thesis pertaining to social ethics  
and submitted to The Open University  
for the degree of  
Doctor of Philosophy

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## Abstract

The subject of this thesis is contemporary Portugal from 1974 onwards. The object is corruption. The purpose is to examine the dynamics of both the occurrence of, and impunity to, corruption, as a means of evaluating the quality of democracy and improve it.

Part One (Problem and Awareness Pattern) focusing primarily on the Emaudio case study, the thesis establishes within politics and economics a summative evaluation of the most critical issues needing to be addressed when dealing with alleged cases of corruption.

Part Two (Cause and Response Pattern) moves beyond a single case study to include both historical and current socio-religious, political and economic contexts of corruption, by exploring critically certain patterns of practice, structures of incentives and opportunities, and perceived cultural assumptions most likely to either nurture or ignore corruption. Three clusters of responses are advanced. They illustrate the inadequate administrative and judiciary responses of the anti-corruption agencies, which include a detailed analysis of the Parliament's Inquiry Commission regarding the dismissal of two deputy directors of the Judicial Police.

Part Three (Tentative Solution Pattern) seeks to develop morally and theologically a means of minimising such corruption and the tendency to ignore it, by formulating an alternative framework which could be used both as a foundation and a starting point (first phase only) for a nationwide, comprehensive, and a multidisciplinary anti-corruption scheme. A classic (10 Great Words) and contemporary (Singapore experience) case study are provided prior to proposing eight principles upon which to base the new anti-corruption alternative response. This follows a tripartite jointly approach of top-down (political will), bottom-up (civil society) and middle-ground (administrative and judiciary) structures.

## Dedication

In memory of José António da Rosa Dias Bravo,  
late Vice-Attorney General and *Juiz Conselheiro* of the Supreme Court of Justice,  
an adviser, friend and brother in Christ, whose life, example, dedication and service  
remains an inspiration for improving democracy.

## Acknowledgements

This thesis arose from the notion, after reflecting on a number of alleged cases of corruption, that it is a significant social issue. The picture was a patchwork: half-stories, cases, complaints, echoes of revolt, mixed memories shared by individuals. As the initial inquiry proceeded, I learned a great deal, and am still learning with appreciation. I say this not so much as an excuse for errors and omissions for which I am solely responsible, but rather to point out some avenues for action.

Although the pathway behind, in many ways proved lonely and extended in time, I owe an enormous debt to individuals and institutions. Dr E.D. Cook for invaluable advice that will remain for the years ahead. This thesis would not have reached its final stages if it were not for an unexpected phone call, from Dr Bruce Winter, after a pause. Within a year of transferring to UK, including 13 short trips to Portugal in between, this thesis reaches its conclusion. I benefited from Dr Winter's main supervision, feedback, analysis and support for which I am grateful. Dr Paul Freston, my second supervisor, also provided helpful critical comments firstly in Oxford, then Brazil and Portugal. Dr David Smith has encouraged me immensely with his expertise and vision. Dr Denis Osborne for passing his own notes and seminars' material. The Mustard Seed Foundation in USA, and Langham Partnership UK & Ireland for their scholarship awards. Dr John Stott, uncle and servant theologian, and his team who inspired so many through Langham Fellowship. The Board of AEE for ongoing support and encouragement.

The following are friends to whom I am grateful: Weena and Graham, Lisa, Stephen and Margaret, Robert and Joy, Eunice and John, David, Ron, and Richard (ECM), Jerry, Theron, Nuno, Vitor, Gary and Terri (IBP), Victor and Bia, Alan and Celeste, Alex, *Amigo* Cliff and Sheila, Luciana, Madalena and Tomé & families for never ending support. Last but not least, Danny who reminded me to keep studying! and Tita for coping with *tótó*'s many demands with continuous joy and Suzana. Together we may proceed.

## Abbreviations

AACC former High Authority Against Corruption  
BE Left Block Party  
CDCOC Central Directorate for Combating Organised Crime  
CDS-PP Centre Social Democrats – Popular Party  
CG Constitutional Government  
COA Court of Auditors – European Union  
COE Council of Europe  
CPI Parliamentary Inquiry Commission  
DCIAP Central Criminal Investigation and Prosecution Department  
DCICCEF: Central Directorate for Combating Corruption, Fraud, and Economic and Financial  
    Crime  
EU European Union  
FSE European Social Fund  
GNR Republican National Guard  
Greco Group of States against Corruption  
IACC International Anti-Corruption Conference  
IMF International Monetary Fund  
MP Member of Parliament(s) (MPs)  
OECD Organization for Economic Cooperation and Development  
OV Green Party  
PCP Portuguese Communist Party  
PJ Judicial Police (*Polícia Judiciária*)  
PM Prime Minister  
PPI Public Prosecutor Inquiry (Emaudio Case Study)  
PPS Public Prosecutor Service (*Ministério Público*)  
PR President  
PS Socialist Party  
PSD Social Democratic Party  
PSP Public Security Police  
TC Constitutional Court  
TI Transparency International  
TI-CPI Transparency International’s Corruption Perception Index  
UGT General Workers Union  
UN United Nations  
WB World Bank

## NEWS PAPERS & MAGAZINES

In an effort to reduce the length of the footnotes, references to newspapers and websites are abbreviated, followed by date, page number and title— the absence of page number means the Internet was used. The author translated some titles and quotes.

24H 24 Horas

CAP A Capital

CM Correio da Manhã

CN Canal de Negócios

DD Diário Digital

DE Diário Económico

DN Diário de Notícias

EXP Expresso

GR Grande Reportagem

IND Independente

JL Jornal de Letras

JN Jornal de Notícias

PD Portugal Diário

PUB Público

SEM Semanário

TSF Radio TSF website

VIS Visão



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**PART ONE**  
**PROBLEM & AWARENESS PATTERN**



# Chapter 1

## Introduction

### 1.1 Purpose and Aims

The thesis examines a twin problem in contemporary Portugal, namely the occurrence of corruption and its impunity,<sup>1</sup> by developing three particular themes. Firstly, focusing on the Emaudio case study,<sup>2</sup> the thesis raises socio-political and economic awareness by highlighting (a) the individual, institutional and environmental factors that nurtured corruption; and (b) the patterns of individual and institutional responses that tolerated corruption.

Secondly, by enlarging the analysis to include both the historical and current cultural contexts,<sup>3</sup> the thesis explores briefly certain patterns of practice, perceived cultural assumptions, and incentive and opportunity structures most likely to feed and ignore corruption. Attention is devoted to the environment of corruption with particular concern in examining the inadequacies of current responses to corruption.<sup>4</sup>

And finally, the thesis develops in much greater detail a means of minimising corruption and its impunity by: (a) re-examining and proposing key basic principles; (b) laying the basic foundations upon which to (c) formulate an alternative ethical framework for the initial phase of the anti-corruption strategy.<sup>5</sup>

These aims are crucial for understanding the “why of corruption” for two main reasons. Firstly, and as correctly stated by the World Bank scholars, efforts to reduce corruption must move beyond a narrow response to a broader and multidisciplinary approach. They must address its underlying causes which include a complex mix of historical legacies, institutional factors, and

---

<sup>1</sup> For a detailed description see Chapter 2 “The problem of corruption”, and Chapter 3 “The problem of impunity”.

<sup>2</sup> See Chapter 4 “The Emaudio case study”. This interesting case covers two interconnected fields of analysis, namely politics and economics from both national and international perspectives.

<sup>3</sup> See Chapter 5 “Historical determinants of corruption”, and Chapter 6 “Current contextual factors of corruption”.

<sup>4</sup> See Chapter 7 “Types of existing responses to corruption”.

<sup>5</sup> See Chapter 8 “Formulating an alternative framework of response”.

policy choices that facilitate corruption in each specific country (World Bank 2000, 39; UNDP 1997; Husted 1999; Crespo 1991, 8). Therefore, this thesis distances itself from the intermittent, confusing and casuistic approaches to corruption that characterise Portuguese official conduct today.

Secondly, they constitute a first step towards setting a comprehensive anti-corruption national strategy, something that does not yet exist, as is openly yet surprisingly acknowledged by the Portuguese leaders in the recent Greco report.<sup>6</sup> Existing anti-corruption agencies have become an anachronism. Although the principles of independence and autonomy of the Public Prosecutor Services (PPS) are held firmly, and theoretically assign the responsibility to initiate and control criminal investigation, they are actually dependent on the expertise of the Judicial Police (PJ) for their execution. The latter is vulnerable because it is in the hands of the Ministry of Justice whose responsibility it is to appoint the National Director every three years, and the National Director can easily change things around internally with or without justification, including the leadership of the anti-corruption unit. The former, having been granted independent status, resources and power is almost always unproductive in conducting investigations and detecting corruption. Additionally, cooperation between these key institutions can never be taken for granted, particularly when there are various intermediate sectors as well as distinct institutions (police forces included) “*cutting the same cake*”.<sup>7</sup>

So, a study describing the occurrence of corruption and the lack of adequate responses to it is long overdue, not least because the neglect of corruption may significantly account for the

---

<sup>6</sup> See (GRECO 2003, 5). Greco (Group of States against Corruption) is the latest initiative of the Council of Europe which replaced the GMC (Multidisciplinary Group on Corruption), established in 1994. With similar views, see M.J.Morgado’s interview in JN:Notícias-Magazine:05.02.2006:42.

<sup>7</sup> Although it is often emphasised that the Judicial Police (PJ) stands out as the main body responsible to tackle corruption, other Police institutions namely PSP: Public Security Police; GNR: Republican National Guard; and SEF: Aliens and Frontiers Department, can also investigate corruption, in addition to the Public Prosecutor and its specially created DCIAP: Central Criminal Investigation and Prosecution Department. Cf (Maia 2004, 96–97; Simões 2006, 30). But smooth cooperation, even with the Public Prosecutor, is never linear - see the experience of former Deputy Director of PJ in a text written by M.Vitorino, CM:20.05.2005: “*A direcção nacional da PJ depende de nomeação política do Governo. Maria José Morgado diz que não quer fazer acusações, mas regista as circunstâncias em que o Ministério Público diligencia junto da Polícia Judiciária, esta actua, mas por vezes dá instruções para avançar com outras prioridades. ‘A sua acção é boicotada’, regista Morgado, lembrando que os meios são sempre finitos.*”

country's poverty<sup>8</sup> and incapacity to reform its rather backward socio-religious, political, and economic institutions. Portugal can learn from, and join in the growing international research on corruption. Although it is a latecomer, and despite the recent public warning of the Minister of Foreign Affairs, D.F.Amaral in 2006, when he referred "so frankly" to Portugal, saying that for the time being, "in matters of corruption, unfortunately, it is unable to give lessons to any other country in the world..."<sup>9</sup> it nevertheless has a genuine service to share, including among former colonies, all of which suffer severely from unresolved corrupt systems as well.<sup>10</sup> This is not to justify the quip, "Portuguese (Catholic, or Latin) therefore corrupt". Far from it because corruption as it is practised is thoroughly intelligible. The condition for genuine dialogue is not for Portugal to be a corrupt-free country, as the optimal level is never zero, but simply to be both serious and consistent in its determination to combat it by going beyond mere intentions. This is precisely what is missing at present, at great cost to the nation.

Rose-Ackerman is right to remind us that corruption is never more than a second-best (Rose-Ackerman 1978, 8). Corruption does not pay; only ethics does.<sup>11</sup> In fact, being dishonest always has its cost, and scholars have pointed out for many years that corruption increases inequality and poverty (Lodge 1998; Vogl 2002, 13; Hawley 2003, 5). These are both serious problems in Portugal, although their root causes are highly contested.<sup>12</sup> However, there is nothing

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<sup>8</sup> Cf. M.J.Morgado's views expressed in the First Congress concerning Democracy in Portugal: "*Portugal, enquanto país pobre, fica ainda mais pobre com a corrupção.*" (CM:12.11.2004 "*Corrupção está fora de controlo*").

<sup>9</sup> See his interview in DN:20.07.2005. The question and answer follow: "*A propósito de PALOP e da sua visita a Angola, de que forma é que Portugal pode chamar a atenção dos responsáveis angolanos para o facto de que os níveis de corrupção não abonam nem a favor do país nem para a sua imagem externa?*" "*Posso ser inteiramente franco consigo? Eu acho que Portugal, em matéria de corrupção não pode dar lições a nenhum outro país do mundo. Infelizmente. Começemos nós por liquidar esse fenómeno cá dentro e então, depois, talvez possamos falar da nossa experiência perante outros países.*" Cf. A.Correia, VIS:11.05.2006 "*Polémica: Os dias (cansativos) de Freitas*".

<sup>10</sup> The following literature alludes to the problem of corruption faced by Brazil (Assis 1984; Bezerra 1995; Bezerra 1999; Geddes and Neto 1992); and Mozambique (Stasavage 2000; Shleifer and Vishny 1993, 18).

<sup>11</sup> See an interesting short article giving reasons "why cheats don't win" by J.P.Duarte of Massachusetts Institute of Technology in PUB:17.01.2005 "*Missão possível, desenvolvimento e ética*".

<sup>12</sup> For long, this unresolved debate has been capturing people's attention - see (Quental [1871]1994; Pires 1992; Reis 1984).

genetically wrong with being Portuguese, or Catholic, or sharing a wider Latin culture.<sup>13</sup> In our research we offer no alibis of this kind. The problem lies elsewhere, in the lack of a basis prepared to design and launch comprehensive anti-corruption schemes, in the absence of sufficient numbers of well trained and equipped personnel, often deployed in disconnected (and piecemeal) fashion, and in the ill-functioning control mechanisms which exist to prevent, detect and punish corruption in a timely, swift and just fashion. Without these powerful concepts such as transparency, competition, and accountability that permeate the entire literature become meaningless, as now appears to be the case in present-day Portuguese society.

## 1.2 Key Concepts and Focus

These aims combine two fundamental conceptual issues, which constitute the main focus of the thesis. The first deals with opportunities, incentives, and motivations for practices that are corrupt (Ferreira and Baptista 1992; Alam 1990; Alam 1995; Mény 1996; Mény and Rhodes 1997; Kwong 1997). Corruption is seen primarily as a process - a dynamic process which evolves in a concrete environmental context, with both actors and spectators, rather than simply a case of sporadic or one-off episodes. As stated by former Attorney General, Cunha Rodrigues, J.M. Júdice, Vital Moreira and Barbosa de Melo, a certain culture of corruption exists and expands because it has been left largely unchallenged (AACC 1990, 138; AACC 1991, 94; Melo 1991, 26).

Jones argues convincingly that either there must be the opportunity to perpetrate a corrupt act which has been planned and contrived at great length, or else the act in question arises from a chance taken in a passing moment (Jones 1993, 2). The latter seems less serious, unless it becomes a habit, whereas the former is in fact more serious, being generally founded on the assumption that corruption poses low risks. Whatever is the case, people in general respond to incentives, as in the Portuguese saying: “*a ocasião faz o ladrão*” (opportunity makes a thief). Corruptors in particular pay great attention to the ways others react and, in advance, measure certain risks and compare

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<sup>13</sup> As E. Buscaglia correctly said in a panel discussion, systemic corruption in Latin America “is not related to, like many scholars and practitioners may think in Europe and North America, a weak moral fibre. It’s more related to weak institutional frameworks - in other words, rules of the game that are not being enforced.” - (Symposium 1999, 202).

them with possible benefits (Becker 1968; Becker and Stigler 1974). When the latter outnumber the former, engaging in corruption seems both easy and appealing.

On this assumption, Buscaglia and Dakolias' causal analysis of corruption in the judiciary of Chile and Ecuador focuses on three areas, namely the probability of apprehension and conviction, and the severity of punishment (Buscaglia and Dakolias 1999). These are critical aspects worth considering. Therefore, this thesis largely concentrates on the way legal, social, cultural, economic and political changes have provided both opportunity and incentive structures for corruption (Sousa 1999, 1; Antunes 1990, 117; Goudie and Stasange 1997; Center for Democracy and Governance 1999, 7).

The second issue concerns people's perception of, and response to, corruption (Ferreira, et al. 1992; Heidenheimer, A., Perspectives on the perception of corruption, 1993; Grabosky 1990).<sup>14</sup> The way people perceive, react or respond is of utmost relevance in determining the root causes and conditions for corruption. This too, needs to be handled dynamically, using sound theoretical knowledge, creativity, and appropriate means of fostering active investigation within the complex structures of society and crime. For instance, if people and organisations react with indifference, then such apathy contributes to the spread of corruption and needs to be addressed properly. Responses to corruption, like its nurturing factors, are equally relevant and should be considered side by side, as factors which contribute towards an ideal environment. To some people, corruption is an optimal response to market distortions (Liu 1996); to the pressures of shortage economy (Kwong 1997, 108); to internal organisational apathy towards preventing fraud (Levi and Sherwin 2000); or to excessive political power and the arbitrary use of it (Ribeiro 1990, 94).

In summary, the rationale behind the factors nurturing corruption on one side, and the inadequate responses to these on the other, when left unchallenged, facilitate both the occurrence and the spread of corruption. Thus there is a need to concentrate on socio-cultural patterns, broad structural changes and long-term historical developments, looking particularly for regularities of practice, structures of incentives and opportunities, and cultural assumptions that both nurture and

---

<sup>14</sup> For example, the Transparency International (TI) annual worldwide Corruption Perception Index (PCI) is a well publicised survey based on business people, risk analysts and the general public's perception of corruption in their respective countries of work.

ignore corruption. These are critical issues and constitute two sides of a single coin which this thesis seeks to describe in a holistic way, although the main emphasis is on the inadequacies of the responses.

### 1.3 The relationship between the subject and object

It should now be clear that the subject of this thesis is contemporary Portugal, from 1974 onwards; and the object is corruption, here initially broadly defined as the abuse of public or private office for illegitimate gain.<sup>15</sup> But the relationship between the subject and object needs some clarification. Firstly, addressing corruption, from the April 1974 “*Carnation Revolution*”, to the present, as part of ‘real world research’ (Robson 1993), is always a sensitive, and sometimes a painful task, because corruption usually carries a great many negative connotations. The intention, however, is not to explore its dark side, nor to join a populist-demagogic rhetoric of the kind that has for many years been aimed at politicians and people in business. The purpose instead is to raise, first and foremost, public and political awareness of corruption because its known effects seriously obstruct economic growth and this leads to unstable social, economic and political conditions. This is best achieved if (1) politics and politicians are properly and openly appreciated, in a spirit far removed from Harold Lasswell’s much cited definition of politics as “*the art of who gets what, when, and how*”; (2) fair acquisition of wealth is equally openly encouraged and welcomed in line with the Protestant preacher John Wesley’s famous saying “*Gain all you can, save all you can, give all you can*”; and (3) ethics are adequately applied, including a pluralistic religious ethics.<sup>16</sup>

Secondly, the Portuguese media in general tend to treat corruption anecdotally. This, in itself, does not eliminate the value of the media, and particularly the views of its opinion makers. This thesis makes constant reference to them, thus privileging popular perception of the problem.

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<sup>15</sup> This slightly modified definition takes after that of the Asian Development Bank as opposed to a much more widely used definition by leading organisations such as the WB, IMF and TI which only focus on “the abuse of public office”. For further discussion see section 1.6 Definition.

<sup>16</sup> The author is well aware that this scenario never existed but will insist on it, as perhaps the most needed pre-conditional basis if one expects effective changes. The reason seems simple. Distrust brings further distrust just as war tends to generate even more war.

But every effort is made to treat the issue according to scientific rules, and to pay due respect to individuals and organisations that fall within this enquiry with the understanding that its aim is not to give the author's verdicts, ethical or otherwise, upon present or past individuals or institutions.

Thirdly, the topic of corruption continues to be extremely confused both conceptually and jurisprudentially. Politicians, in particular, illegitimately get most of the blame without ever having been given proper support or the basic equipment for undertaking such a noble task. Demagogy of all kinds prevails, with the result that reform of the political system is permanently on the parliamentary agenda.<sup>17</sup> The same is true for the long awaited reform of public administration.<sup>18</sup> Even the control policy mechanisms regarding rules on patrimony, wealth and interest disclosure, and the rules governing conflicts of interests have been defective in their composition, and worse in their implementation.<sup>19</sup> But hope must remain as democracy is still in its early decades.

Fourthly, to the best of my knowledge this thesis represents the first multidisciplinary and global treatment of responses to corruption in Portugal. Aware of the profound limitations imposed by these complex, secret, and largely unstudied phenomena, the ultimate purpose of this thesis is to enlarge our understanding of something that deserves proper academic treatment, knowing that the end result will require further complementary research to deepen and possibly to correct it.

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<sup>17</sup> These critical issues will be included in the Current Contextual Factors of Corruption in Chapter 6.

<sup>18</sup> Notice the steps taken, starting with the last year of Salazar's leadership until 1989. In 1967, the Secretariat of Administrative Reform was created under the Presidency of the Council of Ministers; when M. Caetano took over the government in 1968, he created and presided over the Higher Council for Administrative Reform, supported by the above mentioned Secretariat; in 1970, the actual Secretariat was integrated into the Secretariat General of the Presidency of the Council of Ministers; in 1973, it became Secretariat of Public Administration. After the military coup in 1974, the 2nd Constitutional Government (hereafter, CG) in 1978 created the Ministry of Administrative Reform. The 3rd CG disbanded the newly created Ministry, and integrated responsibility for Public Administration into the Presidency of the Council of Ministers, with a Secretary of State of Administrative Reform. In 1981, the 7th CG established the Ministry of Administration Reform. The 9th CG closed it and the responsibility for public administration was re-integrated again into the Presidency of the Council of Ministers. The 10th CG (C.Silva minority government) in 1985 united all administrative tasks related to the public service and assigned to the Directorate-General of Public Administration within the Ministry of Finance; and in 1986 became the government to devote a specific chapter of its Programme to administrative modernisation; it disbanded the Secretariat of State of Public Administration and created the Secretariat for Administrative Modernisation, directly attached to the PM. The 11th CG (First majority for C.Silva: 1987-91), in 1988 created the Under-Secretary of State of Administrative Modernisation, directly attached to the PM, which in 1989 was replaced by the Secretary of State of Administrative Modernisation.

<sup>19</sup> A good example is the so-called "transparency package" laws issued in the last days of the C.Silva government in 1995.

And finally, corruption is a powerful indicator of the real quality of ethics - applied to democracy (the exercise of power),<sup>20</sup> capitalism (the acquisition of wealth), and to the socio-religious context (the function of values). Therefore, power, wealth, and values form part and parcel of any study of corruption, and this study is no exception. Democracy finds corruption one of its greatest threats, and rightly so, because in a corrupt transaction some have illegitimate privileged access to inside information and contracts for example, to the clear detriment of others, thus violating the principles of equality and justice. Within the European Union, Portugal must enforce mechanisms of fair trade and competition. These are theoretically regarded as the most effective tools to prevent corrupt practices. The values of civil society, largely intertwined with Catholic moral teaching and practices, are important deterrents to be considered too. It is generally and correctly assumed that, without the vigorous and conscientious support of the people, any fight against corruption is unlikely to succeed. Therefore, cultural patterns and assumptions behind broad structural changes and long-term historical developments matter significantly if we are to explain and deter corruption. So the advantage of focussing on Portugal as the subject of this thesis is that it provides a specific context of corruption without which the topic remains meaningless, and one in which efforts to fight corruption remain unsuccessful, as at present seems to be the case.

#### 1.4 Reasons and Assumptions

The following are five reasons of an international, national and personal nature for undertaking the present study. Firstly, corruption has received great international attention since the late seventies. As a result there is an increasing number of national,<sup>21</sup> regional,<sup>22</sup> and international<sup>23</sup>

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20 Cf (Dobel 1978, 967): "Corruption destroys the coherence of the political discourse."

21 Several countries have organized an independent anti-corruption agency. For three examples of well known and successful cases in Hong-Kong, see (Speville, B., Hong Kong policy, 1997; Speville, B., Strategic control of corruption: A quiet revolution over two decades, 1996; IACC 1996, 1591-3; Bishop 1997); in Singapore, see (Leak 1999; Ali 2000); and Australia, see (Williams 2000; Elliot L., 1996). TI has open branches (Chapters) in more than 80 countries around the world.

22 For regional initiatives in the EU, see (Salisch 1995; Vermeulen 1997; Liberati 2000); in the COE see (Council of Europe 1999; Csonka 1997). For other regions see The Organization of American States which signed The Inter-American Convention Against Corruption - (Zagaris and Ohri 1999).

23 For international efforts see (Elliott K., 1996, Ch.10; Griffin 1994; Pieth 1999; Pieth 2000; Savona and Mezzanotte 1997). The following organizations are active in providing assistance: WB (Shihata 1997; World



initiatives, conferences, agreements, and specialised agencies, and a vast amount of elaborate research including surveys and tool-kits, that tell us more about corruption and its negative effects than we ever knew before. Such theoretical and factual knowledge, some of it included here, is important for Portugal to be able to perceive and relate to, as well as to build on, and possibly even to improve upon too.

Secondly, in the aftermath of 9/11 Western governments are checking out why stock markets in Western cities have not properly dealt with increasing evidence of money laundering, tax evasion, organised crime, and corrupt deals that enable terrorist groups to transfer wealth in support of their illegitimate causes. It seems obvious that manipulation of power, wealth and values have serious consequences. So corruption and connected crimes must be included in the agenda of the world leaders if they are to pursue a better and safer environment.

Thirdly, corruption affects advanced democracies also. It is no longer confined to third-world countries with which it was largely associated in the early phases of research. Particularly in the post Cold War period,<sup>24</sup> the waves of scandal have not spared Western European and North American democracies.<sup>25</sup> This may indicate an apparent failure of the old and once influential ideals of liberal democracy.<sup>26</sup> And now one hopes that such a corrective move will not be replaced by another potential error of focusing in neo-paternalistic style mainly on former Marxist countries of Eastern Europe. And most important, Portuguese leaders must no longer disguise or ignore

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Bank 1997; World Bank 2000; Rose-Ackerman 1997); IMF; OECD (OECD 1997); World Trade Organization (Nichols 1997); International Chamber of Commerce; and UN (Chaikin 1997).

<sup>24</sup> During the cold war period, corruption was largely ignored by the respective superpowers whenever their security and military interests were at stake. As correctly pointed out by Charlick "With the end of the Cold War...donor agencies have begun to say openly what they could previously only privately mutter - that corruption, rent-seeking, or other such euphemisms, is a major impediment to the economic development of many African countries. Perhaps just as important, it is a threat to donor programs as well." (Charlick 1992, 177).

<sup>25</sup> According to Della Porta, a wave of successive scandals have also reached the political elite in France, Spain, Germany and Denmark, in addition to already known cases of endemic corruption in Italy. The financing of political parties, the arrogance on the part of the elite in power, the determined action by the magistracy and the investigative journalism are some of the critical issues raised by corruption in Western Europe. (Della Porta and Mény 1997, 2-4)

<sup>26</sup> Liberal democracy with its emphasis on constitutional order, separation of powers, and the tendency to view corruption in terms of the weakening of ethical constraints on individual conduct in public office has somehow failed to provide a fair system of government. Most recent scandals appear in the USA with highly commented cases of Enron and World.Com.

corruption under the cover of “solidly established” democratic regime discourse or under the alibi of freedom, human rights and arguments about equality.

Fourthly, Portugal does seem to care about corruption. However, the author shares the view of many that corruption remains largely unchallenged, and that this poses a serious problem for the newly established democracy. As S.P. Huntington correctly reminded us, Portugal started the “third wave of democracy”, which then spread to Spain, Latin America and Eastern European states.<sup>27</sup> Of all these countries, Portugal remains one of the least studied with regard to corruption, both by international<sup>28</sup> and national<sup>29</sup> experts. One searches almost in vain for articles concerning Portuguese cases or by Portuguese scholars in any of the major specialist web sites or journals.

And finally, a more personal reason is advanced also. In the midst of the author's ongoing academic and pastoral experiences as a Protestant theologian in training new clergy in and among Portuguese-speaking peoples in Africa and Portugal, there were countless occasions on which allegations of corruption devastated individuals' expectations and trust in both public and private institutions. Such circumstances jeopardised the progress of individuals as well as of society. Apathy and resignation often prevail, and these are unjustifiable even when the political, economic and socio-religious elites seem indifferent.

This thesis received further initial encouragement when the late Vice-Attorney General, Dias Bravo received the author in his own office in the Palace of Palmela. We exchanged views in a friendly conversation on corruption, which was seen as a contemporary democratic dilemma requiring multidisciplinary attention. These old and unresolved matters prompted the author to

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<sup>27</sup> As keenly cited by J.C.Espada, EXP:13.02.1999 “*Aliança Mundial para a Democracia*”. Cf (Soares 1999, 104), and J.M.Moreira, PUB:07.11.2001 “*A Ibéria e a Aventura Civilizadora*”.

<sup>28</sup> Although the situation is changing slowly, in general terms, Portugal was rarely included in international social science research of any kind. According to Makler and Graham, up till the late seventies Portugal has been the most neglected of all Western European countries. See both the Foreword and Introduction in (Graham and Makler 1979) which contain an excellent overview of the emerging studies regarding Portugal. But in respect to corruption, Portugal remains largely unknown. TI-CPI includes Portugal but rarely one finds articles tackling the problem in Portugal.

<sup>29</sup> The exception started perhaps with the publication of (Sousa 1999; Sousa 2002; Sousa 2004a; Sousa and Araújo 2004). The Portuguese Chapter of TI barely survived, despite its initial impact. Cf. R.Eiras, EXP:07.07.2001-Economia, “*Corrupção Ganha Terreno Em Portugal*”; V.Andrade, EXP:24.03.2001 “*Corrupção cresce em Portugal*”; E.Dâmaso, PUB:02.09.2001 “*ONG Internacional Lança Guia Contra a Corrupção Em Portugal*”; and A.Souares, PUB:09.09.2001 “*ONG Contra Corrupção Recebe Denúncias Pela Internet*”.

address theoretically the problem of corruption by relating theology to ethics, and Christian community to society, things that should never have been separated in the first place. Mutual coexistence and respect are the ideal. Therefore this thesis offers another approach to a concrete social problem as part of the contribution of wider civil society in its aspiration toward firmer democracy and more sustainable prosperity.

There are two assumptions worth highlighting here. Despite a great deal of legal complexity, political demagoguery, administrative discretion, media confusion, social tolerance and envy, criminal sophistication, few verdicts and even rarer prison sentences, corruption in Portugal is both intelligible and detectable. It is a thoroughly rational game involving calculation, not crimes of passion.<sup>30</sup> Players engage in corrupt deals because the socio-religious, political, economic, and judicial environment somehow give them their unofficial go-ahead. The risk of being caught remains very low. The chances of escaping trial are high. And the possibility of avoiding a prison sentence is great, by appealing to higher courts, which has been made much easier since the creation of the Constitutional Court. None of these tactics appears irrational when contextual analysis is undertaken in a serious, global and multidisciplinary way.

The other assumption seems straightforward but is nevertheless widely neglected in both literature and anti-corruption agencies. Considering that corruption flourishes in well-established environments and is often supported by certain deep-rooted cultural and administrative elements that remain either unnoticed or ignored, any anti-corruption effort which is to be successful must first spend a great deal of time, energy, resources and creativity to form a strong basis or foundation upon which to launch its activities. The latter need to be thoroughly realistic and gradual and in direct proportion and relationship to the former. But because little attention is paid to such a foundation, the failure of attempts to fight corruption round the world is notorious. Cases of success are rare and amount to only three or four, which should embarrass leading organisations in the West such as the World Bank, IMF and Transparency International. However, this is not the

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<sup>30</sup> As R.Klitgaard writes: "corruption is a crime of calculation, not passion. True, there are saints who resist all temptations, and honest officials who resist most. But when the size of the bribe is large, the chance of being caught small, and the penalty if caught meager, many officials will succumb. Combating corruption, therefore, begins with better systems." (Klitgaard 1998).

whole story as there is never only a single reason, either. The interesting U4 study, which measured success in five African anti-corruption commissions seems to incline in this direction (Doig, Watt and Williams 2005). So, the mere formation of a specialized anti-corruption agency is certainly not a panacea and may achieve few results.

## 1.5 Scope

The study of corruption throws considerable light on Portugal's three most recognised features, which distinctively establish the interdisciplinary nature of this research. Portugal is a democratic, capitalist and Catholic country. Corruption has a universal effect whenever political, economic, and socio-religious beliefs and values are unable to challenge corrupt mindsets, structures and behaviour. Therefore, this thesis covers the fields of politics, economics, and religion.

*Politics* covers government and State affairs, commonly referred to as public functions. Its key responsibilities are fostering the citizen's own welfare and creating and implementing fair laws to govern the market place. *Economics* raises private issues pertaining to the agents and institutions in business and industry. Its chief aim is profit, ensuring that the country also benefits from taxes and opportunities for employment. There is, however, no neat division between politics and economics, as this paragraph may indicate.

Instead there are tensions and even collusion between them. The Portuguese Constitution theoretically subordinates economic to democratically elected political power (cf. Article 80). But in practice, almost nothing is linear, and corruption is illustrative of the lack of harmony between public and private functions (Girling 1997, ix-x; Philp 1997, 37). The "capitalist-democracy nexus" in which power (political), wealth (economic) and market forces (actually a combination of both political and economic markets) can easily undermine whatever normative line that society may attempt to impose. It is not uncommon to see pervasive economic forces "imposing" their own rules to the point of weakening the regulatory political function. Such a tenuous dividing line poses critical questions while revealing dysfunctional public and private institutions. This resembles what

Rose-Ackerman calls a “mixed-economy” concept (Rose-Ackerman 1978, 1–2), which is not all that rare, considering the example of semi-public and semi-private institutions.

Let us consider the influential role of political parties as a gateway to power and public office. In many ways they are neither truly private nor public institutions.<sup>31</sup> Juridically though, they are private. While in power they play an enormous part in shaping government and thus become closely linked or mixed with public agents and companies. But in actual practice, where transparency is far from perfect, political parties have a mixed nature. The Portuguese case speaks for itself as the central administration offices that have been “colonised” by leading party members and friends, under the well-known tacit system of “jobs for the boys”.

In addition, the Prime Minister may speak as the leader of government (public function) or as the general-secretary of his party (private function). To make matters worse, there is a constant movement of personnel from the public to the private sector and vice-versa, thus making the separation of powers a complex issue. In many ways, these examples confirm the impression that a mixed economy, with strong market forces, can also encourage governmental and private corruption.

Therefore corruption is seen as a serious issue to be left entirely in the hands of politicians and business people. After all, their activities are anchored in society and are ultimately for its benefit, as they often assure us in public. In fact, society’s ethical attitudes and beliefs must also be taken into consideration. Personal and institutional values are invaluable because one of the essential features of corruption is the “decline in the ability and willingness of the citizens to act spontaneously or disinterestedly to support other citizens or communal institutions” as Dobel writes. He then adds that “Societal or state corruption involves the moral incapacity of citizens to make disinterested moral commitments to actions, symbols and institutions which benefit the common welfare” (Dobel 1978, 960).

Where then are the sources of morality in a pluralist society? There are certainly many, arising from education, religion and the media. The last of these, for instance, are often viewed as

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<sup>31</sup> This brings to mind the Catholic University that appears to be neither public nor private under a supra-national Concordat regime. For a severe criticism of such view see V.Moreira, PUB:18.04.2000:13 “The fiction of the ‘Concordat Education’”.

“the third power”. The role of the independent media, particularly their investigative character, is highly relevant in both denouncing and raising the awareness of corruption. But as far as Portugal is concerned, the main source is still its religious institution, the highly influential, traditional, and hierarchical Catholic Church. What is of interest here is not so much private beliefs and spirituality, but what filters through from this area into daily social actions in the public sphere on the one hand, and the cultural heritage and the general adherence to a Catholic world-view on the other.

Unlike northern European Protestant countries, the process of secularisation<sup>32</sup> or religious disengagement has not greatly diminished the social power and influence of Catholicism in Portugal. Although there is an apparent significant decline in church attendance, the Catholic Church permeates all key institutions including key decision-making centres. It is the only institution which consistently merits people’s trust. P.Balsemão, a former Prime-Minister and co-founder of PSD, himself a non-practising Catholic, is right in saying that “Real change in Portugal will hardly be achieved without the support, or at least the understanding, of the Catholic Church...”<sup>33</sup>

In fact, and next to the State, Catholicism is the most powerful single institution. It has great wealth and influence, and reaches into strategic non-religious areas like political economy, education, health, social affairs, and even the media.<sup>34</sup> The former Minister of Education, Augusto Silva, himself uninvolved in Catholicism, experienced the relevance of religious beliefs and values in the process of his PhD research among the people of São Torcato in the northwest of Portugal. He correctly explains that religion which is “so easily mixed up with history and tradition,

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<sup>32</sup> B. Wilson defines secularisation as “the process whereby religious thinking, practices and institutions lose social significance” (Selfe and Starbuck 1998, 86).

<sup>33</sup> See (Maxwell 1986, 209).

<sup>34</sup> So much so that S. Franco, himself a devout Catholic, former Minister of Finance and negotiator on behalf of Catholic Church in redesigning the new 2003 Concordat, starts his article “The Church and the power: 1974-1986” saying “It is common and correct to affirm that in Portugal the Catholic Church constitutes the first one of the civil society institutions.” Then he writes “Deep down, and once again, the fundamental national dialogue happens between the State (with its groups and civil or military institutions) and one Church, which stand almost alone in the civil society. It will be impoverished, but it is like this...”. And concludes: “...in few European countries so much has passed through the influence of the Church, and this is almost everything that is truly important in matters of power and society in Portugal. That is, throughout History and also in the last years.” (Franco 1989, 403,421,425). For better or for worse he seems to be right.

nevertheless offers the most powerful criterion for the ethical evaluation of events and acts.” (Silva 1994, 227).

However, the inclusion of religion, as one of several analytical tools, is almost a novelty in the study of corruption in contemporary research. Perhaps the first attempt to relate religious affiliation and corruption in recent times appeared in La Porta, Lopez-de-Silanes, Shleifer, et al. 1997. The authors viewed hierarchical forms of religion such as the Muslim, Catholic, and the Eastern Orthodox as prejudicial to a civic engagement that could affect people’s willingness to fight corruption. Other studies followed such as La Porta, Lopez-de-Silanes, Shleifer, et al. 1999; Paldam 2001; Treisman 2000; Lambsdorff 1999, 10; Lash 2003. Paldam, for instance, argues that religions have considerable power to explain the variation in levels of corruption in the countries included in the TI CPI.<sup>35</sup> This is justifiable on the grounds that religion continues to play an apparently vital role in democratic nations such as the USA and Latin based countries in Europe, namely Italy, Spain and Portugal, to mention only Christianity. The collapse of the New York twin towers that profoundly marked the beginning of the twenty-first century has demonstrated how religious thoughts and beliefs should never have been so widely neglected in academic circles as they were in most of the previous century in the West. An Islamic mindset, like Judaism and Catholicism, does not simply detach political economy from religion. Exactly as Max Weber so emphatically stated, religious thoughts and habits do influence economic developments (outcomes) and vice-versa. It is a mistake therefore to neglect the social ethics dimension of religion, particularly in countries such as Portugal.

Perhaps next to Catholic ethics there is the so-called “Republican ethics”, dating from the short-lived First Republic (1910-1926) which apparently reappeared after the 1974 revolution, and was most closely connected with the Socialist Party. It also appears to be somehow linked with the influence of Masonic ideals. But both these ethical influences seem to have failed to impact the nation in general, and political economic institutions in particular, in deterring widespread malpractices including systemic corruption.

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35 For him, the least corrupt countries are the Protestant and Anglicans. For contrary views regarding the inclusion of religion in the analysis of corruption, see (Tavares 2004).

Whatever other problems may exist, the Portuguese population obviously needs to be consistently informed, and specifically challenged, in order to enhance its own intolerance towards corruption. These are relevant building steps towards the achievement of trust in and among citizens and institutions alike. Up till now, the people have never been properly consulted, guided or supported in such a necessary civic task. This seems to be the biggest of all the mistakes in the recent transition to democracy. So far, they continue to be the unnoticed and vulnerable victims or, as Morgado and Vegar put it “faceless victims” of corruption.

In summary, this thesis is shaped throughout by socio-religious-political-economy viewpoints, set in the context of a changing and pluralistic society. And rightly so because corruption is, after all, a moral issue par excellence whether one refers to public or private matters. However, having presented three major areas of research, it is important to clarify that none of them, separately, is fully intelligible if isolated from the others.

To complete this section, a comment is needed with regard to perceived limitations in undertaking an ambitious multidisciplinary approach to corruption. Concentration on a mixed and complex field of socio-politics and economics means that this thesis is unable to cover many different aspects likely to relate to or to influence corruption. Choices have to be made. Some relevant points are certain to be omitted. For example, purely private corruption is left out as this thesis barely touches on the illegal financing of political parties. Likewise, “off-shores” are another cloudy and complex area that Western democratic countries seem unable to tackle. Aware as we are of these genuine limitations, we nevertheless embark on this study according to our stated aims, knowing that it has the potential to contribute to and to enlarge the knowledge of critical contextual factors for corruption in Portugal. This contribution has not yet been made and the fact that there are inherent limitations is not in itself a reason not to embark on this research.

## **1.6 Definition**

Wrestling with a definition is critical issue as it largely determines what should or should not be included in fighting corruption. The literature is so full of different definitions that Deysine classifies it as a case of “overdefinition”. Although the debate is endless, it is nevertheless possible



to identify key historical categories and developments. Because the first foundations were laid primarily by political scientists, the early definitions are largely influenced by politically-desired outcomes. The threefold classification of public office-centred,<sup>36</sup> public interest-centred,<sup>37</sup> and market-centred<sup>38</sup> definitions is frequently cited.<sup>39</sup> The last incorporates more clearly an economic concept, sometimes developed under principal-agent theory (Banfield 1975; Rose-Ackerman 1978; Shleifer, et al. 1993), and rent-seeking models (Krueger 1974; Murphy, Shleifer and Vishny 1993; Parker 1996). Many of these follow Nye's definition, which is by far the most widely used one.

To a certain extent, one agrees that "the topic remains conceptually muddled in large part due to the varying and idiosyncratic operational definitions employed. This circumstance, in turn, has obstructed comparative analysis and the development of sound empirical theory" (Dolan, McKeovan and Carlson 1988, 3). Since that definition is essential, it seems that pragmatically, the future of definition lies in a choice between a narrow and a broad one also suggested by Deysine (1980). Due to the pioneer nature of this multidisciplinary research, a broader approach is perhaps the most adequate as it provides a more flexible way of dealing with a crime full of secrecy and complexity. The following broad definition by Della Porta and Mény (1997:4-5) seems a valid one.

Corruption is "a clandestine exchange between two 'markets', the 'political and/or administrative market' and the economic and social market." They further explain that "The exchange is an occult one since it violates public, legal and ethical norms and sacrifices the common good to private - personal, corporatist, partisan, etc. - interests. And such a transaction enables private actors to have access to public resources (contracts, financing, decision-making, etc.) by giving them an unfair advantage, because there is neither transparency nor competition. This procures present or future material benefits to corrupt public actors either for themselves or for the organisation of which they are members." (Della Porta, et al. 1997, 4-5)

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<sup>36</sup> Nye in (Heidenheimer, Johnston and LeVine 1993, 966).

<sup>37</sup> Friedrich in (Heidenheimer, et al. 1993, 10).

<sup>38</sup> Leff in (Heidenheimer, et al. 1993, 389).

<sup>39</sup> Philp discusses the utility of these definitions in greater detail (Philp 1997). He has the merit of demonstrating the complexity of matching a definition with concrete situations in real life, particularly in politics.

This seems appropriate because it clearly supports a multidisciplinary analysis; it takes into account the critical collusion between public and private sectors; and it correctly observes legal requirements as the basic pillar of democracy alongside ethical values as perceived by the wider civil society. Above all, it captures the significance of a mixed economy concept argued above. It can easily be related to the Portuguese Penal Code which views the “marketisation” of the public office as the focal protective function (Costa 1987, 95; Dias 1991, 64). But the definition can also cover both public and private corruption and, arguably, in equal terms. Critical concepts such as transparency and competition are specifically included and can be explored against the background of power, wealth and values.

There are, however, some weaknesses too. The definition does not appear to give equally serious attention to private corruption. At least it does not unequivocally point in that direction. But one may legitimately argue that private corruption is far more than a mere transgression of transparency and competition rules. Its outcome also affects the consumer, for instance. But in general, Della Porta and Meny's definition seems a valid one to support the analysis and aims of this thesis.

## 1.7 Methodology

Corruption is highly secretive and usually unavailable for detailed internal examination. Intentions and motives are often hidden or at best mixed in a complex array of factors and situations. As such, any study of corruption must adjust accordingly and find ways of examining its root causes and responses with whatever material and evidences appear to exist in and around any given context and time.<sup>40</sup>

There is a very general sense in which corruption, like all human practices, whether individual or collective, needs to be interpreted either in terms of the beliefs and attitudes of the agents involved (rarely disclosed anyway) or else in terms of causes of action that are not explicit beliefs or attitudes. So, in cases where the causes of actions are not stated or discoverable reasons,

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<sup>40</sup> While wrestling with methodological aspects, the author is grateful for the timely advice given by Professor Ringer, author of an interesting book in which Weber's methodology is presented afresh as a valid contemporary tool in search of historical and causal analysis behind social practices (Ringer 1997).

but rather “causes other than reasons” (Ringer 1997, 149), one must look for regularities or patterns of practice, tacit customs, some of which are historically and religiously rooted and passed down as hallowed traditions. Additionally one must certainly look at the structure of incentives and opportunities, and at socio-cultural assumptions that continue to shape current issues. These easily penetrate institutional arrangements or social relations.

This implies a methodology that takes a broader view concerning the why of corruption, including its inadequate responses likely to capture the most important elements that both nurture and ignore corruption. Special attention is given to people’s perception of the problem of corruption made public through opinion articles, interviews and participation in conferences and similar activities. This is even more justified because there is little literature available that deals with the current context of Portuguese corruption.

## **1.8 Literature Review**

So far, we have established the need to move beyond the legalistic, individual, and isolated cases of corruption that have occupied the main attention in Portugal. Instead we concentrate on the process and dynamics of corruption. We have already argued that causes of corruption, and its responses must be found in a wider tripartite field of enquiry, that is, within a complex nexus of socio-religious, political and economic relationships.

In order to proceed, one must not neglect the growing cumulative research already available. This section describes how knowledge has been structured by briefly referring to key works and theorists as well as their methodologies, moral assumptions, key principles and models, including weaknesses that shape the inquiry into corruption. The ultimate purpose, however, is to build on existing knowledge and thus offers a better approach in explaining, relating and comparing generalised causal and response theories for undertaking a study of national corruption. This obviously demands a closer review of existing Portuguese literature as the primary source of analysis.

Newcomers find their search for sources of information much facilitated as a result of recently edited compendia,<sup>41</sup> specialist journals,<sup>42</sup> Internet resources,<sup>43</sup> kits and manuals,<sup>44</sup> and anti-corruption conference proceedings.<sup>45</sup> The major structural divisions seem to be legal, political, and economic categories. This order reflects how the specialised literature came to exist in the first place.

Legislators have been the main initiators for raising the anti-corruption profile in the world. For instance, the very first editions of the International Anticorruption Conference series (IACC) started with particular concerns regarding the need to enforce the laws.<sup>46</sup> There is no doubt that corruption incorporates first and foremost a legal concept of crime, often committed by those who held some power, money and wealth. Good legislation is therefore vital. All governments rely on their law books for social and economic order. In particular, a democratic regime demands a law-abiding foundation. Otherwise anarchy prevails and easily nurtures both corrupt attitudes and vengeance against corruptors. Neither approach is acceptable. Fair legislation and adequate enforcing mechanism are the necessary underpinning for controlling corruption in a civilised manner. In other words, corruption cannot be treated without good and fair legislation.

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<sup>41</sup> The earliest one is (Heidenheimer, A. J., *The context of analysis*, 1970), later replaced by (Heidenheimer, et al. 1993) with the first edition dated in 1989. At the turning of the century two new compendiums appeared (Fiorentini and Zamagni 1999) in three volumes, all written from an economic perspective; and (Williams and Doig 2000) in four volumes, each with different editors, covering matters of explaining (vol.1) and controlling (vol.4) corruption, and its occurrence in both developing (vol.3) and developed (vol.3) worlds.

<sup>42</sup> *Corruption and Reform* started in 1986. As from mid-1993 it merged with *Crime, Law and Social Change*.

<sup>43</sup> Some websites include a valuable section of annotated bibliographies such as the World Bank Institute; the Norwegian Agency for Development Cooperation (NORAD); the Utstein Anti-Corruption Resource Centre, also known as the "U4"; and the Independent Commission Against Corruption (ICAC - Australia).

<sup>44</sup> Key organisations either adopt or produce their own tool kits and manuals. See TI Source Book in (Pope 2000), and a Tool Kit - (Transparency International 2002). The UN has its own Tool Kit (United Nations 2004); and so does the US Agency for International Development (Center for Democracy and Governance 1999).

<sup>45</sup> The International Anti-Corruption Conference - IACC Secretariat, held eleven international conferences in the last twenty years in Washington (1983), New York (1985), Hong Kong (1987), Sydney (1989), Amsterdam (1992), Cancun (1993), Beijing (1995), Lima (1997), Durban (1999), Prague (2001), and Seoul (2003). The papers of the last four conferences are available in CD-Roms edited by TI and-or in TI's website. For the Beijing conference see (IACC 1996).

<sup>46</sup> This is clearly stated in Anti-Corruption History Conference section of TI web site: "While the initial focus of the conference was on law enforcement issues and the development of successful strategies and tactics for deterring and investigating official corruption, the scope of the conference quickly grew to include the entire spectrum of stakeholders in the effort to combat corruption and fraud throughout the world."

Such a foundation is widely perceived, as Noonan clearly established, so that there is not a single nation in the world that refuses to view corruption as a crime on its law books (Noonan Jr 1987, 702). Portugal gives special importance to legal issues. Portuguese literature on corruption is largely related to legal matters (Costa, A. 1987; Moura 1993; Dias 1991; Gomes, et al. 1998; Costa, J. 1996). Of these, A. Costa's research (1987) concentrates on state-driven corruption and has been well received. Unfortunately, there has been very little debate about his views among jurists and other specialists, as M. Fonseca has pointed out (AACC 1990, 101). This is proving unhelpful in the midst of the ever increasing mixed relationships between public and private sectors. It seems that he has not taken the Portuguese context seriously, particularly the almost invisible dividing line between these two sectors. This has obvious implications for anti-corruption strategies too.

Such an acknowledgement does not mean that legal matters stand above other disciplines. Far from it, as legal concepts are sometimes inadequate to deal with several critical corrupt issues. For example, in countries which are not very law-abiding, legislation sometimes becomes easily muddled in legalistic disputes, which often turns out to be a serious problem in itself. This is certainly the case in Portugal. Such a pitfall needs to be avoided by including other non-legal approaches in the inquiry into corruption.

In fact, as the IACC series developed over the years, it became obvious that legal aspects are not sufficient to counteract corrupt practices. Therefore political and economic scientists enter into the research by addressing critical issues left unresolved by legal scholars. A brief reference to two pioneer works is important in tracing back key influential thoughts and developments. This is even more relevant for the study of corruption in Portugal, where the topic is still in its infancy.

Firstly, the contribution of Sutherland is acknowledged in the definition and powerful concept of "differential association" in white-collar-crime (Sutherland 1945).<sup>47</sup> He laid the ground work for a systematic approach to both an empirical and a theoretical-criminological understanding of economic deviance. In his definition, white-collar crime is a crime undertaken by those who

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<sup>47</sup> For the limited initial impact of Sutherland's concept of white-collar crime see (Hauber, Toornvliet and Willemse 1988). For a positive review of his ideas, see (Ruggiero 1996; Ferreira, et al. 1992; Comer 1985). For opposite views, see (Nelken 1997, 896–901; Andrade 1999).

hold high social and economic status.<sup>48</sup> His views were keenly taken up and explored by the influential left wing and Marxist politicians of the past (Andrade 1999, 148). This is an early warning about mixed motives and self-interest which affect the study of corruption.

More interesting is perhaps Sutherland's sociological concept of "differential association". He attempts to move away from a general trend to attribute causes based mainly on individual or social pathological factors. Basically stated his hypothesis is that criminal behaviour is perceived in association with a tension between those who define it favourably or unfavourably. There is criminal behaviour only if the weight of favourable definitions exceeds the weight of unfavourable definitions. And this is intimately related with the social disorganisation concerning either lack of, or conflicting standards. According to Sutherland these are the root sources of economic deviance of the powerful.

Although Sutherland did not intended that his hypothesis would cover all cases, his ideas nevertheless attempted to provide a rather universal causal, if not in fact a mono-factorial, theory of crime. Such an approach was later dismissed. As Nelken writes, Sutherland's theory is now regarded as flawed and superficial, and the search for a universal theory of crime has lost its attraction (Nelken 1997, 902). Here possibly lies one of the major factors for the confusing status of the current causal analysis of corruption. Researchers then concentrated mainly on particular case studies alone. But localised and narrow case studies have their own limitations too. For this reason this thesis goes beyond the Emaudio case study to include both historical and contemporary factors of corruption.

Secondly, Becker's seminal article is a reference work for economic crime (Becker 1968). It basically deals with reasons why individuals may decide to take an illegal path in acquiring money or profit. He takes into account the cost of enforcement, investigation and punishment and seeks to answer the optimal level of punishment to deter crime. His approach, later expounded in a joint article with G. Stigler, clearly indicates that corruption is also a crime of calculation (Becker,

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<sup>48</sup> Such distinctions led Quiney to then advance a parallel concept of a "blue-collar crime", perpetrated by lower bureaucrats and professionals.

et al. 1974). It definitely opened up a new way to consider the mathematical rationale behind a corrupt action, which is critical for causal analysis too.

In many ways Sunderland and Becker's contributions have opened up critical issues for future research. Among political scientists, Nye's "Corruption and political development" has been perhaps the single most influential article (Nye 1967), not least because of his widely used legal and public-centred definition of corruption. It was specifically chosen to fit his study of corruption in Less Developed Countries (hereafter, LDCs) under a debatable concept of "political development". Like any legislator, Nye is mainly concerned to reduce the level of both ambivalence and ambiguity, particularly when these are associated with equally debatable normative or moral views.

His assumption is that LDCs have dual worldviews with regard to ethics: the "indigenous" one and the "more or less Western" point of view. He applies a Western standard of corruption, believing, in our view wrongly, that there is a conceptual consensus in the West. However, Nye's great theoretical achievement lies in the fact that most subsequent political and economic scientists have settled their analysis around both his definition and the concepts of corruption associated within the context of LDCs. So that thirty years later it is still catching attention despite some minor changes which are occasionally suggested. In our view, Nye's approach is wrong. Firstly, because of his definitional focus which is entirely based on public corruption. People's perspectives around the world, and most certainly in LDCs where poverty is a serious problem, few would agree that corruption is confined largely to public officials' conduct. Many would like to 'condemn' the private individuals and firms equally.

Secondly, Nye's simplistic view of culture, with apparently no regard to a country's history, religion, values and institutional developments, seems inappropriate too. It clearly lacks an holistic perspective. So, when key institutions such as WB, IMF and TI have largely adopted his approach, one cannot help thinking that there will be a negative outcome. A decade after these institutions began to tackle corruption around the world seriously, the results are not yet promising – "Unfortunately, the history of anti-corruption campaigns around the world is not propitious. At the national and local levels, in ministries and in agencies such as the police, even highly

publicized efforts to reduce corruption have tended to lurch, lapse, and, ultimately, disappoint” (Klitgaard, MacLean-Abaroa and Lindsey 2000, 11).

Such a situation should have prompted criticisms before now. In many ways, Doig, Watt and Williams’ conclusion appeared very late indeed (Doig, et al. 2005, 49–50). And despite the creation of anti-corruption special agencies, many countries, in addition to those five included in their research, have missed the target, wasted resources and demoralised their own people and external donors too. Their recommendations, such as (1) success based upon the concept of country-specific realism, and (2) corruption remains a matter of opportunities, incentives and risks, here understood beyond the realm of public office, are right but not usually observed by academics, policy makers and social practitioners.

For instance, the causal analysis of corruption lacks comprehensive, multidisciplinary and contextual approaches. A lot is confined to a random list of general and universal causes.<sup>49</sup> As such, they may be useful to illustrate the general situation but are rarely accurate enough to build a reasonable and contextual strategy to fight corruption, which in our opinion remains a special concern and priority in analysing corruption. Without consistent regard for environmental factors, superficiality dominates the inquiry, leading to varying and idiosyncratic definitions and policies most likely to obstruct anti-corruption progress, comparisons and sound empirical theory.

A good example is the case of Portugal in international literature. Somehow, it entered the list of successful anti-corruption cases in the world and scholars are citing it. For instance, two studies place Portugal alongside Hong Kong and Singapore (Hessel and Murphy 1999; Tanzi 1998, 30). Kaufmann too indicates that “Portugal has undergone significant improvements over the past dozen years or so...” - these generalisations can only distort the evidence (Kaufmann 1997).

Another important political concept from Nye is that "some kinds of corruption might promote economic development." During the sixties, several influential authors have proposed a similar idea such as Bayley, Huntington, and Leff.<sup>50</sup> This beneficial idea has been labelled as "grease-the-wheels" by (Kaufmann 1997), and "efficient grease payments" by Wei (Wei 1997a).

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<sup>49</sup> See footnote 324.

<sup>50</sup> See respectively pp 935-952; 377-388; and 389-403 in (Heidenheimer, et al. 1993).



Such a position is also known as the "revisionist approach" and gained many critics.<sup>51</sup> Bardhan's excellent review includes a brief discussion of the effects of corruption on efficiency by dealing with both sides of the arguments (Bardhan 1997). But over the years and particularly in the recent past, Nye's position has been under considerable attack. It is now largely abandoned.<sup>52</sup> In some ways this has left an almost empty space without an alternative view in the ongoing discussion of the effects of corruption. As a result, there seems to be a false consensus under the banner of a "politically correct" approach. And yet, the reality varies so much in different socio-political and economic contexts and it is possible to see why, in some cases, corruption is the preferred alternative route for making things happening. Such a stand is far from uncommon either among the population in the LDCs or among the bribees of the rich world. So it seems now in the international arena.

Despite this apparent consensus, corruption remains, in the words of Lowenstein, an essentially contested concept, covering various levels and themes. With regard to levels there are two broader concepts, namely grand and petty corruption. They are largely based on the perspective of the agent's status and-or the size of the bribery involved. Grand corruption refers to misconduct perpetrated by top executive and political leaders. Specific literature in the field is rare. Moody-Stuart's book *Grand Corruption* is a notable exception (Moody-Stuart 1997). He explains how and why heads of state, ministers and top officials misuse public power for private, pecuniary profit. He also suggests that a higher share of responsibility must rest on the tempters - that is, the rich Northern countries - than on the tempted ones - that is, the Global South (54).

Grand corruption is harder to account for, due to the higher quality of the agents' power; their secrecy and ability to camouflage; their ability to use and abuse intermediating lower-level personalities; and in times of prosecution their ability to pay for good lawyers' fees. And because of this capacity, it is not uncommon for them to pursue legal action against people who appear to

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<sup>51</sup> See D.Kaufmann in (Stapenhurst and Kuded 1999, 39–47; Tanzi 1998; Kurer 1997, 117–138; Mauro 1995).

<sup>52</sup> A good recent exception is perhaps Girling's explanation concerning the "functional corruption" which he finds in South East Asia. See chapter (Girling 1997, Ch. 2).

be defenceless whistleblowers. It seems therefore that there are unequal weapons in fighting corruption when the alleged corruptors belong to powerful or wealthy classes.

By far the most common approach is towards petty, low-level or micro corruption perpetrated by lower ranks of civil servants, customs officials and policeman in violation of principal's institutional norms concerning illegal benefits (patron-client relationship). For example, political scientists prefer to speak of corruption as a symptom of more deeply-rooted dilemmas in politics and society involving low-level personnel. Economists provide specific theories, including game theories in which corruption appears to play a negative role among workers, in resource allocation,<sup>53</sup> taxes,<sup>54</sup> wage incentives,<sup>55</sup> productive control,<sup>56</sup> direct foreign investment,<sup>57</sup> public contracts,<sup>58</sup> and competition.<sup>59</sup>

Of these, fiscal matters seem to be of greater relevance for Portugal where tax evasion remains very high. A higher tax burden leads to more unofficial activity (Johnson, Kaufmann and Zoido-Lobaton 1999; Pommerehne, Hart and Frey 1994). Levels of tax evasion are high when penalty rates on the private sector and tax collectors are low and when the probability of detection is low - so argue (Haque and Sahay 1996). And of significance remains the existence of offshores (Besley, et al. 1993; Frey and Pommerehne 1984; Schneider 1994; Hampton 1996).

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<sup>53</sup> Inefficient allocation of resources affects business and state enterprise alike and may be the result of a corrupt behaviour. Shleifer & Vishny's article focuses on the consequences of corruption for resource allocation (Shleifer, et al. 1993). Cf. (Baumol 1990; Grossman and Kim 1995; Lien 1990).

<sup>54</sup> Tanzi includes taxation under 'direct factors' that promote corruption (Tanzi 2000). For additional literature on tax collectors' behaviour, see (Chander 1992; Feige 1994); for taxpayers' behaviour, see (Das-Gupta 1994; Erard and Feinstein 1994; Isachsen 1980; McBarnet 1991).

<sup>55</sup> Low salaries, particularly in the public office, are often cited as a contributory factor of corruption (Gupta, Davoodi and Alonso-Terme 1998; Besley and McLaren 1993; Biswal 1999; Mauro 1997).

<sup>56</sup> Owoye's analysis, based on a macro economic approach, argues that corruption affects production and eventually increases the price level in the market (Owoye and Bendardaf 1996) whereas Murphy acknowledges some negative effects of production but they emphasize that corruption and rent-seeking is even more harmful to innovation (Murphy, et al. 1993).

<sup>57</sup> Wei's study finds that foreign direct investment is negatively associated with high levels of corruption (Wei 1997b; Wei 1997c; Wei 1999).

<sup>58</sup> To comply with strict rules, sometimes seen as obsolete and unnecessary, leads many to irregular, illegal and/or corrupt conduct such as farce contracts; side-contracting; non-observance of rules; illicit disclosure of information; manipulation of contractual figures; payment of kickbacks, commissions and so forth (Della Porta and Vannucci 1999, 33-54; Jones 1993; Rose-Ackerman 1999, 27-35).

<sup>59</sup> It is often cited that corruption is deeply associated with the lack of competition (Ades and Di Tella 1996; Weyand and Rummel 1998).

All these issues and others as well form the overall context of corruption. It is not practical to embrace them all in a single study. Johnston offers three major concepts worth referring in explaining corruption: the personalistic, the institutional, and the systemic viewpoints (Johnston 1982). He associates each aspect with an analogy such as "the rotten apples", "the rotten barrels" and "the big picture". He then provides a brief analysis of their positive and negative strengths.

The personalistic concept tends to associate corruption with "human nature" - the "natural" tendency towards greed, mismanagement of power and other vices manifested by those in positions of public trust. Many scholars avoid addressing corruption from a moral perspective (Mény 1996, 111–2), and react strongly against a moralistic viewpoint as this tends to be exploited by political opponents especially in the context of electoral disputes, often fuelled by the media.<sup>60</sup> The fear of falling into a 'moralistic ghetto' seems to be one of the most clearly perceived explanations, perhaps due to the widely accepted move towards secularization, here seen as a sociological theory which accounts for a reaction against the traditional and strong influence of religion. Although Guodao and Zhengkun acknowledge that the spread of corruption has "deeper causes of morality and culture, which make people behave with the social condition", they also warn that "exaggeration of morality makes it false" (Guodao and Zhengkun 1996). Despite these warnings one cannot ignore completely the agent's personal and moral behaviour, including that which is religiously motivated. Patrick Dobel's perspective emphasises this aspect when defining corruption as the moral incapacity of citizens to make reasonably disinterested commitments to actions, symbols and institutions which benefit the common welfare (Dobel 1978, 958).

The institutional concept takes into consideration the environment in which individuals are operating by looking especially at organisational structure (Ermann and Lundman 1996). In this case, causes are to be found in mundane matters such as the workings of bureaucracy and related institutional factors, including some forms of handling the laws and the internal disciplinary mechanisms (Charap and Harm 1999; Geddes, et al. 1992; Nas, Price and Weber 1986). This approach, which was not considered by Johnston in the course of his book, is nevertheless useful.

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<sup>60</sup> Cf. C. Leys in (Heidenheimer, et al. 1993, 51–3; Beenstock 1979; Corm 1996, 97–9).

It has the possibility of providing a comprehensive explanation and is widely used in various countries still. Banfield's well-known article is a good example (Banfield 1975).

The systemic concept sees the origins of corruption - here seen in a "neutral" analytical manner - in this interaction between government and society. But according to Johnston, it is a form of influence, rather than failure of individuals and institutions that accounts for corruption. He may be right in considering the misuse of influence to be at the heart of the problem, but to isolate this aspect only is certainly not the best strategy for a systemic approach, which in theory appeals to a "big picture" view. Max Weber's determination in refusing a mono-causal factor in any social science research is something to take seriously here, it seems.

Inherent to a systemic perspective is a multidisciplinary approach to corruption, which in our view Johnston does not take seriously enough in his book. This approach, in fact, is rare in the literature, as Shihata has correctly pointed out (Shihata 1997, 255). Future research needs to try to bring together various interrelated disciplines in the political, economic, and cultural fields. The trend now is to concentrate on the political and economic dimensions of corruption.<sup>61</sup> This is hardly surprising considering that the most adopted definition is centred around 'official' corruption as already stated above. As a result, private sector aspects are neglected.

On the other hand, the economist's valuable contributions tend to detach themselves from complex political nuances. The major gap in the current literature is in the critical area of culture and how it conditions the manner in which different nations view corruption. The inclusion of culture is important though it is a difficult analytical concept to deal with in social studies. Allusions to cultural matters have not been entirely absent. Many writers mentioned them but in an entirely superficial matter. For instance, Rose-Ackerman in her first book calls attention to subtleties of cultural features in the overall analysis of corruption in specific places (Rose-Ackerman 1978, 4-5). There is now a broad consensus that corruption is rooted in poorly functioning institutions, as well as in policies that undermine free trade and competition all over the world. This raises important cultural issues needed to explain corruption.

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<sup>61</sup> Other Johnston's writings follow the same political perspective (Johnston 1991; Johnston 1998). Other scholars have followed the same path (Morris 1991; Padhy 1986; Bezerra 1995) in Mexico, India, and Brazil, respectively.

In the case of post-Marxist countries in Europe, researchers acknowledge that one of the key legacies of communism was a "culture of policymaking" in which the state played the dominant role in mediating economic relations. Bureaucrats and executive state officers determined both suppliers and customers, set prices and wages, provided finance and controlled the distribution of goods. Although a change has taken place and a new redirection is geared towards democracy, there are no doubts that old habits remain widespread in those countries. We argue therefore that cultural matters, including powerful ingrained traditions and moral views based on religion also are essential factors that need to be properly accounted for in the causal analysis of corruption.

And lastly in the way of influential political concept is Heidenheimer's useful and well cited concept of "black, grey and white corruption".<sup>62</sup> At the very bottom of these concepts is the attempt to seriously consider the cultural and social contexts in which power, wealth and status are exercised and therefore affect perceptions of whether and how much corrupt behaviour is morally, culturally and legally condemned in a concrete place. Also useful and not well used are Heidenheimer's ten types of corrupt behaviour applied in four types of political obligation relationships characteristic of certain communities.<sup>63</sup>

Although political scholars have written extensively over the years, the fact is that there are not yet classic works in the field. DeLeon, himself a political scientist, admitted that "it is perhaps indicative of the chariness of political scientists towards this subject that the book which most rigorously examines political corruption was written by Susan Rose-Ackerman, herself an economist" (DeLeon 1989, 195). Her book, *Corruption A Study in Political Economy* is indeed a masterpiece in the field (Rose-Ackerman 1978).

The time of its appearance (1978) should have led by now to a far better result in the overall contemporary analysis of corruption, particularly in the field of causal theories that has

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<sup>62</sup> "Black corruption" indicates the case when both elite and mass opinion would condemn an action as corrupt beyond any dispute and as a matter of principle. "Grey corruption" indicates greater ambiguity. Some would perceive a certain action as corrupt whereas others may not. "White corruption" indicates that a large majority would not vigorously support an attempt to punish a kind of corruption that is widely tolerated (Heidenheimer, et al. 1993, 161).

<sup>63</sup> For a full details see table 10.1 and 10.2 in (Heidenheimer, et al. 1993, 152, 156). The four types are the Traditional Familist; Traditional Patron-Client; Modern Boss-Follower; and the Civic-Culture, based systems.

remained generally confused. Her complex, multidisciplinary analysis is not easy to digest. It is mainly targeted for an audience of economists and highly technically trained political scientists. The author's most recent book is an attempt to simplify the argument and reach a wider audience (Rose-Ackerman 1999). Only time will tell if this effort is successful.

In the first book, Rose-Ackerman sets a good foundation as to the way corruption should be perceived and dealt with. Unlike Nye and most political analysts, she did not view corruption as a problem unique to the LDCs. She did not follow Sutherland's narrow concentration on the powerful elite either. She begins her analysis by correctly bringing together public and private officials as the main players in a corrupt dispute within democratic and capitalist settings. She explores in detail the key variables mainly under principal-agent theory of corruption which has been followed by several analysts ever since (Klitgaard 1988; Goudie, et al. 1997). The principal represents the top level government official whereas the agent is an official designated to perform a certain task.

Particularly noticeable is her inclusion of a full chapter on private sector corruption. It was innovative in the seventies. As correctly noticed by Ades and Di Tella, Rose-Ackerman was the first to emphasise the effect of bureaucratic market structure on corruption when she introduced the "principle of overlapping jurisdictions" (Ades, et al. 1996, 7–8). From the very beginning she included the hypothesis of corruption of corporate boards and top managers of the private markets by affirming that "Just as legislators may sell out voters, corporate directors may sell out stockholders..., so too may private managers exploit imperfections in the market mechanism that generate corrupt opportunities" (197).

Perhaps, the fact that this is placed in the last chapter of the book contributed to its minimum impact. But despite its inclusion in the well used Heidenheimer's *Handbook*, the chapter is generally neglected. The author admits the economist's tendency to overlook critical market failures, including the illegal or unethical behaviour perpetrated by managers, stockholders and employees operating under profit and non-profit making firms. We are correctly reminded that such misconduct does not necessarily have to involve public officials.

What is also interesting in Rose-Ackerman's findings is the fact that most of the analytical tools and remedies applied to the study of official (and political) corruption can easily be adapted to apply to counteracting corruption in the private sector, as she insists. Unlike the principal-agent theory that deeply influenced future research, scholars around the world do not seriously follow this important aspect of private corruption. By and large, research continues to focus mainly on official corruption. As noticed, this is the path followed by leading institutions around the world such as the WB, IMF, and TI. The latter, however, made a valuable contribution in launching the Bribe Perception Index in 1999.

Our key argument here is that unless both private and public corruption are taken equally seriously, to the point of exercising pressure to correct most legal national statutes that unreasonably punishing public offenders more heavily than private ones, most anti-corruption campaigns are likely to continue to fail. Failure to do so might well mislead us in coming to terms with causes of corruption.

Still on the foundational basis, Rose-Ackerman has the merit not to have trapped the analysis in the all too common political dualism of Western democratic versus Socialist economic styles which characterised the world then. Now that Marxism is widely defeated her analysis is still valid as something apparently timeless. What she highlights is the mixed nature of the economy in a modern society, which is equally relevant to a post-modern environment such as ours. Mixed systems are by far the most common feature in a society where politics and economics take place. Another important analytical aspect is the belief that society somehow continues to draw the line between a vast and complex range of mixed alternatives. This respect for society's normative beliefs, coming particularly from an economist, is outstanding. She acknowledges that normative statements about corruption require a standard of "goodness" and a "model" of how corruption functions in particular instances. She goes on to criticise her colleagues who so often adopt a narrow definition of goodness and an oversimplified model of the corrupt marketplace (9). She seems to have emphasised the importance of personal morality (p5) but throughout the book she hardly evidenced it. The exception is in the very last section in the conclusion where a brief discussion of morality, corruption and economic theory appears.

Lastly, Rose-Ackerman's key contribution lies in the wealth of variables used in understanding the kind of incentives that exist in legislative, bureaucratic and economic corruption. With regard to arguments she did well to start on legislative type of corruption by reviewing both the legislative process (individualistic or corporate levels) and powerful lobbies in the midst of intense and often antagonistic interest groups and political parties. In this way, her analysis is grounded in very early possible set of incentives for corruption. She tested it by considering the ideal as well as an imperfect democratic society, particularly the relationship between legislators and their constituency on one side, and politicians and market forces on the other.

The influence and misuse of money, power and status is expanded under various bureaucratic scenarios such as "lining up and paying off"; monopolistic conditions, and competitive environment. Critical for such an evaluation is the observance of contextual conditions for each variable used. In the case of legislative corruption, it is important to know whether voters are faced with ignorance and-or apathy in their relationship to political agents.

But despite this achievement, and the subsequent massive publications in the field, scholars have generally failed to address one of the most important aspect in the overall analysis of corruption - that of causal theories and responses to corruption. Rose-Ackerman's classic book has not been concretely applied in the study of national corruption. And without an in-depth causal analysis in a given context it is improbable that anti-corruption campaigns will succeed. In many ways what we see today is a casual treatment of the subject. The result is often a non-related set of causes given without reference to socio-political, economic and cultural contexts within a single country.

For instance, Morris acknowledges that causal theories encounter three problematic results (Morris 1991, 10–12). Firstly, it has produced "an array of contradictory hypothesis". Secondly, it appears "fragmented". And finally, it fails to differentiate between various types of corrupt behaviour. The last two reasons seem correct. Often the analysis is too general and hardly refers to a concrete type of corruption. Another reason not advanced by Morris is the contextual, that is, institutional and environmental factors do play a significant role in determining the causes of a



specific type of corruption. We are indeed confronted so often with a list of causes of corruption. Such a list is of little value because it is unrelated to concrete problem and context.<sup>64</sup>

With regard to Morris' contradictory reasons, one must say that the example he cited is not the best one may think of. The fact that both "centralisation" and "decentralisation" are often used as determinants of corruption is not necessarily a contradiction. Both can be correctly perceived as causing administrative and political corruption. What determines the matter is the concreteness of each situation. So causes of corruption, particularly of "grey corruption" to use Heidenheimer's classification once again must be analysed within a specified context, taking into account historical, cultural, political, legal and economic conditions.

At least in theory, it is possible that "centralisation" may nurture corruption in one country in a given time and context, and may deter corruption in the same country in a different time and context. The problem is not different countries, cultures or political styles but concrete factors in operation in a concrete time and situation. One may argue in the same manner with regard to decentralisation theory.<sup>65</sup>

So, our aim is to provide a framework of analysis that goes well beyond the short-lived impact of individual or institutional scandals. We concentrate instead on basic process factors that make the incident possible and even predictable. This seems more helpful in discerning the environmental root causes of corruption and its impunity that somehow remain neglected by social and political scholars.

## 1.9 Procedure of thesis

In the following two chapters we introduce the twin problem of corruption (occurrence and impunity), followed by an examination of a case-study in Chapter 4. Then we proceed with Part Two which analyses the historical and contemporary factors that nurture and ignore corruption with

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<sup>64</sup> For example, excessive bureaucracy is often cited as one of the root causes of corruption. Although it is generally right, one needs to go beyond that and inquiry what are the key factors that allow bureaucrats to succeed in their corrupt intention.

<sup>65</sup> In this same line of argument stands Ruggiero recent helpful concept of "causality of contraries". In short, it reacts against generalisations and favours "variations and differences in a particular way". This implies that "each time we subscribe to one cause of crime we may realise that the opposite cause also possesses some reasonable validity" (Ruggiero 2001, 6–8).

emphasis on the inadequacies of existing responses to corruption. And finally, a tentative alternative framework of response is presented as a means of minimising the effects of corruption in modern Portuguese culture.

## **Chapter 2**

### **The problem of corruption**

#### **2.1 Introduction**

The purpose of this chapter is to raise public awareness about corruption by introducing the problem of its occurrence and permeation into both public and private spheres. This first critical step is the focus of Part One, starting here and following with an explanation of the parallel problem of impunity in the next chapter. Then we conclude with a concrete example of a transnational case study in chapter four, with the overall objective of pinpointing corruption as one of the most serious national issues which still demand an adequate contextual analysis.

Unless there is a genuine perception from within that corruption is slowly but nevertheless steadily destroying the inner fabric of the entire society - of which trust is perhaps the most valuable, albeit invisible, social capital - its seriousness will continue to be disregarded for the foreseeable future. Already the result of past delays in discerning the present situation was to make it seem rather critical in economic, political and ethical terms.

The following two sections critically describe corruption as a problem in itself, and in context. The last section briefly summarises why corruption is best perceived as one of the most serious national problems by highlighting critical issues which receive further attention in Part Two, in which factors which lead to corruption are outlined and responses are proposed.

#### **2.2 Corruption as a problem in itself**

First of all, corruption must be seen as problem in itself. This has the advantage of introducing clarity before our discussion becomes closely connected with various equally critical matters to be included under "corruption in context" in the course of Part Two (Historical and Contemporary Context). The decision to discuss it separately however, is mainly to avoid falling into the normal trap of prematurely enlarging the field of analysis to an extent that it appears so complex that it becomes impossible to reach an intelligible explanation. Because they have fallen

into this pitfall alone, many discussions have ended up being useless. The following are four reasons why corruption is a problem in itself, namely the climate of suspicion, mixed relationships between public and private sectors, faulty political responsibility, and deliberate confusion.

### **2.2.1 The climate of suspicion**

In the air there persists an obscure but real perception<sup>66</sup> that the suspicion of corruption lies almost everywhere,<sup>67</sup> to such an extent that key institutions and their representatives feel utterly incompetent to even clarify the gossip, let alone to solve it. For precision's sake the concept of suspicion is considered first rather than corruption. Menéres Pimentel, the former Ombudsman, is partially right in saying that "the Portuguese people do not know the phenomenon of corruption" as there are only suspicions.<sup>68</sup> This is largely because the courts are failing to come to terms with critical known cases of alleged corruption. A study of corruption cannot afford to confuse concepts or infringe democratic rights and mechanisms.

Of course a suspicion can be irrational and illegitimate. However, the mere fact that it is allowed to develop and to infect the environment is a serious issue intimately related to corruption. Its existence, conditions and means of perpetuation require an early expert analysis for two reasons. Firstly it is necessary to deal with the matter itself and decide what comes next, and secondly it may lead on to other crimes worth pursuing if it turns out to be legitimate. This is the sole

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<sup>66</sup> See the following survey in EXP:24.03.2001 "Corruption increases in Portugal" by V.S.Andrade - 79% believe that it is growing "drastically" in these last years; 80.5% consider to be "widespread"; 68% think that corruption exist among the country leaders, including in central administration; 80.9% think that local councillors are involved in corrupt schemes; 86.4% have no doubt that corruption flourishes in sports; 77.2% guarantee that they are frequently confronted with less transparent situations or corruption; and 92.7% have the conviction that anti-corruption work is extremely weak. Cf. TI survey three years later in CM:10.12.2004 "Sounding on corruption".

<sup>67</sup> This might justify J.Cravinho's theory of the Portuguese "Italianisation process" in DN:21.09.2002. Cf. F.F.Silva, EXP:10.10.1998 "The king is going naked!" - "Curioso é que as suspeitas de corrupção, seja ou não para financiar partidos, não são de hoje nem de ontem, nem se resumem às obras públicas. ...O director da Polícia Judiciária, Fernando Negrão, disse... que existem cumplicidades políticas no grande crime económico. Ferraz da Costa já por mais de uma vez chamou a atenção para o problema. Garcia dos Santos afirmou que existe corrupção e o Governo sabe. O ministro das Finanças confirmou que, efectivamente, sabia, enquanto o resto do Executivo se mostrava surpreendido. Agora já ninguém pode fingir que não conhece a questão..."; M.S.Tavares, DD:21.11.2001 "More of the same"; J.M.Fernandes, PUB:02.10.2002 "Innocent questions? (or not really)"; L.Marques, EXP:10.10.1998 "The Attorney's labyrinth"; and J.Geraldes in *Jornal Online*, University of Beira Interior, "Corruption and democracy" (<http://urbi.ubi.pt>).

<sup>68</sup> See his interview marking the end of eight years as Ombudsman in EXP:11.03.2000 "Save the justice system".

responsibility of the relevant public authorities to deal with. But the normal response is for the authorities to simply delay the cases by passing them over or promising an investigation - the usual polite response. In Singapore for instance, a complaint - initially no more than a suspicion - must receive a response within a maximum of two months if it is to be legally followed up or not; and the actual complainant is the first to be informed of the decision if he or she so wishes or remains strictly anonymous. In Portugal, it can take many months and years. And just as bad, many complaints are not tackled at all.

Is Portugal now corrupt? A fair but persistent question, so it seems. The only possible accurate answer is “no one knows”. Everything else is pure speculation. Here lies the most serious problem of all. Those in positions of authority feel almost incapable of providing voluntarily or in advance the minimum evidence that public bids, admissions and contracts, supply and demands, public and private interchange of personnel, financing of the political parties, access to funds, local and central government relationships, and, to shorten the list, the bureaucratic decision making process in critical sectors are both transparent and accessible for verification. Not being willing to go an “extra mile” is problematic, not least in a context where “law on the book” differs radically from “law in practice”. Appealing to the former is therefore useless as long as the latter dominates matters of common interest behind the scenes.<sup>69</sup>

Instead, an unreasonable burden is placed on vulnerable individuals to provide hard evidence leading to proof. For instance, what good really came out of the incident in which the Dutch Protestant whistleblower courageously denounced the irregularities of the accounts and contaminated bureaucracies in the heart of the European Union’s Commission? Although the “Wise Men’s report” later criticised Deus Pinheiro, Edith Cresson, Manuel Marin and Wulf-Mathies it clearly warned that problems are not confined to these individuals. They lost their jobs but so did the entire Santer Commission. And so what? OLAF replaced UCLAF. Did it matter? Not really, because the environment is largely constituted by a man-made, or better still, by members-states-made combination of tricks in addition to a badly based control mechanism which has no

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<sup>69</sup> L.Marques, PUB:27.02.1999 “My dear engineer” - a letter written to an anonymous engineer concerned with lots of suspicions in public works. The author insists that the major problem lies in the poor quality of rules and regulations in public projects which left suspicion and corruption unchallenged.

criminal investigative powers to take matters to their logical conclusion, making the EU a bad example to follow in anti-corruption related issues.<sup>70</sup>

The traditional Portuguese demands on individuals to “prove it”, the political refuge behind the separation of powers and respect for the judiciary, and the obvious inability or unwillingness to share vital information on time and across dozens of institutions, including those of international cooperation, compounded with an ingrained tradition of secrecy, demonstrate that the fight against corruption is, at best, an amateurish endeavour.

If this picture is not utterly distorted, than it has the inauspicious consequence of tampering with inbuilt beliefs, legitimately acquired in the aftermath of the almost bloodless and honourable Carnation Revolution. And this is certainly no minor issue, unless the greatest asset of the country is no longer its people. Therefore, downplaying people’s motivation is planting seeds for the socio-cultural tensions which damage civic participation in particular. And without people’s voluntary cooperation, no legislation or power alone will be likely to succeed in countering corruption.

Instead, a climate of discouragement, low esteem and pessimism will prevail despite short-lived periods of enthusiasm (Expo98, Euro 2004). It is perhaps better described in the words of the co-director of the *Correio da Manhã* newspaper “Portugal has the stigma of not being a serious country. For many years we had no democracy and in the last 30 we have debated too many problems. Justice no longer works and corruption floods every sector of national life. The country with a history made up of Faith is thus weighed down under an avalanche of corruption: the existing situation and justice show difficulty in determining its real dimension; and what is made known, because of the imperfect functioning of Justice, comes across as suspicion fed by every type of cunning.”<sup>71</sup>

And since the cloud of suspicion remains continuously dense in the air,<sup>72</sup> it is therefore right to proceed with the analysis from the perspective of corruption itself, as a valid theoretical

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<sup>70</sup> For the EU case details see Chapter 9.

<sup>71</sup> J.Vaz, CM:25.05.2004 “Corruption and justice”.

<sup>72</sup> See former President Sampaio’s discourse in DD:21.01.2003 “PR wants greater transparency and more resources for Justice” - “*Não é possível continuar este clima de suspeição generalizada, que inquina e fragiliza as instituições e os seus agentes, só porque, na contabilidade dos recursos, nunca sobra para*

exercise independently of whether there will ever be or not a Portuguese version of Marbella which surprised the Spanish nation at Easter, 2006.<sup>73</sup>

### 2.2.2 Public and private sector corruption

Although corruption in the public and private sectors appears intermittently in the press,<sup>74</sup> the media and people's interest seldom go beyond the "pyrotechny of the scandal".<sup>75</sup> Yet, as the scandal rapidly reproduces itself, it becomes clear that there is more to it than the set of inconsequent stories implies. For the study of corruption reveals a great deal of what lies behind a complex web of relationships, most of which exist at the interface of public and private affairs.<sup>76</sup> There boundaries are ignored, and rules not observed, often with the familiar set of excuses repeated to exhaustion until it becomes "normal". But in fact it is part of the unchallenged historic routine,<sup>77</sup> made new in different contemporary formats only as argued by Ruivo.<sup>78</sup>

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*investir, suficientemente, na investigação criminal da corrupção', diz Sampaio". Cf. His words in TSF interview, which appeared also in PUB:16.12.2000:2 "Jorge Sampaio dixit": "O clima de suspeição é um clima que tem que terminar. É um problema corrosivo e dá ao cidadão uma desconfiança, já há uma desconfiança secular em torno do Estado em Portugal."*

<sup>73</sup> The Spanish government closed down the local government of Marbella with a total of 24 detentions, including its president on charges of corruption too. See H.Gonçalves, DN:05.04.2006 "Spanish government dissolves Marbella Assembly because of corruption", and in DN:21.04.2006 "Corruption and mafias in the south of Spain"; and E.Dâmaso, DN:23.04.2006 "Marbella".

<sup>74</sup> It would be rather tedious to attempt listing the cases that passed via the media in the last couple of decades, for example. An interesting article appeared in EXP:11.09.1999 by A.I.Abrunhosa with a table containing 13 legal cases between 1986 and 1994, with brief data, type of charges, and legal case evolution. Only one is not directly related with economic crime.

<sup>75</sup> Cf. The Portuguese edition of *Démocratie et corruption en Europe* (Della Porta and Mény 1995, 8) - the editor intended to add a complementary chapter regarding Portugal but was unable to do so, justifying himself in the following manner: "...the factual information remains very incipient in our country, the investigations are left incomplete and those who discover and denounce political depravity appear to take more pleasure in the **pyrotechnics of scandals**, which are quite popular, than in the urge to contribute effectively toward a moralization of administrative activity, which must necessarily include a psychosociological and economic comprehension of their subversion." (emphasis added).

<sup>76</sup> Dr Antunes' timely book "*A doença da saúde*" (The illness of health) illustrates the problem in the national health system: "A promiscuidade entre estes dois sectores é a principal causa da falta de produtividade... cerca de 90% dos médicos estão integrados no Sector Público e destes a grande maioria faz também parte do Sector Privado, que funciona como um sistema paralelo, supletivo do Estado." (Antunes 2000, 18). More recently, a similar book appeared regarding the local governments (Sousa, A., Paulo Morais - Mudar o poder local, 2006).

<sup>77</sup> See Chapter 7 for an overview of the historical ingrained habits that somehow play a part in shaping contemporary conduct.

<sup>78</sup> Consider the following selection - (Ruivo 2000): (1) From a president's wife: "*Nesta sala passaram centenas de pessoas... Aqui foram criadas empresas, aqui foi criada a Rádio (...)* por aqui [passaram] membros do Governo..." (Interview with local privileged actor 9), (p.205). (2) Local councillor comments: "*O que se tem passado ao nível dos concursos limitados é que a lei, prevendo que têm de ser três os*

Carlos Tavares, the former Minister for Economy released the results of the McKinsey Institute's study in September 2003. It unequivocally states that "informality", that is the parallel economy in current language, is the number one obstacle affecting the growth of the economy.<sup>79</sup> Next come confused conditions of public office and unreasonable legal constraints. And Helena Garrido of *Diário Económico* accuses all governments of "irresponsibility and irrationality" in allowing such a situation.<sup>80</sup> Or is it better seen as a result of the Portuguese drama of "instability" as A.P.Leite does?<sup>81</sup>

Graça Franco poses a challenging question, in some ways odd because of the strong and unnecessary reactions which usually follow any Catholic attempt to address critical political issues. She asks what the last pastoral letter<sup>82</sup> (from the Portuguese Bishops' Episcopal Conference) concerning seven social sins, corruption included, has in common with the McKinsey report. "Apparently nothing and substantially everything" she replies. The ethical dimension link seems obvious and fair. But her additional call for a cultural revolution by involving everybody (the state) and everyone (citizens) is a typical superficial recipe for doing and expecting nothing but pure discourse and good intentions.<sup>83</sup>

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*empreiteiros, vamos lá, consultados, nada impede que não se cumpra essa lei, mas para quem o não quiser fazer pode-se fazer um conluio. Vai chamar os seus três amigos, cada um apresenta a sua proposta, já se fica a saber os valores que cada um vai apresentar, negociando-os até... É uma coisa que está expandida por todo o país!"* (Interview with a Chamber President, 5), (p.227).

<sup>79</sup> See CM:16.09.2003 "Parallel economy stops Portuguese development"; CN:16.09.2003 "After McKinsey report"; F.Pacheco, CN:07.10.2003 "The report and 2010: two sides of two coins". For a critical view of the study see A.Castro Guerra, PUB:13.10.2003 "The dangerous conclusions of McKinsey". The real analysis and debate was impossible since the government released only the conclusions of the study. See (McKinsey Global Institute 2003).

<sup>80</sup> See DE:19.09.2003 "The culprit of secrecy".

<sup>81</sup> See EXP:30.07.2005 "Why does Portugal become poor?". Leite gives some comparative data concerning Portugal and Spain's politics: "*Desde 1976 a 2005 os espanhóis tiveram quatro chefes de governo... Portugal teve quinze.*" Then, he extrapolates as follows "*Analisando as longevidades médias, Espanha com mais quinze chefes de governo chega até ao ano 2125. Portugal, para chegar a 2125, precisará de mais sessenta primeiros-ministros.*"

<sup>82</sup> See Pastoral Letter of the Portuguese Episcopal Conference, September 15, 2003, "Joint responsibility for the common good", available in [www.ecclesia.pt](http://www.ecclesia.pt). For a positive reaction see M.Alegre, EXP:20.09.2003 "A guide for action"; and G.O.Martins, DE:25.09.2003 "For a better Portugal". For a somewhat critical insights see F.Madrinha, EXP Online:17.09.2003 "Well does Brother Thomas preach...".

<sup>83</sup> See PUB:22.09.2003 "Saints and sinners". Among the illegalities, Franco includes absenteeism from work based on false medical certificates, fraud related to bankruptcy, tax evasion, corruption, and bureaucracy. Cf. J.M.Paquete de Oliveira correctly remarks "Neither is the city totally perverse nor the State completely perfect" in (AACC 1990, 20).



And finally, what can be said of the views of António Borges, a highly respected economist, who emphatically declared that the very first priority for the next government is to combat corruption?<sup>84</sup> This is known to drive away good foreign investment. Cadilhe, once in charge of a department whose sole objective is to attract investments, used an interesting term “*custos de contexto*” (context related costs) to explain Portugal’s difficulty in the area. This prompted V.J.Silva’s comment as follows: “I shall not commit the awful unorthodoxy of suspecting that in the ‘costs of context’ are included those of us going along for years and years hearing the same diagnosis *à la Palisse*, seeing prescribed the same miraculous remedies for our economic illnesses... or maintaining government agencies which are useless - and without anything concrete and innovative happening.”<sup>85</sup> What else can be gleaned from the above four cases?

These views indicate that corruption raises particular concerns in mixed private and public relationships. Unless checks and balances are well defined, seemly placed and functional, the chaotic atmosphere prevailing will not attract good politicians and investments. Individuals - alone, in groups or under principal-agent models - will use and abuse the system. Ethics pays and is necessary in the process of political economy affairs too. Therefore inside knowledge regarding the conditions, actors, and viewers’ attitudes is fundamental for perceiving this web of unwritten contacts and contracts.

### 2.2.3 A fundamental political responsibility

It is perceptible that of all governments, parliaments and presidents of the last three decades, none has really focused on corruption yet. Although isolated discourses and even concrete efforts at certain peak periods have been made, the overall result is nil. Indifference makes corruption particularly serious.

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<sup>84</sup> L.Ferreira, PUB:26.07.2001 “A.Borges gives priority to the fight against corruption”; F.S.Cabral, PUB:11.09.2001 “The vicious cycle of demoralization”; J.Amorim, PUB:29.09.2001 “‘Corruption’ seen by A.Borges”. Cf. N.Santos, EXP:28.07.2001 “*A rodagem do carro de Borges*” and in EXP:04.08.2001 “A prudent silence”; S.Sanches, EXP:05.10.2001 “The state of the State”; and E.Dâmaso, PUB:23.06.2001 “The crisis”.

<sup>85</sup> V.J.Silva was not sure what this term really means, it seems. See in DE:28.11.2003 “The mysteries of the economy (or the ‘costs of context’)”. Silva thinks that economic and judicial languages are two inward looking codes to which ordinary citizens have no access. Cf. PUB:24.11.2003 “‘costs of context’ need public investment”; DE:09.01.2004 “Investment: 40 IDE contracts are worth 1,100 millions”.

Consider first the transition<sup>86</sup> to democracy started in 1974. It covers the “provisional” (prior to the 1976 Constitution) and the “constitutional” governments up to 1985, correctly designated by S.Franco as “critical times”.<sup>87</sup> Although chaos dominated politics, many argue that little could effectively be achieved as a result. But it is interesting that concerns about corruption entered into the very first programme approved by the government.<sup>88</sup> This in itself rules out the idea that no one ever thought much about corruption in the emotional days of the transition. In fact, it was not a bad start at a time which marked two critical events, namely the massive increase of public officials, and the nationalisation of several private companies. The State also increased its role as a player in addition to being the market’s regulator. This proved problematic<sup>89</sup> as also did the fact that corruption received no additional attention while these critical steps were rapidly shaping the country, particularly the apparatus of public administration.

Instability prevailed throughout the first eight constitutional governments. Of these, only the second, third and seventh governments referred to corruption in their programmes. But in 1978, the first autonomous anti-corruption and related public office crimes unit was created under the PJ known as *Brigada Anti-Corrupção*. This indicates that between 1974 to 1978 the investigation of economic crimes was somewhat relaxed. And herein lies a fundamental error. They failed to lay the basis for tackling corruption fairly, and swiftly, and for reasons going beyond mere political motivations. This jeopardised any future attempts to minimise the effects of corruption because it

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<sup>86</sup> There are various ways in typifying critical political periods. An interesting one is put forward by J.M.Ferreira: Republic of revolutionaries (1974-75); Republic of politicians (1976-82); Republic of entrepreneurs (1982-90); and lately, the Republic of financiers (financieiros) and journalists. In between, he adds, there are other key players such as the growing influence of the Catholic Church visible in the approval of the law of religious liberty - see DN:19.06.2001 “Pressure groups in the regime”.

<sup>87</sup> See a global overview of the first twenty years (1974-1994) in (Reis 1996) where S.Franco wrote four chapters under the economy section: The revolution framework; The revolutionary experience (1974-75); The critical times (1976-85); and The European period (1986-1993).

<sup>88</sup> See for example the First Provisory Government, dated May 15, 1974 and published in the *Diário do Governo* 113/74 Série I, and in Decreto-Lei 203/74 of May 15, 1974 which reads: “*Promover um inquérito a todos os abusos de poder, atentados contra os direitos dos cidadãos ou práticas de corrupção...*” and “*Activação dos meios preventivos dos crimes em geral e, em particular, da corrupção, dos delitos antieconómicos e de todas as formas de atentado contra pessoas e bens*”. See also the V Provisory Government programme, under “Measures concerning the private sector”: “*Simplificação radical dos processos de concurso e adjudicação de empreitadas, integrando a participação e controlo dos organismos representativos dos trabalhadores e reforçando as medidas repressivas contra os crimes económicos (corrupção, fraude, etc.)*.” (www.portugal.gov.pt).

<sup>89</sup> See (Viegas 1996, 1,34).

was not discussed in the first place. That is, corruption was not part of the Parliament's discussions to the point of seeking multiparty agreement, legislation and strategy. Instead, anti-corruption philosophy and practice has become a victim of "*politicização e judicialização*" (politicizing and judicializing) ever since.

According to S.Franco, the very first time when "corruption was talked about" after the revolution was in March 1979 when the Resolution of the Council of Ministers (78/79 of March 20) envisaged the creation of a special anti-corruption unit under the direct responsibility of the Prime Minister (Franco 1996, 225). This was inconsequential as Mota Pinto resigned as PM, three months later. The AD (Democratic Alliance) under the charismatic leadership of Sá Carneiro included corruption in its programme of action, but Carneiro died in a controversial air crash in December 1980.

When the ninth constitutional government, known as the "Central Block" coalition, took over in May 1983 for 2 years and 5 months, the longest of them all, the effects of corruption were visible. Still without Parliament's intervention, the government established an autonomous anti-corruption administrative investigation unit, *Alta Autoridade Contra a Corrupção* on August 1983, an obvious methodological error, identical to the 1979 one. Additionally, this unit did not have criminal investigative powers; therefore it was useless, like the current OLAF in the European Union office in Brussels. The excessively slow method of setting it up and equipping it with resources and personnel reveals critical problems which show that perhaps the organisation was not welcome in the first place. Its mandate was weak, to say the least.

The consolidation period started in 1985 with a minority government and two majority ones led by Cavaco Silva (PSD) until 1995. At last, a stable administration took office in 1987, but only the last of its three governments in 1991 approved programmes mentioning corruption. Much needed "surgical" changes were made to the Constitution and as a result nationalised firms were returned to private ownership on a large scale.<sup>90</sup> Here lies perhaps the second major fault of neglecting corruption again, when massive European funding and economic progress were under

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<sup>90</sup> Viegas is right in acknowledging various concrete efforts to diminish state intervention in the economy starting after 1976 (Viegas 1996, 171).

way. So when scandals became known in 1989-1990 and were legally charged in 1991, at the time of a second majority election, the cause of corruption was affected by two factors.

In the first place, the extinction by Parliament in 1993 of the anti-corruption unit which had lasted approximately 10 years, followed by the creation of a new subsection within the PJ framework. Secondly, a number of badly formulated laws appeared regarding the financing of political parties and vital control mechanisms of politicians and their relationship with the public sector. The last set of laws ended in a complete fiasco when, shortly before the 1995 general election, the so-called “transparency package” was approved in Parliament, only to be altered later when the Guterres (PS) administration replaced C.Silva.

The socialist period did not alter significantly the anti-corruption scenario. Some important laws appeared, including the Law 108/01 of November 28, 2001 which changed important aspects of corruption and traffic of influence laws, and defined private corruption as a crime, and the Law 5/02 of January 11, 2002 which facilitated some special access to bank accounts, fiscal data and recovery of assets in favour of the State, in economy related crimes.

This rather brief review confirms that corruption was loosely dealt with, mainly in intermittent legal matters, under unhealthy political conditions, with various changes in the process unilaterally introduced, still unfinished, and politicised throughout. This was so much so that current political party finances and enforcement mechanisms, for example, are entirely unrealistic, and anti-corruption units are ill equipped both legally and in terms of personnel. The problem of relationships between institutions is serious, and even more so when dealing with vital bodies outside the anti-corruption units.<sup>91</sup>

For this situation, the political leadership is directly responsible. And in fact, there can be no substitute for top political responsibility to change the problematic scenario which exists today. The following subsection completes the evidence as to why corruption is a problem in itself.

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<sup>91</sup> These issues will be discussed in Chapter 6.

### 2.2.4 A deliberate confusion

Corruption remains alive mostly as a subject chattered about, either in the corridors of the elite in search of power for money, and of money for power, or gossiped about in a popular fashion in coffee shops around the country. The latter reveals a powerless civil society whereas the former have abused their access to power for the illegitimate gain of the few. If this is sociologically correct, as a “natural” consequence of the previous three factors, how has the problem of corruption been affected as a whole?

The concept is certainly quite amorphous, and this diminishes the possibility of grasping the questions at stake in a corrupt transaction. Superficiality super-abounds instead. In short, and contextualising according to the spirit of the present moment, it may be said that the apparently positive “Simplex”<sup>92</sup> mood of the Sócrates administration has not yet reached the confusing legislation and the jurisprudence, structures and strategies which surround corruption.

If once the famous “3 F’s” of Fátima, Fado (traditional folk singing) and Football entertained Portuguese minds during the longest of all the twentieth century Western European dictatorships, corruption now seems to entertain the free press while somehow failing to reach the research chairs of universities, and the interest of the civic groups,<sup>93</sup> at least until the early years of the twenty first century. In practice the negative implications of this are that there is an almost total absence of any meaningful outside pressure upon existing anti-corruption bodies such as the Public Prosecutor,<sup>94</sup> the Police Forces,<sup>95</sup> and ultimately the Courts.<sup>96</sup>

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<sup>92</sup> Simplex - *Programa de Simplificação Administrativa e Legislativa* (Administrative and legislative simplified programme), is the latest (March 2006) of government efforts to reduce the bureaucracy it inherited. The first major step simplified 333 administrative acts - Available from [www.portugal.gov.pt](http://www.portugal.gov.pt).

<sup>93</sup> As stated above, the 1998 TI Portuguese Chapter initiative did not survive beyond its initial phase. Currently, there is no similar civil society group at all.

<sup>94</sup> It consists of DCIAP: Central Criminal Investigation and Prosecution Department based in Lisbon, and four regional DIAP: Criminal Investigation and Prosecution Departments.

<sup>95</sup> It includes the PJ, and its anti-corruption unit, DCICCEF: Central Directorate for Combating Corruption, Fraud, and Economic and Financial Crime; the Public Security Police (PSP); the Republican National Guard (GNR); and the Department of Immigration and Frontiers (SEF).

<sup>96</sup> There are four types of Courts: Constitutional Court, Supreme Court of Justice (the courts of law of the first and second instance), Supreme Administrative Court (administrative and tax courts of first and second instance), and the Court of Auditors.

The media are important observers, and are also facing critical problems, including low investigative performance, and the unclear movement of personnel to and from critical sectors. That most politicians and private donors alike make corruption a deliberately confused issue is perceptible to anyone with a minimum understanding of socio-religious, political and economic contexts. That many, especially those in elite positions, maintain the current status quo, with its confusion as to legal and administrative powers on the one hand, and highly inefficient control mechanisms and the overstretched judiciary on the other, is also hardly a surprise. These rather critical skeleton elements account for the prevailing *laissez-faire* approach and severely curtail whatever trust citizens have acquired concerning the State's sharp eye to discourage corruption. Against such a confusing background, it ends up as a nurturing ground for corruption instead. This explains why corruption is a problem in itself, first and foremost.

### 2.3 People's perception

It is both possible and desirable to perceive critical aspects of corruption through the lenses of individual observers. But this raises at least two immediate concerns. Firstly, what to include or exclude is problematic in itself due to a variety of viewpoints. And secondly, perception is related to individual concerns and may not reflect society's awareness of the problem. However, the aim is to bring together dispersed and previously unrelated views, in a way which will make possible reflection on the seriousness of corruption. What is included will carefully consider some degree of consistency and conceptual clarity over a period of time, in a search for critical themes.

Over the years, national public surveys are used to increase public awareness and promote discussion but seldom contribute towards change. An interesting one appeared on the occasion of the thirtieth anniversary of democracy, revealing the perception of 325 army officials, now between 50 and 75 years old, who took active part in the 1974 military coup.<sup>97</sup> None regrets taking part in it and, when asked about the contemporary situation, their concerns are centred on corruption,

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<sup>97</sup> The survey was jointly organised by *O Público* and the Catholic University. Only 4 officials failed to hand in the anonymous inquiry. For further details see three articles in PUB:24.04.2004: A.Gomes "Democracy and the end of the war were the objectives of the coup" and "Robot portrait of the April Captain".

unemployment, low economic growth and drugs. The reference to corruption is of some significance even though no specific matters are raised.

In fact, several surveys usually put corruption within people's first four major concerns.<sup>98</sup> The variation largely depends on the political occasion at the time (Morlino 1998, 314–316). In the context of a study about Portuguese Courts, corruption appears in ninth place out of 12 possible priorities for the government's action (Santos, et al. 1996, 575). Since TI began to publish its annual Corruption Perception Index in 1995, Portugal appears steadily between the 22nd and 25th positions with a score around 6.3 to 6.5, 10 being the highest, corruption-free or cleanest mark.<sup>99</sup> It seems therefore correct not to draw conclusions over and above the established fact that corruption is part of the Portuguese list of concerns.

In thirty years of democracy, views on corruption have touched two extremes. Starting with humorous viewpoints, Herman José, a TV personality, in his own characteristic style declares that “violence is to live in a corrupt state where things are deeply mechanised and no one will ever accuse anybody. The rest is a joke”.<sup>100</sup> In his weekly television programme, he invited the Attorney General Cunha Rodrigues who had then (1999) been fourteen years in office, together with a famous blind black American singer, Stevie Wonder. A journalist, who imagines the reactions of readers, asked what led Herman to unite these two? The reply goes “It is obvious neither of them can see anything”, and another version says: “Rodrigues never discovered a single case of money laundering to date because he had Mr Negrão (a derivative of black in Portuguese) as director of the PJ”.<sup>101</sup> On the same lines, Sérgio Figueiredo compares the system of justice to a large washing

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<sup>98</sup> See the following surveys: J.M.Fernandes, PUB:25.04.2004 “The time for insisting”, where corruption appears in second place (49.9%); C.Viana, PUB:Pública (Magazine):25.04.2004 “Are we like that? A portrait in 100 dimensions” - see item 31 in particular; PUB:21.12.2002 “Corruption: a rapidly rising concern” (first place); DG:05.12.2003 “Sampaio's popularity exceeds the 80% barrier” (second place); PUB:03.07.2003 “Unemployment is the main concern” (second place -49.9%); PUB:12.01.2002 “Concerns with corruption continue to increase” (third place - 38.3%); and PUB:10.12.2004 “Politicians, Inland Revenue and Justice come top in corruption” based on TI study (2004 Corruption Barometer).

<sup>99</sup> All indexes are available in [www.transparency.org/](http://www.transparency.org/). They annually hit the news in Portugal. See for example CM:28.02.2002 “Portugal is among the most corrupt”; L.Bessa, CN:06.02.2004 “Transparency is not a question of degree”.

<sup>100</sup> See his interview in IND:13.07.2001:32-33. The context of this citation relates to a couple of episodes of violence in the reality-shows, including the Big Brother.

<sup>101</sup> See EXP:02.04.1999, subsection “*Vidas*”: “*Herman à Cunha*”.

machine where white-collar crimes, false invoices, fiscal fraud, and corruption go in, and come out spotless;<sup>102</sup> and finally M.E.Cardoso suggests surrounding the country with wires as all inhabitants are somehow knowledgeable spectators who are accomplices of corrupt practices.<sup>103</sup>

The other extreme is more common but humourless. It consists of severe unspecified criticisms made by the elite. J.M.Júdice while *Bastonário* (Presidential title) of Lawyers said that corruption exists in criminal investigation because people in high places have told him so.<sup>104</sup> Another *Bastonário*, Pires de Lima, tells that corruption is not being investigated for reasons of political expediency.<sup>105</sup> Manuela Arcanjo, while Minister of Health, acted as a shadow minister also, says F.Azevedo Silva (DN:19.04.2001). She identifies clinical directors of public hospitals performing their duties and seeking political interests and the interests of syndicates instead of the welfare of patients, concluding that it is the sector in society most politicised and influenced by parties (*partidarizado*).<sup>106</sup> And lastly, João Cravinho who writes extensively on corruption,<sup>107</sup> after stepping down as Minister of Public Works denounced the existence of powerful lobbies that defeated not only his Ministry but also Guterres' administration, thus marking the first parliamentary polemic of the year 2000.<sup>108</sup> So, as P.Sande write in his article "In the land of lobbies": "Nothing new: João Cravinho complained of the lobbies, Santana Lopes too. Which? A mystery."<sup>109</sup>

But in between these short samples of two extremes, there are important themes to highlight as well. In 2001, the daily newspaper, *Público* addressed 17 critical problems under a

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<sup>102</sup> As cited in PUB:10.04.2001 (originally in DE:09.04.2001 by S.Figueiredo).

<sup>103</sup> See his interesting article entitled "*O papel selado*" (paper used for official documents) in (AACC 1990, 66–67) initially published in EXP:28.06.1986.

<sup>104</sup> See interview with J.M.Júdice, PD:19.09.2003 "There is corruption in criminal investigations". When asked where? He replied: Where, I do not know."

<sup>105</sup> A.P.Lima interview in EXP:12.02.2000:32 "Corruption is not investigated for political reasons".

<sup>106</sup> See her three pages interview in DN:18.04.2001:17-19.

<sup>107</sup> J.Cravinho, DN:21.09.2002 "The Moderna's University and Italianization in flow".

<sup>108</sup> See JN:08.01.2000 "Cravinho set Parliament 'on fire'"; PUB:08.01.2000 "PS doesn't want a parliamentary hearing"; PUB:08.01.2000 "The laws of polemics"; DN:08.01.2000 "Opposition tightens on Cravinho"; SEM:14.01.2000 "Guterres obliges Cravinho to deny lobbies?"; SEM:14.01.2000 "The lobbies which dismissed the minister"; VIS:13.01.2000 "Cravinho's sowing"; and IND:21.01.2000 "Lobbies howl softly".

<sup>109</sup> See P.A.Sande, DN:11.10.2002.



broader citizenship perspective. Corruption being one of these is associated with the financing of political parties, traffic of influence, lack of transparency in politics, and the fact that very few cases reach the courts. The study then favours an agreement between political parties in tackling corruption effectively.<sup>110</sup> The *Agência para o Empreendedorismo* (Agency for Entrepreneurism) reveals that three out of four Portuguese young people between the age of 15 and 34 view negatively a career in public administration, and 11 percent of 858 respondents considered corruption to be the cause of poor achievement of the current administration.<sup>111</sup>

At one of corruption's many peaks, and out of all cases being investigated in the PJ, 42 per cent were centred on local government corruption.<sup>112</sup> It is often part of a well known triangle with construction firms and football clubs that appear frequently in literature and the media (Ferreira and Baptista 1992, 77–82) where the dividing line between irregularity and illegality seems rather thin.<sup>113</sup> As briefly referred to above, the illegal financing of political parties is of particular concern (Sousa 1999; Costa 1998),<sup>114</sup> something which A.Vitorino calls “a clouded zone” or “sottogoverno” (substitute government) (AACC 1991, 89). Equally serious is the fact that political parties prefer to pay annual symbolic fines rather than complying with already precarious legislation.<sup>115</sup>

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<sup>110</sup> See a summary in PUB:08.10.2001 “*Um mês de cidadania*”; the following articles by E.Dâmaso, A.C.Campos and P.Correia, PUB:06.10.2001 “*Só um quarto dos casos de corrupção chegam a tribunal*”; and E.Dâmaso, PUB:06.10.2001 “*O jogo das reformas casuísticas*”.

<sup>111</sup> See DD:18.11.2003 “Youths fail the present and future of the Public Administration”. The study is available in [www.agep.pt](http://www.agep.pt).

<sup>112</sup> See DN:08.02.2006. Cf. PD:10.12.2005 “PJ investigates nearly 400 Councils (Local Governments) on suspicion of corruption”; EXP:19.03.2005 “Crimes in the Chamber” (350 cases involving 30 presidents of 308 councils).

<sup>113</sup> See CM:01.11.2003 “Corruption in Portugal - football attracts to itself contractors and business” - citing M.J.Morgado; CM:03.11.2003 “Pacheco Pereira says yes to Morgado”; E.Rangel, CM:01.11.2003 “Crime from A to Z”; V.J.Silva, DE:09.05.2003 “Paradoxes of democratic minimalism”; and H.Santos, DD:31.10.2003 “Corruption”.

<sup>114</sup> See also J.C.Vasconcelos, VIS:16.12.1999:48 “Financing and corruption”; F.B.Costa, IND:08.01.1999 “Hidden financing... with the tail showing”; M.Monteiro, EXP:04.12.1999 “Financing and transparency”; J.Tavares and P.Ferreira, PUB:14.05.2001 “Who pays for democracy?”; R.Vaz, DE:14.01.2003 “For transparency”; J.B.Moura, DE:08.01.2003 “Party financing”; N.G.Ribeiro in DE:13.05.2004 “Money, politics, parties etc.”; and R.Cartaxana, CM:25.05.2004 “Promiscuous relations”.

<sup>115</sup> See CM:09.01.2004 “All parties with irregular accounts”; J.M.Júdice, EXP:17.10.98 “May God give them virtue!”; TSF:12.10.2001 “Court of Auditors: Accounts of political parties have illegalities”; A.T.Ribeiro, VIS:11.01.2001 “Accounts: Parties outside the law”, and in VIS:18.01.2001:48-51 “Accounts of the 1999 parliamentary election”; and L.Sousa, PUB:06.10.2001 “The game of casuistic reforms”.

Concerns with expenditure levels in the Health Ministry are also perceptible and these prompted the heart surgeon M.J.Antunes to write a book giving ample evidences of waste and mismanagement (Antunes 2000). Such an unprecedented decision from the elite is valuable in itself, even though he may have ended up “preaching” in the desert. If that is truly the case, then the analysis must look elsewhere and search for causes other than reasons, impregnated though these may be in the strange webs of relationships that prevent ears from hearing and eyes from seeing what is being transmitted by well-intentioned citizens.

Although the above mentioned cases are often regarded as the most readily perceived areas of corruption, this seems rather simplistic and possibly unfair too. With no reliable studies or statistics, and with cases reaching the courts symbolising just a “tip of the iceberg” theory,<sup>116</sup> it is not desirable to attempt to reach conclusions yet. Instead, and for the time being, it is best to consider seriously the concerns of additional people.

Many have already acknowledged the widespread nature of corruption as it permeates most spheres of national life. Insightful terms such as “*corruptogéneas* (corruptogenic) conditions”<sup>117</sup>; “pre-corruption”;<sup>118</sup> the religiously based idea of being “omnipresent”;<sup>119</sup> and “*viveiro* (nursery) of corruption”<sup>120</sup> illustrate the point. They all appeal directly to the existence of structures of opportunities and incentives that underpin what may be called a subculture of corruption, which promotes an atmosphere of chaos. In reference to the latter, writes Helena Garrido “it must be said that those who benefit from the chaos in the Portuguese public administration are the corruptors, fraud makers, inefficient firms and incompetent public officials.”<sup>121</sup>

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<sup>116</sup> A concept widely applied nationally - see S.Moura in (AACC 1991, 70; Moura 1993, 23); PCP’s magazine “*Avante!*” No.1298 of October 15, 1998 “Corruption in Portugal”; EXP:10.03.2001 “The tip of the iceberg” in reference to the collapse of the *Entre-os-Rios* bridge; and V.J.Silva, DE:23.01.2003 “Will democracy be excessive?” by considering the cases of Felgueiras and Águeda as a microcosm of the national corruption ‘iceberg’.

<sup>117</sup> V.Moreira in (AACC 1991, 94).

<sup>118</sup> J.Salgueiro, EXP:11.03.2000.

<sup>119</sup> M.Coutinho, DE:30.12.2002 “The system”.

<sup>120</sup> A.Barreto, PUB:27.10.2002 “*Fantasma*”.

<sup>121</sup> As quoted in PUB:09.06.2001 “*Lido*” - originally in DE:08.06.2001.

In conclusion, Dom J.Policarpo referred to corruption as a problem in his 2002 Christmas homily.<sup>122</sup> In the following year, a pastoral document of the Catholic Church bishops identified the seven national social sins.<sup>123</sup> They included corruption. P.Sande and others welcomed such a document but wished the bishops had the opportunity to substantiate the reasons for its stubborn existence, and added the complaint, “Why is there so much talk and nothing changes?”<sup>124</sup> SEDES, a Catholic inspired organisation which unites several business people, has also pinpointed corruption as a serious, unresolved problem. In a document released prior to the 2002 legislative election, it reads under section 6:

“In face of the widespread feeling among the population, confirmed in international publications as to its general extent, it is necessary to combat corruption efficiently ... by eliminating the opportunities for its practice... It is not understood, for example, that, year after year, the Constitutional Court should come to present reservations as to the accounts of different parties and that, also year after year, nothing ever happens to change the situation.”<sup>125</sup>

## **2.4 Concluding remarks**

Corruption permeates many spheres of public and private life, over and above isolated individual cases. The above selection of views indicates that corruption is serious and deserves special attention. Although several critical elements and areas of corruption have been noticed, it is the present situation that poses the most urgent need for analysis as institutions themselves are affected by countless suspicions and episodes of corruption. A traditional casuistic approach needs to be abandoned in the search for structures for incentives and opportunities behind corrupt attitudes and practices.

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<sup>122</sup> See DN:26.12.2002 “What have we done of our ideals”.

<sup>123</sup> See the document “Joint responsibility for the common good”, September 2003, in [www.ecclesia.pt](http://www.ecclesia.pt).

<sup>124</sup> P.A.Sande, DN:19.09.2003 “Catholic, apostolic and roman”.

<sup>125</sup> See PUB:04.02.2002 “Commitment to change proposed by the SEDES”.

## Chapter 3

### The problem of ignoring corruption

#### 3.1 Introduction

This chapter builds on the previous one by increasing public awareness but this time focusing on the problem of the impunity of corruption. This is a twin problem because the absence of response - or the inadequacy of it - favours the spread of the crime. Impunity, added to the occurrences of corruption alluded to previously, provides a unified overview of the predicament. Each feeds on the other, irrespective of the order, which is unimportant, as the situation has clearly deteriorated since the early days of democracy.

Impunity significantly lowers the risks involved in corruption. When crime is left unpunished, the cost is reversed, that is, honest people pay the social penalty for being the odd ones out, and therefore unwelcome in the system. The righteous are subject to peer pressure. Such an environment favours first and foremost those who perpetuate and protect illegal practices. In the end, power is subverted, wealth reduced, except for the wrongdoers, and ethics becomes demagogic rhetoric.

The Portuguese situation seems perplexing. Consider three introductory factors. Azevedo and Rolim remind us that "At the end of the eighties, Portugal awoke to the judicial scandals involving public figures. Fifteen years later, none of them has been satisfactorily resolved."<sup>126</sup> This raises the problem of the lack of response. But from the cases on which a verdict was pronounced, the problem is different, as the following two examples demonstrate.

In 2000, two bribed traffic police officers were eventually found guilty. They were sentenced to two years in jail, but the judge suspended the sentence for a period of three years. The one who paid the bribe and afterwards took criminal procedure following his lawyer's advice, was

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<sup>126</sup> A.P.Azevedo and M.L.Rolim, Exp:12.09.1998 "Cases without justice". Cf. Two sets of related articles published in subsequent years: A.I.Abrunhosa, EXP:11.09.1999 "Justice drip by drip" (*Justiça a conta-gotas*) and "Criminal investigation at various speeds"; and A.I.Abrunhosa and A.P.Azevedo, EXP:08.01.2000 "Justice with no room to reply" and "State should compensate" by A.P.Azevedo.

sentenced to eight months in jail. He too had his sentence suspended for two years.<sup>127</sup> This raises additional concerns. Considering that denunciation of such practices is rare, and judicial conviction is rarer still, one of the key questions is how the general public, including potential corruptors and corruptees, reacts to such a decision. It is possible that such a decision is likely to discourage citizens from becoming whistle blowers. Consequently people's toleration of corruption may increase. This however is not an isolated case, as the following paragraph indicates.

Secondly, some basic statistics revealed by the Portuguese News Agency, Lusa, on the occasion of the 10th anniversary of the legal extinction of the *Alta Autoridade Contra a Corrupção* (anti-corruption unit) in 1993 illustrate the point as well.<sup>128</sup> The following 1997-2001 figures refer to the total number of convictions and effective prison sentences only. In 1997, 46 were convicted and 6 sent to prison; in 1998, 33 were convicted and 8 imprisoned; in 1999, 24 convicted and 5 imprisoned; in 2000, 43 convicted and none imprisoned; and in 2001, 39 convicted and 4 imprisoned. To complete the picture, the article says "And for more than a year there have been no registered imprisonments."

These factors prompt the following observations. Firstly, in the thirty years of the current regime, not a single prominent, top-level politician has been convicted of corruption. Secondly, all the convicted people, though these are not many, come from the "small fish" pond. Thirdly, in most of the crimes that reached the courts, the bribes offered were around 100 Euros.<sup>129</sup> Fourth, the tendency to impose a fine or to suspend prison sentences is common, and there are very few effective prison sentences - 4.6 individuals on average each year. This scenario points towards a climate of impunity combined with mild punishments. This situation requires an examination of the critical facts leading to these circumstances. That should include an inquiry as to why public reaction is so muted.

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<sup>127</sup> See the report in JN:24.10.2000:28; Pub:24.10.2000:13; and DN:24.10.2000:18.

<sup>128</sup> See PD:30.08.2002 "Crimes through corruption lessen: Hundreds of lawsuits registered but only half a dozen in prison". Figures are taken from the *Gabinete de Política Legislativa e Planeamento*, Ministry of Justice.

<sup>129</sup> This figure refers to another statistic, covering the period of 2002 to 2005 presented by the PJ. See N.Ferraz, CM:06.02.2006 "A study: Local government and police forces are the main focuses (of corruption)". Cf. J.Godinho, CM:02.01.2006 "Justice: unpublished study analyses 224 lawsuits and traces the profile of criminals - corrupt for 100 Euros only".

The following section looks at nine contextually related issues which facilitate the ignorance of corruption by key sectors within society. The concluding summary section specifies critical elements needing further analysis in the course of Part Two, Chapter 7 (Models of existing responses).

### **3.2 Critical elements behind impunity**

Corruption is never an isolated problem. It inevitably arises alongside other critical matters within, as well as beyond, politics. In the case of Portugal, the following nine correlated issues highlight the widespread ignorance of corruption. They are critically described with a view to grasping the overall multidisciplinary implications of combatting the web of corruption.

#### **3.2.1 An unacknowledged seriousness of corruption**

Perhaps the first critical issue is that corruption has not yet been properly and globally acknowledged, either in the distant past or since the establishment of the current democratic regime, by business persons, members of the elite or the clergy, not to mention politicians, as observed in the last chapter. By “properly and globally” is meant that corruption is not unequivocally perceived by the leadership of all four “sovereign bodies”,<sup>130</sup> as a serious national problem. At best, it remains a diffuse phenomenon. The way to test it appears simple and must be made clear from the outset to avoid ambiguities in future discussions. In the first place, it consists of finding out whether or not there is a fully comprehensive and unified regulation - as all actions against corruption must be solidly grounded on fair and good legislation.

Secondly, following a clear legal mandate, it must be certified that all the administrative and criminal bodies established to prevent and counteract corruption are equipped with adequate power, expertise, resources and capacity to efficiently perform their duties on time, fairly and swiftly.<sup>131</sup> And thirdly, there must be an anti-corruption mandate which enables the financial

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<sup>130</sup> Constitutionally assigned to President of the Republic, House of Parliament (*Assembleia da República*), Government, and the Courts.

<sup>131</sup> This is relevant and needs to be properly specified in each stage of the entire process of either administrative or criminal investigation. For the time being, D.F.Amaral’s general guide seems appropriate and briefly reveals the apparent crisis in the judiciary: “*casos normais, que se deviam resolver em 6 meses ou*

proceeds to be adequately recovered. In this way corruption becomes a very risky business to get involved in.

This rather desirable and realistic democratic scenario has certainly not been achieved yet. And worse still, no political plan is underway which is likely to achieve it either, despite abundant but intermittent, dubious, confusing and misleading political discourses and concepts. And beyond politics, other critical fields directly or indirectly involved, namely the private and civil society sectors, are not playing their role in a desirable manner either.

Such a situation seems inexplicable knowing as we do the pervasive effects of corruption in slowing down political reforms and economic growth. These constitute two major critical aspects awaiting better performance and outcome, and in that order. Meanwhile, having already “invested” rather generous funds into needed and vital areas such as education and health, almost comparable to the level of an advanced European country, Portugal’s results still seem meagre. An inquisitive mind inquires why after generous European Union support schemes, massive and uninterrupted since 1985, amounting to millions of Euros daily, the country is still largely uncompetitive and unproductive, with levels of poverty affecting up to fifteen per cent of the population. What might account for this though is that corruption wastes resources<sup>132</sup> that despite all generosity remain scarce. Thus the urgent need to take a close look at corrupt practices and mechanisms that evade accountability and transparency. So what can justify the widespread reluctance to recognise this problem?

It may be because corruption is unquestionably a very delicate issue, always hard to admit in one’s own space and situation. Somehow it looks as if it will seriously damage the country’s image, something very precious indeed. Secondly, relativism also plays a vital role, as there always will be so many “good” excuses, not least because corruption is a highly contested concept. There

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*um ano, demoram 5 anos a julgar; providências urgentes que careceriam de decisão em 48 horas chegam a durar 2 ou 3 meses a ser tomadas; casos difíceis e complexos que poderiam justificar processos de 2 ou 3 anos levam 15 anos a terminar.” (Amaral 2000, 247). Equally important is to set a time limit for deciding if a complaint is feasible or not in the early stages of the criminal inquiry, which Amaral has not included.*

<sup>132</sup> Just one example at this point, put forward by E.Dâmaso, PUB:22.01.2000:8 “The politics and money” - “Obras, custam, em média, 77% a mais. ...Se calhar, é mesmo provável que as democracias estejam condenadas a aceitar a corrupção como prática admissível até certo nível para que todos possamos dormir descansados, na paz do Senhor, vivendo o sono feliz da estabilidade prometida, para esconjurar os fantasmas da radicalidade política de esquerda e de direita.”

is no shortage of countries in a far worse situation “than us”. This is a rather false consolation, tactically used and abused by many. As L. Marques explains, Portugal poses as a rich country in the south, and as a poor one in the north.<sup>133</sup> Meanwhile, such ambivalence inhibits one from coming to terms with one’s own reality.<sup>134</sup>

Thirdly, there is a tendency to compare Portugal with the average EU situation, thus ignoring the fact that a number of its member states have unresolved historic problems with corruption such as Italy, Spain, Greece, and France, and these should not be seen as ideal points of comparison.<sup>135</sup> Since the enlargement of the EU there is an even greater possibility of falsifying the figures. The good example of the Nordic countries (Finland and Norway) is normally little referred to except in brief and isolated references here and there.

And finally, it is easy to think, as well as to behave in such a way, that assumes that the problem will resolve itself, perhaps in a magical democratic form, or to leave it entirely in the hands of others to come, considering it to be somebody else’s dilemma. Dâmaso’s following perception seems correct “As I have written so many times, in Portugal corruption is accepted as a sweet drug”.<sup>136</sup> This is simply not enough. If for theology, for instance, the acknowledgment of sin is the *sine qua non* for salvation, a proper recognition of corruption is obviously also the first step towards its comprehensive treatment. To miss it is a mistake and weakens the anti-corruption cause altogether.

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<sup>133</sup> L.Marques, EXP:12.12.1998 “Rich and poor”: “*A Norte temos a reivindicação resultante da pobreza e do subdesenvolvimento. A Sul vivemos a glória de estar entre os grandes do universo, à frente de países como a Itália e o Canadá. Entre a pobreza, a Norte, e a riqueza, a Sul, há uma economia de contrastes.*”

<sup>134</sup> Some headings cause real concern such as the one put forward by L.S.Matos, PUB:02.09.2002 “Below Botswana”, in reference to the TI-CPI annual results.

<sup>135</sup> In a drastic critical mode, which often characterised S.Franco’s many public interventions and duties, he writes in the context of fiscal reform: “All this when our evasion, fraud and secret economy today, after 1998 (I don’t say ten years before), are not much better than those of Southern Europe.” One wonders, presumably correctly why choosing Southern Europe as a comparative element? Is cultural affinity the best criteria even in evaluating economic performance? We think not. See A.S.Franco, DN:09.10.2001:01 “Fiscal reform and the rosy became red”.

<sup>136</sup> Cf. E.Dâmaso, PUB:13.04.2002.



### 3.2.2 Unstudied problem

For apparently unknown reasons, corruption has not yet merited any special interest by academics, universities' research departments or civic institutions. This, in turn, clearly reduces the possibility of perceiving the seriousness of corruption, which is a problem in itself. The evidence is both historical and contemporary. From the historical viewpoint, Oliveira Marques clarifies that "The history of corruption in Portugal has not, in practice, had devotees. Cases and examples crop up here and there, but a systematic documentary analysis and an accompanying study of opinion don't exist, as far as we know, in our historiography." (AACC 1990, 10). The current situation has only started to change slightly.

Back in the early nineties, Costa Braz, the former head of the anti-corruption unit explains it well: "The phenomenon of Corruption has not received, in our country, a genuine and exhaustive study, except in rare monographs of a judicial nature. It is, however, a frequent topic - or title - within the media" (AACC 1990, 5).<sup>137</sup> Among the judicial articles, the rather influential views of distinguished scholars such as António Costa<sup>138</sup> and J.Figueiredo Dias,<sup>139</sup> for instance, are taken at face value and their findings are rarely criticised by other lawyers, thus impoverishing even further this undebated academic field.<sup>140</sup> And Vital Moreira adds "Because this (political) corruption also exists in Portugal, there are no studies on this issue, the cases are rare, and those which have been made public have been no more than speculation, which has not been duly investigated." (AACC 1991, 94).

José Vegar, a former investigative journalist, found himself amused by the fact that citizens who occupied high responsibility in public life did not share their findings and experiences in books (Morgado and Vegar 2003, 19). It seems difficult to explain the reasons why a country with 850 years of history, being the first world power back in the 15th century "discovery age", and the

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<sup>137</sup> By far the most comprehensive legal work is the supplementary bulletin of the University of Coimbra's Law Department (Costa 1987). Most of the remaining articles are now included in the two following publications (AACC 1990; AACC 1991).

<sup>138</sup> See (Costa 1987).

<sup>139</sup> See (Dias 1991).

<sup>140</sup> See M.Fonseca in (AACC 1990, 101).

last to release its vast colonies towards the end of the 20th century, with the oldest defined borders in Europe and no major internal ethnic, linguistic, or religious fractions whatsoever, should reach the 21st century without publishing a single political economy book or similar technical report likely to comprehensively elucidate the possible root causes of corruption.<sup>141</sup>

More recently, in the First Congress on Portuguese Democracy held in 2004, one magistrate, M.J.Morgado, urges the civil society to demand from the PJ, Ministry of Justice, and the Attorney General, more statistics, studies, diagnoses and results concerning the fight against corruption.<sup>142</sup> These reports are essential for two reasons. Firstly, it fosters a culture of corporate accountability. And secondly, it is vital for encouraging greater citizens' awareness and for seeking their support for the cause.

When in February 2006, Mouraz Lopes, former Deputy Director of the PJ released its very first study, he himself required a qualitative research too. This first study is only about straightforward statistics of cases open for inquiry between 2002 and 2005.<sup>143</sup> In terms of usefulness there is nothing substantially different from the annual statistics of the Ministry of Justice which reveal a lot more about the Court's efficiency or, in this case the Police, than corruption itself. In actual practice, neither PJ nor the PPS have ever yet published a comprehensive and multidisciplinary study of corruption.

Equally serious is the generally apathetic attitudes of the universities. The already known painful birth of sociological research,<sup>144</sup> heavily constrained by the inward looking views of Salazar, has produced a discipline which now seems particularly uninterested in corruption. Consider the journals and working papers of the two best established social science departments, recently classified as the Associated Laboratories of the State. The oldest, *Análise Social* (1963-

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<sup>141</sup> The first book, though not academic in its style nor exclusively on corruption, appeared only in 2003 as a joint initiative from a former Deputy Director of anti-corruption unit and a journalist. See (Morgado, et al. 2003).

<sup>142</sup> N.Ferraz, CM:12.11.2004 "Justice: M.J.Morgado warns: corruption is out of control".

<sup>143</sup> N.Ferraz, CM:06.02.2006 "Study: Local governments and Police forces are main focuses"; DN:08.02.2006 "Local governments represent 43% of corruption investigated by JP"; and F.Galope, VIS:04.05.2006 "Corrupt? Us?" indicates that 1 in 5 inquiries (1.251 of 6.976) concerning economic related crimes were connected with corruption (just over 300 cases per year).

<sup>144</sup> M.V.Cabral, DN:21.05.2004 "Building a profession".

2006 - 2nd Trimester) of the Institute of Social Science of Lisbon University has not dedicated even one of its 179 volumes to the theme of corruption and not a single article out of 1,285 titles is specifically on corruption, although they were mostly written by Portuguese scholars.<sup>145</sup> The same is true of the *Revista Crítica de Ciências Sociais* of the Centre for Social Studies of Coimbra University, in existence since 1978 (76 issues, and about 592 articles). None of their working papers (31 and 251 titles respectively) have touched on corruption either, which indicates that new scholars are neither inclined nor encouraged to analyse one of the most compelling social issues. This looks both unimaginative and backward.

And yet, B.Santos, the founder and director of the Centre in Coimbra since its inception in 1978, unambiguously views corruption as “a great invisible threat and the most dangerous for the country” and often refers to it in his popular writings.<sup>146</sup> The same is true for both António Barreto<sup>147</sup> and Manuel V.Cabral,<sup>148</sup> former editors (and directors) of *Análise Social* (1998-2003, and 2004 respectively). Therefore, academics and their institutions have neglected to provide much needed contextually grounded theories of corruption, so vital for policy makers in their essential national role.<sup>149</sup>

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<sup>145</sup> For conciseness' sake, there are authors who touched on corruption and related issues though. See (Sousa 1969; Aguiar 1986; Aguiar 1988; Lobo 1996).

<sup>146</sup> As cited by L.Botelho, PUB:06.07.2003 “Reforms of penal justice are in a dim light”. See other popular articles written by B.Santos in which corruption is mentioned in VIS:29.05.2003 “On a razor edge”, VIS:15.05.2003 “A terrible example”, and VIS:07.08.2003 “Fires and justice”. Cf. An interview in IND:21.01.2000:16-17. See also (Santos, et al. 1996, 31–35, 679–696).

<sup>147</sup> Barreto is a former Minister and a well-known academic and sociologist. Under his leadership interesting studies were published. See for example (Barreto 1996; Barreto 1998; Barreto 2000). Among his popular articles that deal with corruption see in PUB:11.03.2001 “Disasters” (misprinted as A.Guterres); PUB:13.05.2001 “The specter of the rose”; PUB:09.12.2001 “The two Midases”; PUB:16.12.2001 “*O deserto autárquico*”; PUB:27.01.2002 “*Fantasmás*”; and PUB:27.02.2002 “*Um duelo de vices*”.

<sup>148</sup> M.V.Cabral is a prolific writer and research coordinator for several surveys - (Cabral 1997; Cabral 1998; Cabral, Vala and Freire 2000; Cabral, Vala, Pais, et al. 2000). One of his articles deals with the underground economic concept in Portugal - (Cabral 1983). For popular writings see M.V.Cabral, DN:30.07.1999:17 “Public works and electioneering”; DN:21.06.2002:11 “A party-controlled tribunal” (Constitutional Court); DN:27.09.02:11 “Endemic venality”; DN:15.11.2002:1 “Crisis, State and Society” DN:13.02.2004 “Administrative despotism”; and DN:07.11.2003 “The faceless enemy”.

<sup>149</sup> Is then P.Pereira right, in his apparently provocative article? See PUB:31.08.2000 “A country without intellectual life”.

### **3.2.3 Legally and jurisprudentially confused**

Of course corruption is a legal concept. Civilisation and democracy demand it above all else. But the extreme appetite for creating, altering, adding, and substituting laws, at an incredible speed, is weird, so much so because it largely corresponds to the official main response to episodes of corruption.<sup>150</sup> This is problematic in itself,<sup>151</sup> not least because of the confusion and proliferation of rules which are hard to handle even by the most gifted professional. It actually reveals more about the state of the Parliament and governments than the problems they seek to resolve.

It is also inadequate because core ideas of corruption are not discussed as a whole but in parts that remain distant from one another, without coherent logic, missing vital elements, that at best are incorporated in a very gradual and slow process but far from completion yet. It falsely assumes that corruption can better be dealt with by legislation, thus ignoring the complex relationship between legality and political ethics or accountability, as something may be legal but unethical or not explicit in the law but politically unacceptable. And realistically, it is impossible to conceive laws likely to anticipate all the critical aspects inherent to a political function, conduct, and above all the ever-changing environment in politics and economics. However, it is possible and desirable to incorporate essential elements in a comprehensive way to achieve two fundamental goals: firstly, to unambiguously protect the judicial core elements behind the crime of corruption; secondly, to provide the fundamental means by which to convict wrongdoers.

The absence, or the distortion of one or more of these crucial ingredients will make jurisprudence not only difficult but confused. Portuguese experience has categorical examples in the recent past. If one takes, for instance, the legal basis and procedures regarding the use of wiretapping in the investigation and prosecution process, the case is widely perceived as being highly confused. Courts of appeal have endangered many criminal cases already. This could well serve other interests but not the cause of reducing corruption and making it accountable.

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<sup>150</sup> A.Santos, former President of Parliament, and a key legislator since 1974 summarises the problem well "Laws replace laws in a delirious rhythm. Laws contradict laws. Laws without application due to lack of follow up regulation." (Barreto 2000, 51).

<sup>151</sup> It is not uncommon to hear jokes about this - see G.Albuquerque, DN:12.08.2002 "Laws, laws, laws. If the production of laws entered in the accounting of GDP, Portugal would hold the world record for productivity".

Recently, the former Minister of Works, Bagão Felix decided to put an end to a massive sets of labour laws that inundated the law books for consecutive decades and anarchically. This was perceived to be detrimental to business and foreign investment. And rightly so. Despite obvious criticisms mainly during the process, there is now a more unified body of legislation. Contextually, this amounts to an outstanding service and achievement thus making B.Felix perhaps the “John the Baptist” or precursor of Simplex. This has not yet happened to corruption, as is already the case in Singapore for example.

So, despite continuous legislation, including transposition of European and international regulations to national law books, the cause of corruption continues to suffer from the lack of simple, unified and effective legislation that clarifies what key concepts (*bem jurídico*) are all about and provides anti-corruption bodies with adequate tools and power to prevent it, support whistleblowers, investigate, charge, punish, and recover the proceeds of corrupt transactions. This is an awful and unnecessary situation to be in, and in direct contradiction to the spirit of democracy.

### 3.2.4 Conceptually distorted

Not only legislators, but other key anti-corruption agents including magistrates and judges appeared not to have grasped key concepts concerning corruption.<sup>152</sup> In practical terms there is not only a deficit of knowledge of what is debated in international research but there are also misconceived ideas. In fact, there are many conceptual ramifications which add greater difficulty in pinpointing what criminal corruption is all about and in differentiating one crime from others. This may have caused misclassification of charges by prosecutors, and later on judges too, in deciding the final verdict.

The variant elements behind a single concept of corruption which currently largely focus on protecting the function of the public office, include passive versus active corruption; illicit (*corrupção própria* - proper corruption) and licit corruption (*corrupção imprópria* - improper corruption); antecedent and subsequent; mediate and immediate (*mediata and imediata*), qualitative

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<sup>152</sup> For a brief overview of the problem see (Antunes 1996, 152)

and quantitative types of rewards, and various degrees of “intentionality” which complicate the judge’s final decision in critical corrupt cases.<sup>153</sup>

The diversity of this terminology show how difficult it is to deal with these concepts. The result, unsurprisingly though, has often led PPS and Judges to “fail to act when they could investigate more deeply or accuse, fail to come to a conclusion when they ought to pass a sentence or declare someone innocent when they should condemn, taking refuge in the shadow of the principle ‘*in dubio*’ at the first appearance of incomprehension.” (Simões 2006, 37).

Likewise, there are too many related crimes which enlarge the ambiguity of the concept and classifications such as various types of embezzlement (*peculato*) and extortion (*concussão*), prevarication, personal favour on the part of an official agent, undue promotion, non-promotion, participation in economic transactions, refusal to cooperate, abuse of power, violation of secrecy, and traffic of influence, most of which are connected with public functions too.<sup>154</sup> José G. Marques already warned of this critical confusion due to the “lack of dogmatic rigour and dispersed regulation” (AACC 1990, 98). A. Maia believes that most of the media’s classification of corruption may be wrong too (Maia 2004, 84–85). But the problem is not between the media and the judiciary only.

This situation also confuses the lay reader and the population in general who most likely refuse to denounce such practices, even when confronted with apparent corruption, as it is often the case. If this argument is correct, the negative effects for prevention are unimaginable. Another critical consequence is the misunderstandings and miscommunications which are not rare either within the judiciary and public administration. A judge from TIC (Criminal Court Investigation) sent a case back to the Public Prosecutor (DCIAP) in disagreement with the latter’s classification.<sup>155</sup> The judge justifies this saying “It is not the judge’s duty to accuse, and even less

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<sup>153</sup> Cf. A juridical Portuguese term “*sinalagmática*” and “*pseudo-sinalagmática*” (relationship between cause and effect of a bribe) often used in this context - (Simões 2006, 27; Costa 1987, 73, 113, 125; Maximiano 1993, 71, 75–76; Morgado 2006).

<sup>154</sup> For a very good introduction to these variants as contained in the Penal Code and other legal books see (Costa 1996; Gomes 1995; Almeida 1997). For a comparative, but equally complex case of Brazil see (Ribeiro 2004).

<sup>155</sup> J.Cravinho, DN:13.11.2004 “Corruption never existed!”; CM:30.06.2003 “Lawyer for main person to be examined warned judge”; CM:18.07.2003 “PPS waits for the end of court holidays”; CM:05.10.2003 “Taxes:

so to accept an accusation detached from reality” (CM:01.07.2003). One needs to remember how complex is the current judicial model, as M.J. Morgado explains by the analogy of the “*santíssima trindade*” (holy Trinity) of investigator, Public Prosecutor and the Judge of Criminal Investigation - if someone from this triangle breaks the cord, everything goes wrong.<sup>156</sup> With regard to public administration, Morgado adds: “Without exchange of information between the public administration and the police organisations it is not possible to progress in the battle against corruption. Social security, the fiscal administration, the police, all have secrets. It is the country of secrets.... that allows impunity.”<sup>157</sup>

No wonder, therefore, that what the media and people in different professions call corruption is for others more conveniently perceived as mere abuse of power, embezzlement or even traffic of influence. Usually, these are more lenient than corruption itself, including the penalties. Therefore, a failure to grasp the core of corruption and to somehow even out the penalties wherever possible across related crimes is of utmost relevance in reducing incentives to economic crimes.

### 3.2.5 Multiplication of parallel activities and institutions

The 2003 McKinsey Global Institute research indicates that “informality” is the single major obstacle to the development of the Portuguese economy.<sup>158</sup> This notion is in direct relationship to equivalent concepts such as the parallel, underground, or unofficial economy. Like corruption itself, its optimal level is never zero. So the issue is to contain it within acceptable levels. Otherwise it does become a correlated problem, as is consistently supported by several studies.<sup>159</sup> B.Santos warns of the coexistence of two states acting in parallel in Portugal. These are

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PPS refutes arguments of Fátima Mata-Mouros”; CM:01.07.2003 “C.Almeida: MP made responsible accusation”; N.Ferraz, CM:12.01.2004 “Corruption: *Tribunal da Relação* grants petition for MP’s appeal”.

<sup>156</sup> M.J.Morgado, VIS:24.06.2004. Cf. C.Almeida, CM:01.07.2003 “*MP fez acusação responsável*”.

<sup>157</sup> Cited by C.Ferro, DN:23.01.2004 “Criminal politics is done with populism” - in reference to M.J.Morgado’s speech in a conference held in Lisbon University on “Corruption and Fundamental Rights - the role of the Public Administration”.

<sup>158</sup> See (McKinsey Global Institute 2003); VIS:16.09.2003 “Economia a crescer até 2010”.

<sup>159</sup> One study reveals that the informal economy in Portugal amounts to 22.5 per cent of the GDP which is greater than Austria (10.6), England (12.5), Holland (13) and France (15) - T.S.Dias, CM:05.04.2004 “Parallel economy is more productive”; H.M.Rio, DE:19.03.2004 “Economy: underground, informal,

the formal and informal states; the official and the underground states which moulds the way the Portuguese state is managing its affairs during the transition phase to a point of conditioning its own future activities (Santos, B., *Estado na semiperiferia*, 1985, 900; Santos, B., *Social crisis and the state*, 1986, 188).<sup>160</sup>

According to S.Sanches, the parallel economy gives special advantages for local councillors who have unresolved criminal problems with justice by openly disregarding the law, such as the case of Valentim for Gondomar, Isaltino for Oeiras, Avelino for Amarante and Felgueiras for Felgueiras who stood for local election while criminal cases remained unresolved.<sup>161</sup> It also gives birth to many practices, including the creation of parallel public or semi-public institutions.<sup>162</sup> Adding this into an already twisted environment of corruption, the problem can only be made worse precisely because individuals and associations exploit such weaknesses to their utmost advantage.

The media, on the other hand also explored to exhaustion the FPS case (Foundation for the prevention and security). It seems that it was created as a private institution with the apparent double error of duplication and state funding from its origin.<sup>163</sup> Such action was achieved directly by members of the government. At that time, Vital Moreira who conducted an official research, clarified that "In addition to the State itself, there is not a local government, university or other

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unofficial and parallel"; and M.Frasquilho, CN:07.01.2004 "Death and paying taxes". Cf. The OCDE study cited by J.R.Almeida, PUB:01.03.2001 "25 to 30 percent of the Portuguese GDP is produced in a parallel economy"; and J.F.Guedes, DE:23.01.2004 "The costs of formality II".

<sup>160</sup> Cf. L.Marques, EXP:08.12.2000:20 "The parallel state": "...in Portugal there is a parallel state, born, financed and dependant of the official state. The first does not substitute the second, double its services, add costs, nurture new clientelisms, with the advantage of escaping the control which the official state is subject to."

<sup>161</sup> See EXP:09.07.2005 "The little creatures of the local power".

<sup>162</sup> See former Secretary of State for Public Administration, S.Toscano in DE:30.06.2003 in which she acknowledges the "creation of many institutions for bad reasons". Cf. M.B.Sousa, DN:26.03.2001:3 "Public Institutes without king or rock" which reveal the study undertaken by Vital Moreira and others regarding the proliferation of such bodies - she concluded "the situation is chaotic, as each body regulate itself as it wishes"; J.C.das Neves, DN:29.04.2002 "Government without control" and in DN:27.05.2002 "Public jobs"; and E.O.Silva, DE:21.10.2003 "Budget: persistence and courage".

<sup>163</sup> See PUB:22.08.2001 "Story of a polemic foundation"; M.Silva, DN:20.06.2001 "Court of Auditors fails at foundation of Vara"; J.M.Fernandes, PUB:02.12.2000:56 "Loss of shame and arrogance"; J.P.Henriques; N.S.Lourenço; and L.Alvarez, PUB:03.08.2002 "Court of Auditors reveals new irregularities in FPS". Concerning the Parliamentary Inquiry Commission see N.Pacheco, PUB:22.08.2001 "Inquires for what?"; J.Ferreira, SEM:24.08.2001:10 "Deflecting behaviour"; and from the President of the Inquiry himself, J.B.Moura, DE:29.08.2001 "A Parliamentary inquiry".



public body that aims of administrative ‘modernisation’ which does not boast of having created foundations, associations and companies in which they take an active role or which have been created more or less under parallel conditions”.<sup>164</sup> If this is correct, it enlarges the context that favours illegality immensely at the expense of public funds. On the positive side though, the single case of FPS reveals that some strict regulations exist in fact, as former President Sampaio used to remind people that “in Portugal there are impunity and illicit phenomena that are not tolerable and must be efficiently dealt with”.<sup>165</sup> But somehow it does not stop wrong behaviour completely. Instead it enables some people to bypass it by other means including creating parallel, semi-public or semi-private institutions, which somehow escape strict financial control, at least for some time. The ultimate unresolved issue, however, lies in the root problem of not tackling corrupt structural mechanisms. Instead, the preference is for an isolated or casuistic approach.

### **3.2.6 Obsession with state-driven corruption**

The apparent obsession of protecting the interests of the State office has led almost all legislators, politicians and magistrates to concentrate on state-driven corruption by largely ignoring its private dimension although it was always included in the Penal Code under crimes committed against public office. At best, private business crimes are mainly confined under a broad range of free competition rules.<sup>166</sup> These are rarely punished. It is noticeable that there has never been a strong tradition of an open market culture and competition. Lobbying as such is not regulated yet. Consequently, there is much less public awareness of this case of private corruption which remains completely muddled.

In the process of transposing the OECD Anti-Bribery Convention into Portuguese law books, a further amendment was introduced to Decree-Law 28/1984 (Article 41-A/B/C) through Law 13/2001 which contemplates private corruption more explicitly although the key objective was

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<sup>164</sup> See PUB:12.12.2000:13 “The secret state - O Estado clandestino”. Cf. F.Rosas, 24H:23.12.2000:5 “Corruption in a pure state”.

<sup>165</sup> See J.Sampaio’s traditional new year’s speech in CM:02.01.2003 “Sampaio: No-one is beyond the law”.

<sup>166</sup> See an interesting article which briefly gives an overview of some of the dilemmas facing by the private sector written by F.A.Pinto in DE:25.02.2004 “Corporate Governance, The government of societies (I)”.

the protection of international business. But this private corruption concept remains a distant or “foreign” concept still.

So much so that E. Simões of DIAP starts his most recent article saying that the concept of private corruption is “newly created” but then pays no attention to it in the course of his argument, which is puzzling (Simões 2006). Not least because Merida’s UN anti-corruption convention which prompted the author to write the article clearly includes and highlights private corruption matters.<sup>167</sup> Secondly, for a long time it is being included in international discussion. For instance, Rose-Ackerman’s classic and most cited work includes it (Rose-Ackerman 1978, 189–210). And thirdly, several countries do not make such a drastic distinction as Portugal seems to, particularly from the perspective of legal application.

Consider the following article in a single paragraph, in the last page of PUB:07.12.2000, under the title of “Corruption: Public Prosecutor clears doctors and laboratories”. It reads: “According to yesterday’s TVI news, the Public Prosecutor filed the first legal process about dangerous relationships between doctors and pharmaceutical companies. In the process against 13 officials of Atral-Cipan and 372 doctors, the Public Prosecutor concluded that a large majority of doctors received small or insignificant presents related to their profession. For this process, the distinction between prescriptions issued by the National Health Services or by private doctors was fundamental because private professionals are allowed to prescribe drugs for which compensation is given. The only cases liable for punishment are those undertaken by the public service (NHS). Charges against Atral-Cipan were also cleared.”

So, the point to raise here is precisely what the current application of rules allows to happen while the public remains amazed. Private doctors can receive gifts while NHS doctors simply cannot, although in practice the so-called “insignificant gifts” make this transaction highly possible, or so it seems anyway. The problem is even more complex due to the permanent movement from public to private, and back again. Sometimes, as with the doctors for instance, it is possible to be both which complicates the analysis even further. This appears bizarre if one agrees

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<sup>167</sup> See for example Article 12 (Private sector); Article 21 (Bribery in the private sector); Article 22 (Embezzlement of property in the private sector); and Article 39 (Cooperation between national authorities and the private sector).

with Rogério Martins' statement "Whoever seduces is as corrupt as whoever lets himself be seduced." (AACC 1990, 21).

Apparently, such an obsession for state-driven corruption appears inconceivable in the eyes of the population, from whom the authorities somehow expect cooperation. People's perception is something that needs to be taken more seriously even though logic, legal logic included, often is not easily assimilated. Whatever the case, this, as it is, needs better articulation if not change too, as the current situation is simply misleading and adds an element of complexity which is undesirable.

Germano de Sousa, former *Bastonário* of the *Ordem dos Médicos* accepted the evidence when a Judge charged four doctors of passive corruption. He then made a very clear point that justice will never be completed without the inclusion of corrupt private companies too (DD:06-04-2001). Experience shows that the private sector goes more unpunished. Even the penalty for the public office offender is substantially heavier than the active corruption counterpart, with obvious implications.<sup>168</sup> In some cases people found guilty of active corruption are liable up to six months in jail only. This was the maximum that several pharmaceutical companies agents could get as a result of their corrupt deals, when the amnesty was given on the occasion of 25 years of democracy. It pardoned all those companies, and the public and opinion makers were astonished by the implications, so much so that the title given by Fernando Esteves is self explanatory: "Crime Pays" (IND:18.01.2002:30).<sup>169</sup>

Strongly held views of J.F.Dias (1991, 67) against any expansion of the concept to include private corruption in more comparable terms remains unchallenged, despite some contrary views. For example, Martins da Fonseca's analysis of the jurisprudence led him to the conclusion that "all that has been said about passive corruption applies, with minor alterations, to active corruption" (AACC 1990, 106).<sup>170</sup>

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<sup>168</sup> See Penal Code, Articles 372 and 373 for passive corruption and Article 374 for active corruption.

<sup>169</sup> Other similar examples are put forward by the Syndicate of Tax Officers: "Corruption is the follow-up of the chaos already installed. ...Current impunity creates an ideal culture for the multiplication of active corruption in particular, and not only passive corruption." (PD:04.04.2002); and by F.Brás, President of the STAL (*Sindicato dos Trabalhadores da Administração Pública*) in CM:05.07.2003.

<sup>170</sup> Exactly the same argument uses Rose-Ackerman "Turning from government bureaucracies to the private sector in Chapter 10, I show that much of the analysis of public institutions can be applied to private institutions as well." (Rose-Ackerman 1978, 88). Cf. J.Vasconcellos e Sá who, in a different matter raises the

### 3.2.7 Imitation

The problem of copying others is perhaps an inevitable result of improvised research tempered with indifference to the issues of corruption. So the tendency is, from time to time, to imitate what others are doing, often foreign ideas, codes and practices without proper regard to context. Araújo, a lawyer, accuses that we adopt codes inspired in the rich European countries without thinking first if we have the means to put them into practice.<sup>171</sup> Foreign models in themselves are not a problem as M.Carreira correctly explains: “If the models are in most cases essentially ‘imported’ from abroad and don’t work in Portugal, they are not necessarily unfit, but perhaps they are basically inadequate for our own needs” (Carreira 2001, 2). Thus the urgency to take current context more seriously rather than simply imitating others, evading original research and adopting unsuitable ideas and practices.

Valente recalls that in the nineteenth century Portugal highlighted Belgium as a model of progress. In the beginning of this century it seems to be Ireland, the “Celtic tiger”.<sup>172</sup> In the case of corruption, it is not uncommon to request, for example, an Italian style *Mani Pulite*, “Clean Hands” operation, specially after a major scandal is disclosed.<sup>173</sup> Likewise when unresolved ethical issues come to light again.<sup>174</sup> But others clearly reject it altogether.<sup>175</sup> Figueiredo, however, sees another

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pertinent question whether business’s objective is profit or social responsibility, in DE:21.04.2003 “Produtividade ou responsabilidade social?”.

<sup>171</sup> See Araújo’s article in (Barreto 2000, 65).

<sup>172</sup> See V.P.Valente, PUB:16.01.2005 “Alas, land of our birth”; J.Cravinho, DN:18.12.2004 “Central Block under observation”; G.O.Martins, DN:23.03.2005 “The shadow of Sibelius”; and J.M.Moreira, PUB:27.02.2002 “The monster and the unfaithful servant”.

<sup>173</sup> See PUB:16.12.2000:4 “BE wants ‘operation clean hands’” (FPS case); R.D.Felner, PUB:05.09.2002 “Minister of Justice doesn’t explain cases of dismissal in the PJ” and BE leader, F.Louçã, requests a Clean Hands. For individual request see F.Lemos, a business man, in VIS:22.10.1998 “There is octopus in public works”. Perhaps surprisingly, Alberto Jardim, the President of Regional government of Madeira commented in DE:16.10.2002 that the “state of political degradation of the regime allows some situations, that in another country would have given way to a clean hands operation”, also cited in PUB:17.10.2002. See also N.Santos, in EXP:12.05.2003 “Operation clean hands now”.

<sup>174</sup> See J.B.Moura, DE:13.11.2002 “News of the blockade”, in DE:04.12.2002 “The why of impunity”, and his interview in VIS-Online:16.05.2003. Cf. M.Carvalho and C.Pinto, VIS:15.05.2003 “The secret of Fátima”; M.Coutinho, and DE:09.10.2002 “With eyes closed”. The Madeira islands affairs have caused equal concerns - see PUB:25.11.2001 “CDS of Madeira wants ‘clean hands operation’”; and M.Carvalho, VIS:27.01.2005 “Polemic: Webs of Madeira, part II: Complaints to the Public Prosecutor, requests for the fulfilment of an ‘operation clean hands’”.

<sup>175</sup> See António Costa, former Minister of Justice in PUB:28.01.2003 “The country does not need special clean hands operation”; P.Correia, DN:08.02.2003 “*Marcelo lança farpas ao governo*” in which the former

problem when “one hand cleans the other” while everything stays the same.<sup>176</sup> Therefore ingrained habits and practices must be accounted for, and beyond the flowery language fired at political opponents, in endless cycles. Democracy requires different ethical standards, as the Attorney General, Souto Moura said when he welcomed a “mentality of clean hands”.<sup>177</sup>

### 3.2.8 Prevention ignored

As widely agreed, prevention is always the best alternative, since a verdict will never compensate for the full damage inflicted. At best, it represents a sense of punishment with some recovery of losses only. Therefore it must be given special priority. This task belongs primarily to anti-corruption bodies, properly supported by legal statutes. But they are not fulfilling this essential responsibility. And this rather unthinkable omission contains a drastic message against the people whom the authorities seek to serve and to receive their support also.

Neither the PPS nor the PJ have a tradition of open, friendly and ongoing dialogue with the public at large in preventive related matters. This becomes clear through the organisations’ web page, a modern means of communication and a gateway too. The PJ anti-corruption DCICCEF has not even a web page of its own, only the PJ itself. As it is, corruption is one of many crimes receiving no special or priority attention. The same is true for the special unit under the PPS, DCIAP or regional DIAP. But the PPS’s website is rudimentary and seems to be constantly in its building stages, at least up to the middle of 2006.

Prevention is basically an educational project and should reach every citizen, and most particularly children at different stages of growth.<sup>178</sup> Obviously nothing is being done at this level as José M. Lopes attested recently.<sup>179</sup> But under his leadership, the DCICCEF published the first

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PSD leader clearly rejects the idea too; A.A.Mesquita, PUB:20.12.2002 recalling S.Moura, Attorney General saying that “Portugal will not become a Republic of Judges nor will it have Judges being absorbed by other influences”.

<sup>176</sup> See S.Figueiredo, PUB:13.12.2001 - Round here the meaning of clean hands is ‘one hand cleans the other’, and again in CM:11.11.2002 “Democratic horror”.

<sup>177</sup> See E.Dâmaso and R.Abecassis interview with the Attorney General, Souto Moura, PUB:27.01.2003.

<sup>178</sup> Perhaps with irony, the former *Bastonário* of Lawyers, J.M.Júdice, JN:12.12.2002 made a point: “It is far too easy to break contracts, norms of conduct, and legal duties. In the school it would be better perhaps to insist less on the risks of smoking and more on the risks of corruption.”

<sup>179</sup> See his interview in DN:10.01.2005 “Greater corruption is found in politics and the tax system”.

and only leaflet and distributed it among the public office administration. It seems to have been well received,<sup>180</sup> although such an isolated action is inadequate and most certainly retards people's conscientious cooperation.

One wishes that the latest appeal of E.Simões of DIAP, who correctly recognises that preventatively almost everything is left undone, and then suggests the creation of a special and independent preventive body in a model similar to those of France, Italy and Paraguay, will not find echo among Portuguese authorities (Simões 2006, 41–42), not least until current legally entitled institutions are either asked to fulfill their duties or evaluate why they are actually incapable. Otherwise it is fiddling the system and the legislation again and again, thus passing a wrong message to society that laws are not to be obeyed.

Creating a separate institution will most probably add another strain on a typical and already difficult problem of relationships with several anti-corruption bodies, already made public on various occasions. And even more seriously perhaps, what moral and motivational pedigree will a newly established preventive institution have if, for example, criminal institutions maintain their usual relaxed conduct? It is something worth including in the analysis.

### **3.2.9 Ethics of the greenhouse**

This problematic situation is widespread and it severely inhibits ethical changes because each part directly involved in the dynamics of a corrupt conflict is so vulnerable that no one seems capable of throwing “the first stone” any longer. For instance, the State owes money to private companies, or at best, pays its debts beyond the time limit expected.<sup>181</sup> Such a bad reputation has deep roots ingrained in people's minds. Some private companies prefer to retain payments due to the State, for example taxes and social security contributions. The Catholic Church, being at the receiving end of financial favours and closely “associated” with state affairs, seems not all that different either.

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<sup>180</sup> See C.R.Lima, DN:01.10.2005 “Mais de um terço das câmaras sob investigação”.

<sup>181</sup> See for example A.M.Inácio and R.Rebêlo, DN:24.10.2000 “Health Ministry: debt leaps to 300 millions”.

But in the end, each part appears to have “reasons” to justify its rather unhealthy conduct, thus leaving the ethical situation in a permanent impasse. Also the bipolarisation of parties in government has negatively affected the PSD and PS with “original sin” as Pedro Norton correctly advocates: “Portuguese democracy is affected by one original sin which takes away the legitimacy of major parties, including their fight against corruption.”<sup>182</sup> And without a better moral framework for public action, the glass ceiling will certainly not resist.

In summary, the old but still present Catholic ethics, and the much celebrated Republican ethics have come up short in curbing malpractices. Or so it seems now. B.Santos prefers to theorise in favour of a “crisis of the republican ethics”,<sup>183</sup> but one may legitimately wonder if there was even a short period in political economy affairs in either the 1st or 3rd Republic comparable to what Girling elsewhere calls “exceptional periods of integrity” in public life (Girling 1997, 12). The problem, therefore, may not be centred around “a crisis” as such, but in actually questioning if the foundations for a comprehensive and coherent ethical basis in both public and private functions are fit enough for a democratic pluralistic society. Is it the case, for example, that the 1976 Constitution provides such a basis? Will the Catholic institutions redeem the time and do better? Will the secular minded ones, free masonry included, try to make Republican ethics really functional? All shades of ethical conviction, or even a mixture of them are necessary so long as they “Seek the welfare of the city”.<sup>184</sup>

### **3.3 Concluding remarks**

The words of F.S.Cabral, News Director of Catholic Radio Renascença summarise well the dilemma this chapter is focusing on: “Corruption spreads, it is said and felt. But one cannot see the

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<sup>182</sup> P.Norton, VIS:13.05.2004:50 “The original sin” - “Portugal escolheu - como tantas vezes faz - a via totalmente hipócrita da ficção legislativa: os partidos impuseram a si próprios regras que nunca tencionam cumprir, e celebram entre si um acordo tácito para os contornar. Toda a gente sabe disso e todos fingem nada ver.” In another article (VIS:19.07.2001) Norton writes: “É impossível lutar contra a corrupção no país enquanto os principais partidos políticos continuarem a financiar-se por baixo da mesa e à custa de todos os grandes negócios do Estado.”

<sup>183</sup> B.Santos, VIS:29.05.2003 “No fio da navalha”.

<sup>184</sup> A title of Bruce Winter’s recommended book (he himself borrowed the title from Jeremiah 29:7) in which the overall behaviour of the early Christians fitted well the prophetic call, originally meant for the exiled Jewish people. Jesus’ followers were meant to and did function for the benefit of what were then the Gentile regions of the Roman Empire. See (Winter 1994).

desire and courage which are indispensable to fight this cancer, which destroys the authority of the State. Now, in the matter of corruption, complacency is criminal.”<sup>185</sup> So far, the issue of corruption and its impunity have been portrayed in general terms. Critical elements were identified as a result.

They include the problem of the inefficient control mechanisms, uncoordinated anti-corruption bodies, inadequate legislation and judicial responses, and various kinds of social apathy with a special emphasis on the elite. Political conduct is of utmost importance as it holds up the means of change. And so far, these elements have been demonstrated generally. The next task is to examine a concrete case of corruption where these critical elements and others are intimately related.

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<sup>185</sup> See DN:08.08.2004 “*Corrupção*”.



## Chapter 4

### Emaudio case study

#### 4.1 Introduction

The previous two chapters sought to raise public and political awareness of corruption and its impunity. Our emphasis centred on the nurturing environment that underpinned certain structures of incentive and opportunity, which in turn jeopardised both administrative and judicial responses. This chapter redirects the focus entirely onto a single case study of corruption, moving from a general overview of the seriousness of the problem to a concrete example of it.

The main objective is to evaluate the possible success of an environment like this in dealing with a concrete case. It functions as a model, which is imperfect because each story has its own dynamics and particularities, but which seems nevertheless very helpful in pinpointing fundamental and recurring issues related to the Portuguese context. Hence the additional care we expended in selection, as we sought for a case capable of illustrating crucial concepts and misconceptions, diverse tactics and poorly conceived responses that characterise the phenomenon of corruption. The Emaudio case<sup>186</sup> seems to fit these requirements due to its many interesting features, as the following paragraph indicates.

(1) It fits well the legal concept of “autonomous crime”,<sup>187</sup> as active and passive corruption can exist on their own, that is, a case can have corruptors but no corruptees or vice-versa. (2) So far, it is the only case of a top politician to be charged with corruption since 1974, thus making it rather ideal for analysing how power and wealth interact.<sup>188</sup> (3) It is a transnational case involving

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<sup>186</sup> Alternative names are “the Macao fax”, “Governor of Macao”, “Weidleplan case”, or any of the agents’ names involved. The last is rejected because this thesis goes well beyond individuals as argued in Chapter One. The same for the option, “the Governor of Macao” which unhealthy emphasizes “state-driven corruption” as discussed in the last chapter. The fax of Macao is attractive but the case has many more equally critical faxes too. Instead the company’s name is chosen, but not Weidleplan as its leaders were absent in the trial and the company continues to operate. That is not the case with Emaudio though, which closed down soon after the scandal.

<sup>187</sup> For a brief explanation of this apparently strange hypothesis, see (Palma 1993, 6). For further legal basis see (Costa 1987, 32–51), particularly the concepts of “autonomous” versus “bilateral” crimes.

<sup>188</sup> The importance of “catching the big fish” theory is much appreciated in literature as it often determines the commitment of an anti-corruption agency -see (Punch 1991, 218; Pope 1999a; Klitgaard 1998, 4).

Portuguese and foreign nationals, firms, and authorities in a context of the globalised world market. (4) It covers two Portuguese locations, one in the main territory and another outside, thus bringing to mind recent colonial history which still has a great influence, and reminds us of the current autonomous regions of Azores and Madeira islands. (5) The links with an influential political party, with the former president of Portugal, and with the private business sector give interesting insights concerning this mixed relationship. (6) The legal case has critical and complex episodes which facilitate perception of current jurisprudence and politics. (7) Both the media and individuals expressed their opinions which are important to consider. (8) And finally, the case is likely to seize attention for future socio-political and economic discussions of corruption.

But the legal case raises particular concerns too. Sixteen years later, it has not fully reached a final settlement yet because of the unresolved appeals. This is problematic in itself. In the passive corruption case, the public officer was finally acquitted after twelve long years. In such circumstances, why choose this unfinished case? Firstly, the legitimacy of the courts to judge cases is unquestionable and must always prevail. Secondly, this legal case is a public one, and has already been exposed in the media and academic articles (Tribunal Criminal de Lisboa 1993b; Tribunal Criminal de Lisboa 1993a). One of the defendants published his own version of the case also (Mateus 1996). And thirdly, the outcome of the remaining part of this case is irrelevant as regards the reasons for which the case as a whole is included here.

However, when a reasonably simple case stays in the judiciary for 16 years without resolution; when one part of it reached a conclusion 12 years later and is very close to having reached a 'prescription' (*prescrição*); when there are "irremediable contradictions" as publicly disclosed by the jury president himself; when appeals cover mostly legal procedures rather than factual matters; when final conclusions are based on procedures rather than substantial factors as with the Melancia case thus far, then a different route such as the Nürnberg's axiom becomes a possibility: "the courts judge cases, but cases judge the courts".<sup>189</sup> Judge R.Cardoso, explains this rationale (IND:26.11.99:2) "The courts judge the cases but the cases also judge the courts. This is

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<sup>189</sup> M.J.Morgado, CM:25.05.2003 "E agora Portugal?".

an expression extracted from the Tribunal of Nürnberg concerning the necessity for transparency in the action of judgment and in the action judged. The decisions are evaluated much more by their contents than by their conclusion. Everyone is free to make his own conclusion. The only limits are respect for one's own intelligence and consciousness as well as for that of others." Otherwise, the *politização* (undue influence of politics) over justice, and the *judicialização* (excess of the judiciary's influence) on politics remain unchallenged.

Therefore, this case study is more a critique of the systems of justice and politics (low penal and political responsibility) than a reflection on individuals involved; it is more directed at public and private institutions than at isolated individual cases; and it is more interested in the seriousness of corruption, its structure of incentives and opportunities that permeate most spheres of life than in the individual or casuistic approaches to corruption that have characterised Portuguese official conduct for decades now.

The fact that Melancia was acquitted is not in dispute here. He is indeed free and innocent, despite the unreasonable judicial delay of which he too was a victim. And after 16 years now, it would be desirable perhaps that those defendants of the active corruption case who are still alive should have a similar conclusion of the passive case. But whatever the outcome, the case is significant in both legal and political perspectives because it reveals the current Portuguese incapacity to deal with corruption, thus perpetuating a climate of impunity.

After a global description of the Emaudio story, the case analysis, starting with whistle blowing, the public prosecutor's inquiry, the judge's confirmation of charges, trials, appeals, and recovery of assets, pinpoints critical matters relating to corruption and responses used or omitted for further reflexion. The case also illustrates the need for a new approach in understanding and addressing the multidisciplinary challenges about corruption while Part Two begins by examining the critical factors that facilitate and ignore the problem.

## 4.2 The Emaudio case study

In the course of his task as Governor of Macao, appointed by the president, Mr Carlos Melancia<sup>190</sup> was legally accused<sup>191</sup> of corruption in September 1990.<sup>192</sup> Months earlier, an embarrassing fax<sup>193</sup> supposedly reached Melancia's residential palace demanding that he return DM 935,540.00.<sup>194</sup> But he always denied having received it. However, as the fax hit the public news, it caused much gossip and commentary that lasted for months in Portugal, and also to some extent in Macao, where it was disregarded as a "peanut" bribery.<sup>195</sup>

The fax concerns the construction of the first international airport of Macao which Melancia's administration was determined to undertake and for that purpose created two institutions to supervise the project namely the GAIM<sup>196</sup> and the CAM.<sup>197</sup> This was a major public

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<sup>190</sup> Since the April 1974 revolution, Melancia was twice Secretary of State in the Ministries of Heavy Industry, and of Economic Coordination. He was Minister of Sea, of Transport and Public Works, and of Education. According to Mateus, Melancia enjoyed the maximum confidence of former President Soares, was technically competent, had good links with the Church (Catholic) and was well regarded in right wing political circles (Mateus 1996, 290, 305).

<sup>191</sup> The Public Prosecutor Inquiry, hereafter designated as PPI (followed by page number), consists of two parts. Part one (p1-1202) deals with evidence collected in the course of the inquiry; Part two (1202-1290b) includes a synchronised description and analysis of the case (1202-1259-a), and charges consisting of 203 articles (1260-1289-b).

<sup>192</sup> See PPI:1260.

<sup>193</sup> See IND:16.02.1990. On the front page and in a large print appeared: "50 million escudos on runway of Governor Melancia". The entire pages 2 and 3 deal with Mr Melancia under two articles by Helena Sanches Osório "*Macau: carta acusa Melancia, governador desmente*" followed by a play on words: "*Cá se fax, cá se paga*"; and Inês Dentinho "*O senhor administrador*". The fax, dated October 18, 1989 is printed in full on page 2.

<sup>194</sup> See IND:16.02.1990:1-2. The amount refers to the former German currency (DM). The total sum includes DM 606,000 equivalent to 50 million Escudos (250 thousand Euros in round figures) "already paid according to your instructions" said the fax; DM 54,540.00 of interest (9%) since January 1989; and DM 275,000.00 for the project's expenses.

<sup>195</sup> See C.Monteiro in O Jornal:09.03.1990:6 "*O mini enigma oriental*"; and P.Portas, IND:23.02.1990:12 "*O regresso de Macau*". What substantiates the "peanut" theory is uncertain though. Is it just because the amount is small in comparison with "normal" acts of corruption? Or is it because the amount is minimum comparing with a estimated cost (70 thousand million Escudos) of the airport? But for long, Macao has been associated with illegal transactions.

<sup>196</sup> In 1988 the government of Macau requested an up-date of an earlier project done in 1983 by the Airport of Frankfurt. For the undertaking of a revision of the entire project, the government established GAIM (*Gabinete do Aeroporto Internacional de Macau*) as its main advisory body under the leadership of Mr Vasconcelos and Mr Guimarães. In addition, GAIM had the rights for negotiating the air space and the air traffic rights only. In May 1988 the government finally launched the project. The director's master plan was concluded in December of the same year and officially approved by the government in March 1989.

<sup>197</sup> CAM (*Companhia do Aeroporto de Macau*) was established by the government in January 1989 as a private company led by Mr S.Ferreira. Its capital was proportionally divided between the Government of Macau, Chong Luen of the China Union Industrial Association and a Macaense group STDM of Stanley Ho.

project which Portugal was keen to finish before handing over Macao to China in 1999. And, as many scholars agree, corruption often flourishes in the midst of great financial projects (Lien 1990; Jones 1993; Rose-Ackerman 1997; Tanzi 1998; UNDP 1997). Macao appears to be no exception.

Melancia's revelations to the Parliamentary Commission of Human Rights, Freedom and Guarantees, in the aftermath of the fax scandal are staggering. To a straightforward question "Is this a case of corruption or not?", he answered "There was no public bid but a limited consultation of two companies... because it was urgent to appoint a project consultant. And concerning the bid itself, the companies that win or are likely to win followed a normal procedure in paying commissions. This happens not only in Macau. It is like this anywhere in the world."<sup>198</sup> Despite being an apparently honest answer, it is remarkable for a Governor to say such thing in Parliament, while showing no concern whatsoever to tackle such a practice. And the journalist remarks that the major opposition party - the Socialist Party - (with which Melancia is linked) "stayed silent" whereas the ruling PSD simply "enjoyed it" which clearly reveals the degree of political sensitivity of this case.<sup>199</sup>

Melancia also said in the Parliament that he only had two introductory meetings with Weidleplan agents, and subsequently left all the details to his staff, that is Mr Vasconcelos of GAIM and Mr Ferreira of CAM.<sup>200</sup> This appears to be the most correct attitude for any government leader in dealing with outside investors.<sup>201</sup> But the findings of the case reached different

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CAM's responsibility was to supervise the concession and the exploration of the construction of the airport by making sub-contracts with other companies. CAM's consultant was MIAC, a consortium that included the London Airport and the Portuguese airline TAP. The runway was subcontracted out to GRID and Xangai Corporation. Several other companies were given some part in the initial project including Odebrecht (Brazil), Leighton (Hong Kong), Balest Nedam, Dondotte d'Acqua and Sadelmi (Italy), Soares da Costa and Construções Técnicas (Portugal) and Campeon Bernard, SAE and Dunnez (France).

<sup>198</sup> See IND:09.03.1990:10 "My fax is for the President". Cf. Melancia's earlier explanation prior to publication of the fax: "During a bid... no one pays in advance, I think. At the most, sometimes, they pay afterwards, isn't that so?" in IND:16.02.1990:2 "*Cá se fax, cá se paga*".

<sup>199</sup> In fact, the PSD party could hardly "throw" stones at the PS, as this case coincided with serious allegations of corruption affecting the PSD's Secretary of Health, C.Freire.

<sup>200</sup> The first Weidleplan meeting with Vasconcelos occurred in May 1988 in Macao. Ever since, parallel meetings with Melancia took place on several occasions reported in the Public Prosecutor Inquiry.

<sup>201</sup> See IND:09.03.1990:10 "*O meu fax é do presidente*" - his comments were "When a business company wants to invest in Macao, it has a conversation with the governor who explains the main political views. But the governor does not get involved in matters of detail. This belong to deputy secretary officials."

conclusions about Melancia's conduct, which from a political viewpoint is relevant in determining whether or not the public office was used for personal benefit.<sup>202</sup>

Figure 1 Weidleplan Consulting Fax

18/10 89 17:53	351 56 3353	GRAF. LISO-ALEMA	001
		WEIDLEPLAN CONSULTING D-7 STUTTGART 32	173 P21
<b>TELEFAX</b>		<b>Weidleplan</b>	
To:	His Excellency The Governor of Macau Mr. Carlos Melancia	Weidleplan Consulting GmbH Planners Architects Engineers P.O. Box 300809 Maybachstrasse 33 D-7000 Stuttgart 30 West Germany Phone: (0711) 8107-0 Telex: 72233 weid Telefax: (0711) 8107-322	
		No. of Pages (incl. Cover Page)	
From:	Peter Beter/Antonio Strecht-Monteiro		
Date:	Our ref.:	Extension:	CC to:
18.10.89	Bel/nic	207 8107	
Ref. Macau International Airport			
Excellency,			
We very much regret that we have still not received any reply from you regarding the Macau Airport project. Whenever we have tried recently to phone you or have sent you telefaxes, we have never received a response from you.			
We would furthermore like to remind you about the talks we held with you over the past 18 months during which you delayed your decision time after time, and we would also like to point out that we complied with your wishes in financial terms, too.			
We have the feeling that the matter has already been decided upon and that there is no further interest on your part. If this is the case, we would like to have the money back which we have already spent.			
The amount involved is DM 606,000.00		DM 606,000.00	
already paid to you according to your instructions, which corresponds to approx. 50 million Escudos			
+ interest from January 1989 to date (9 %)		DM 54,540.00	
+ flights Lisbon-Macau, Stuttgart-Macau inclusive of expenses and preparation costs for the project		DM 275,000.00	
		DM 935,540.00	
Looking forward to hearing from you as soon as possible we remain			
Yours faithfully,			
WEIDLEPLAN CONSULTING GMBH			
for Peter Beter Antonio Strecht-Monteiro			
<i>Peter Beter</i>			

Source: O Independente, 16.02.1990, p.2

<sup>202</sup> Later in the course of the inquiry, Melancia apparently presented a different version, saying his contacts with Weidleplan officers followed three distinct topics. See PPI:1259.

According to the fax, (Figure 1 above) a Stuttgart consulting firm, Weidleplan, wished to be granted a consultant role for which it previously complied with the “financial terms” proposed by the governor. But somehow, that position was given to another company, Paris Airport. And because no contract was awarded, the message concludes, “we would like to have the money back” according to Richard Weidle (President) who signed on behalf of Peter Beier (Director) and António Strecht-Monteiro (the Portuguese intermediary agent).

Immediately, the Attorney General appointed A.Rodrigues Maximiano, assisted by a PJ sub-inspector António Coutinho, to lead the inquiry which ended seven months later with charges of corruption against seven defendants. The Court confirmed the accusation, but allowed Melancia to face trial separately, that is, alone, on passive corruption charges. All three named Weidleplan agents included in the fax, plus an equal number of Emaudio partners namely Tito de Morais, Rui Mateus and Cardoso do Amaral faced active corruption charges together. Both Weidle and Beier escaped trial as by German law citizens involved in corruption in foreign countries cannot be prosecuted or extradited.

After all, the *Independente*'s fax turned out to be a true copy,<sup>203</sup> despite attempts by the Weidleplan president to discredit it.<sup>204</sup> It perfectly matches the original one seized in Stuttgart, together with the entire file entitled the “Dossier Macao/*Prospecção Macau*”. Weidleplan in time removed it swiftly from its headquarters in time, and “safely” handed it over to a German lawyer. But not for long, as the police confiscated it from the lawyer's private office. The Court in Stuttgart promptly overruled two appeals, and allowed the police to go ahead and open it, only to find the so called “fatal fax” and other relevant material.<sup>205</sup> But the removal from the Weidleplan headquarters was not complete either, as the police recovered the erased fax from the computer's hard disk.

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<sup>203</sup> Except that the top of the page's fax details used a Portuguese source instead of the Weidleplan telefax number as the original sending place. See PPI:1207.

<sup>204</sup> Even Mr Weidle attempt to divert the seriousness of the fax. See his fax to *Independente*'s journalist dated on February 22, 1990: “Dear Mrs Osorio, I would like to thank you for your today's phone call and confirm the content of our conversation. The origin of the telefax in question is absolutely inexplicable to us. It is not recorded in our files. The content of this fax is by no means corresponding to the facts .... we never paid any amount of money whatsoever to His Excellency, the Governor. Our serious feeling is that there are severe disputes going on in Portugal resulted in the defamation of our company which can only be to our disadvantage and against which we strictly protest.”

<sup>205</sup> See PPI:1210. According to Weidleplan's accounting records, the sending of the fax costs DM 2.76.

Weidle's secretary, for instance, admitted typing it, following instructions from Monteiro, and sending the fax to Macao after Weidle's consent and with his signature.<sup>206</sup> The police also noticed that records of all faxes around the October 1989 period were erased as well.<sup>207</sup>

With regard to the fax's contents, the DM 606,000.00 has three different episodes. Firstly, a reiterative demand by Emaudio partners to receive it as a means of guaranteeing an open communication with Melancia.<sup>208</sup> The reluctance to advance the money demonstrates that Beier lacked assurance. Monteiro signed for it, and only then did he receive a cheque from Germany. He passed it on to Emaudio partners in Lisbon but they rejected it. Instead, they demanded that the whole amount was paid in Portuguese cash. Thanks to his contacts in the bank, Monteiro managed within 24 hours, to deliver nearly 50 million escudos in cash.

Secondly, an equally persistent request from Weidleplan, this time for the money to be refunded, as no contract was awarded, not even a second best deal concerning building the passenger terminal which was also proposed. Approaching the end of the financial year, Weidleplan could no longer justify the amount spent. Pressure was on Monteiro, and deadlines had to be changed several times.<sup>209</sup> And with broken relationships within Emaudio partners, communication with Melancia ceased abruptly.<sup>210</sup> Frustration led to the publication of the fax, as the initial paragraph states: "We very much regret that we have not received any reply from...".

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<sup>206</sup> PPI:1209-1209b.

<sup>207</sup> PPI:1215.

<sup>208</sup> What withheld it being sent was the absence of any written document guaranteeing the contract and, in case of failure, ensuring that the money would be recovered. This was finally settled according to the charge, on December 29, 1988, in the Tivoli Hotel in Lisbon where Monteiro agreed to be responsible for such a transaction - PPI:1228.

<sup>209</sup> The deadline for reimbursement was initially set at September 30, 1989; then to October 15; December 31; February 7, 1990; and finally the end of February 1990.

<sup>210</sup> An apparently negative episode happened in the general assembly of Emaudio held on July 20, 1989. Morais left the Emaudio partnership in clear disagreement with Mateus and Amaral. The dispute concerned the possible increase of shares on behalf of another firm, namely Interfina, as suggested by Melancia and Morais but rejected altogether by Mateus. The implication for Weidleplan in particular was that neither Mateus nor Amaral was able to maintain direct contact with Melancia any longer. Morais avoided any contact with Beier and Monteiro too. The doors for parallel communication with Melancia seemed closed.



Altogether, the fax reminds us, there were “eighteen months”<sup>211</sup> of talks, but also contacts, visits, and many other faxes too.

And finally, the third story is the corollary of the PJ’s successful confiscating of a written agreement in which the Emaudio partners and Monteiro signed their consent to return 40 million escudos to Weidleplan. The Germans did not abandoned their attempts to get the money back, thus showing their consistency throughout, even after the discovery (apprehension) of the Macao file. Their lawyer, together with Weidle’s daughter came to Portugal a month before the criminal inquiry ended (August 1990), and met with four Portuguese defendants and two Portuguese lawyers at Solverde Hotel. On their way back, at Porto airport, the police confiscated a four page agreement.<sup>212</sup>

The fax correctly reveals that Weidleplan was left with no contract whatsoever. The initial attempt to obtain a consultant role failed.<sup>213</sup> Later attempts to reformulate the original proposal proved unsuccessful, as legally it was completely unacceptable.<sup>214</sup> Weidleplan then lost the contract for building the passenger terminal also.<sup>215</sup>

But the decisive issue is the reason for the 50 million escudos and what this amount was destined for. According to the accusation, over 27 million, went from Emaudio partners to

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<sup>211</sup> Weidleplan has all dates well registered. From the first contact in April 28, 1988 until the sending of the fax in October 18, 1989 there is only a shortage of 10 days to reach “18 months”.

<sup>212</sup> PPI:778, 779, 793, 797-800. The Public Prosecutor R.Maximiano writes: “*É significativo que os arguidos tenham negado qualquer acordo relativo à restituição dos 606.000 marcos e que tenha sido apreendido um acordo celebrado já no decurso do processo em que se comprometem, com excepção do arguido Carlos Melancia, a restituir à empresa alemã 40.000 contos, após reunião havida em Espinho com a presença do advogado da Weidleplan.*” (PPI:1258b). Cf. The criticism of one of the lawyers in PPI:1323 “*...e apreendido no aeroporto de Pedras Rubras ao Advogado da Weidleplan, Dr. Frick, em acção policial que em nada abona as autoridades portuguesas.*”

<sup>213</sup> Weidleplan, following Melancia’s advice, joined with another company (EGF) in submitting a proposal to GAIM. On January 17, 1989, Vasconcelos opened two proposals, the other one being from Paris Airport. On February 16, Vasconcelos communicated to Beier and Monteiro that Weidleplan’s proposal dealt with areas beyond GAIM’s responsibility, and it was very expensive. Cf. EXP:23.02.90:3 - Weidleplan’s estimated cost was 600m as opposed to 320m from Paris Airport. On February 28, Vasconcelos finally decided in favor of Paris Airport.

<sup>214</sup> Upon reception of Vasconcelos’s letter (16.02.1989), Beier and Monteiro met with Melancia who suggested a reduction of the overall price for the consultant position. On April 14, a new such proposal was sent to Vasconcelos who immediately disregarded it as too late, as the final decision was taken, and the legal contract with Paris Airport was signed on May 12, 1989.

<sup>215</sup> In June 1989, Weidleplan submitted its proposal to CAM. Mr Ferreira ignored it because the proposal only dealt with the project side and left out details about critical aspects of the construction, financing and management. Meanwhile, on July 5, Melancia met with Beier in Lisbon. Melancia advised Weidleplan to wait until the end of August to be awarded a sub-contract.

Melancia as “grease money”, at least in two instalments - one to pay for goods purchased in a Lisbon auction shop, and the other credited to his wife’s bank account, both within a matter of days after their receipt.<sup>216</sup> But the Emaudio partners argued that 31 million were invested in an associated Portopress firm, and the remainder used to pay Melancia’s shares in Emaudio, plus services related to “professional lobbying” with Weidleplan. Monteiro’s defense was centred around his intermediary role only. Melancia’s lawyer argued that his client was never aware of the Emaudio partners’ intentions as formulated in the accusation and that he acted normally in his capacity as Governor. The alleged “parallel” meetings, contacts and phone calls insinuated in the accusation were normal too. His main intention was to attract potential foreign investors. Those alleged payments were not taken from Weidleplan’s money, rather they were entirely banked in the Emaudio accounts in the Chase Manhattan Bank. The payments made to the governor covered the sale of his shares instead.

Lisbon’s *Tribunal da Relação* agreed to charge all seven defendants, but required not one but two trials instead. Melancia, because he held political office, faced trial on his own “for speed’s sake” as the law allowed. This added a significant pressure on the jury, composed of three members each, who had to judge a single crime in two trials at the same time and in the same court. Such a unique event entertained the media for months. And what some feared most happened: the passive corruption trial ended in 1993 with Melancia being acquitted by majority vote, as the president of the jury voted against the verdict. He actually broke the law by disclosing and spelling out his reasons soon after reading the verdict, something not permitted to judges of the ‘first instance’ court.

Five months later, in 1994, the jury of the active corruption trial unanimously declared guilty all four defendants for attempting to corrupt the governor of Macao. The Emaudio partners were given prison sentences and Weidleplan’s intermediary a suspended prison sentence due to his

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<sup>216</sup> In the first payment, Moraes together with Emaudio’s secretary paid 15.492.790\$00 in cash to Leiria & Nascimento Lda, with the following details printed in the invoice, found in the Emaudio safe: Casa Liquidadora, Antigo Bazar Católico, Capital Social: 100.000\$00, dated: Lisboa, 20.01.1989 in the name of Eng. Carlos Melancia, charging for 7 items of antiques and paintings costing 13.870.000\$00, plus 10% Commission: 1.387.000\$00, and 17% VAT: 235.790\$00. The second payment (27 January 1989) of 12.000.000\$00 (cash converted into cheque by Amaral’s friend) was paid into Melancia’s wife’s bank account.

collaboration at certain stages of the investigation and in the court. The Emaudio partners appealed to the Supreme Court. They remained in liberty. Their first appeal was unsuccessful. Then, they appealed to the Constitutional Court. The final verdict of the case has not been reached yet. It is possible that this crime be made prescript or filed forever, after all these years in the corridors of justice.

### 4.3 Case Analysis

From the actual inquiry onwards, a series of developments and setbacks, contradictory perceptions and interpretations, refusals and silences, parallel events and distractions, tactics and agreements took place around critical aspects of the case which the following subsections seek to demonstrate. For clarity's sake, the critical analysis will look separately first at each of the major stages. The purpose is not to incriminate individuals nor to discuss the reasonableness of the verdicts but to identify beliefs and practices likely to nurture and facilitate corruption.

#### 4.3.1 Whistleblowing

Although the case reached the public through the *Independente*, the facts reveal that it was initially one Emaudio partner who gave a copy of the fax to a journalist, Helena Osório.<sup>217</sup> This attests to some internal relationship problems among the partners, including Melancia himself. So a broken relationship is in fact the initial cause of the case - a situation which is not unusual. A change of direction in a corrupt nexus often begins when one player changes his mind. If this had not happened, the PPS would not have noticed the problem.

Osório refused to publish the fax, as the sender details on the top of the page had been erased.<sup>218</sup> The second copy includes it, exactly as published but still omits the receptor's reference details, that is, the Emaudio fax number.<sup>219</sup> This indicates that a whistleblower may have had other interests in mind disclosing only part of the information available as was convenient to him.

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<sup>217</sup> PPI:1208. The copy is attached as PPI:131.

<sup>218</sup> PPI:1208b.

<sup>219</sup> PPI:1209.

Osório claims to be the author of the contents, not the titles and subtitles of the articles on IND:16.02.1990. The decision of the Independent newspaper to publish the fax, after prior discussion with the governor is positive and fulfils its obligation and mission, leaving the remaining tasks to competent authorities. However, the *Independente* has not always proceeded in this way.

The attached article by Inês Dentinho seems unnecessary when disclosing the apparent seriousness of the fax. Her many unsubstantiated details are presented in a succession of very short sentences about the style, views and tastes of the governor which are not directly relevant. The subtitle comments about his preference for oriental goods (*loiça chinesa*), and the fact that “he was born to politics after 25 April only” actually contradicts his own statement in the article. Family details (about his daughters) appear inappropriate too. Years later, it became clear that the *Independente* was not entirely transparent as its former director Paulo Portas was often criticised for using it for political purposes. So the media, as well as other whistleblowers’ attitudes need to be correctly perceived and evaluated in context.

#### **4.3.2 The Public Prosecutor Inquiry**

A total of just seven months for investigations and charges is an outstanding achievement and the opposite of the normal situation in Portugal. Maximiano chose not to detain any of the defendants, thus transmitting the message that it is possible to investigate without the use or abuse of drastic preventive imprisonment. This sharply contrasts with other well publicised national cases in which accused individuals were detained in front of television screens. Both of these situations reveal weaknesses though, and would need to be analysed in depth. But the defendants in the Emaudio case seem to have taken some advantage of the situation and restated, changed, or even abandoned their views during the inquiry, particularly after the effective apprehension of the entire Weidleplan file.

Maximiano worked extensively to give descriptive and synchronized accounts, believing that the judges would share equally his own appreciation of “everyday rules of experiences” in

evaluating a secretive and hard-to-detect crime of corruption.<sup>220</sup> The active corruption case was evaluated in this way, but not the other, so it seems. However, he did not know that there would be more than one trial. But nevertheless, his accusation was too extensive,<sup>221</sup> with some haphazard details irrelevant for dealing with hard core evidence of corrupt intention and transaction, and this also wasted the time of the jury. The defendants often argued that accusation assumes at face value its own hypothetical reconstruction of the case.

Judging by the Supreme Court judge Fisher Sá Nogueira, who dealt with the appeal of Melancia's case, the accusation was largely based on "*dolo eventual*" (probable deceit) which is subject to multiple interpretations.<sup>222</sup> On another occasion his remarks were "But, in the case of the Macao fax, the investigation was quite complete at the level of the corrupting agents, but was presumptive against Carlos Melancia, that is: the charge was based merely on suppositions, without a firm basis... All because of the haste to make the case public."<sup>223</sup> His opinions are certainly debatable, not least because of the jury's conclusion on the active case using exactly the same material and type of charge.<sup>224</sup>

But the core of the concept of a corrupt transaction appeared somehow diluted in many descriptions, both in reference to active and passive cases, this being described by Rodrigues in

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<sup>220</sup> PPI:1250, 1258, 1258b.

<sup>221</sup> It includes a synopsis of the case which is useful but extensive - see PPI:1202-1259 including text on both sides of the each page. The accusation has a total of 203 numbered items, therefore ideal to nurture speculation.

<sup>222</sup> See CM:29.01.2004 "It's always necessary to find someone to blame" - Interview with F.S.Nogueira, judge working for 50 years in the courts. His criticism of the existing laws is unequivocal, including the fact that a time for prescription of a negligent crime is two years whereas for "*dolo eventual*" is 15 years; and his conviction that "we have a lack of information because of the excess of laws."

<sup>223</sup> See A.T.Ribeiro, VIS:02.11.2000:44 "Crimes VIP sem castigo". Judge Nogueira was the Supreme Court "Relator" over much publicised cases such as the Otelo Saraiva, Costa Freire, Leonor Beleza, Abílio Curto, and Melancia. Future historians will most probably find interesting material behind these unsuccessful charges, including controversies regarding the appeals and their outcome.

<sup>224</sup> Judge Fisher Sá Nogueira has made several comments about key cases which need special critical analysis and which this thesis cannot pursue as they are outside its scope. Cf. his comments on C.Freire's case in PUB:15.12.2000:22 "*Supremo manda repetir julgamento*" by C.Gomes; his comments about the inclusion of President Sampaio's name in the pedophilia legal case in CM:02.01.2004 "*Processo: Conselheiro analisa anexação de carta anónima*". Cf. M.S.Tavares severe criticism in DE:08.01.2004 "*A justiça não está acima da crítica*"; A.J.Teixeira, JN:02.01.2004 "*A irrelevância do procurador da República*"; and DN:02.01.2004 "*Souto Moura sai em defesa do Presidente*".

terms of rounded off “*grosso modo*” (roughly) corruption.<sup>225</sup> And as would be expected the lawyers took advantage of this. They, and perhaps the Supreme Court too, chose to discuss the accessory details rather than the core issues of the accusation.<sup>226</sup>

Corruption is often team work, as is seen in this case also. But the inquiry was in practice largely a one-man effort. This raises serious concerns regarding the Public Prosecutor’s style and capacity for a swift investigation of economic crimes, as these generally depend on simultaneous investigation on multiple fronts. As mentioned before, seven months for reaching the charge is a record, but our criticism here centres on the investigative type of decisions taken and the space that these provided for the defendants.

Equally serious is the legalistic and casuistic approach of the inquiry which ignores the fundamental “snow-ball” phenomenon characteristic of corruption.<sup>227</sup> The inquiry opened up many critical avenues<sup>228</sup> which Maximiano felt unable to pursue because of its apparently narrow interpretation of the mandate received: “...*in the defence of the lawfulness and in the very interests of the dignity and good name of the Administration of the Territory of Macao.*” It is true that he was unable to pursue obviously related matters, but he should have advised the prosecuting services to do so immediately. The entire accounts of the Emaudio should have been analyzed in

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<sup>225</sup> PPI:1203b.

<sup>226</sup> Again, the opinion of the judge Fisher Sá Nogueira cited by A.T.Ribeiro, VIS:02.11.2000:41-46 is critical of the investigation: “*Para o conselheiro Sá Nogueira, a própria actuação do anterior procurador-geral, Cunha Rodrigues, condicionou algumas investigações. O que veio dar origem a julgamentos não muito sustentados. Um dos casos que dá como exemplo é o do fax de Macau... a gestão que fez da informação sobre os processos ia condicionando a opinião pública...*” writes Ribeiro. Then cites Sá Nogueira “*É certo que o PGR, perante os condicionalismos da altura, só podia desenvolver aquele tipo de gestão. O procurador e o MP tinham de se afirmar pela investigação e tinham de se mostrar independentes do poder político.*”

<sup>227</sup> Two examples illustrate the point. Firstly, the Italian 1992 case started with a very simple episode of extortion but ended up revealing that corruption was widespread and systematic. As a result more than five thousand people were investigated including PM, MP, Ministers and public and private officials - see (Colombo 2005). Secondly, the Portuguese anti-corruption unit in the PJ caught a pedophile while searching economic crime through the internet - see C.Fernandes and L.Lima, DN:15.02.2003 “*‘Apanhado’ pela brigada do colarinho branco*”.

<sup>228</sup> For instance, it would have not been unreasonable to call key political figures including Almeida Santos and other Emaudio current and former partners or mentors to testify about some aspects of the case; to request the opening of other inquiries into Emaudio’s associated firms including Emaudio International; to further inquire why Emaudio itself was technically bankrupt and yet its bank accounts received and passed on large sums, some of these in cash; and why Emaudio partners made financial transactions without any apparent backing a situation of which the official inquiry gives so many examples. In this regard see Mateus’s reply to a news article in IND:16.07.1999:49 “*New proofs in the Macao fax case*”, complaining against R.Maximiano’s limited mentality in the process of the investigation.

detailed ways by competent auditors to reveal to what extent Emaudio overstepped the boundaries of its legal attributions, which partially was done but without consequences. This means that economic crimes involve low risk.

The links between the Emaudio partners<sup>229</sup> and the PS party, and former President Soares were too obvious and should have prompted further inquiries too. For many years Macao had been publicly known to be under clouds of suspicion of corruption and to be a source of finance for political parties in Portugal. The inexplicable transfers of funds, from and to Emaudio, some of them to Switzerland, received no attention from anyone. This may indicate critical links with other companies and individuals.

When one company is willing to receive 12 million escudos in cash and then issue a cheque to make a payment that has nothing to do with its business this arouses suspicions and should lead to immediate investigation. Auction and antique shops are critical too. Melancia's claim that some payments had to do with his shares leads to other equally critical considerations, including his declaration of assets and interests filed in the Constitutional Court, items which he did not declare. After all, if nearly 16 million escudos correspond to the value of his 250 shares in Emaudio, which he held for only 3 months, it means that he had a profit of 6,290%, which is unreasonable for a company that is technically considered bankrupt. A pertinent question is how many companies in Portugal have fictitious value, like Emaudio? How many act beyond their legally defined objectives, like Emaudio? And how many exist mainly to cover up apparently illegal activities? How many have fictitious accounts?

Banks that apparently facilitate transactions are another area of concern. If the Public Prosecutor's attitude is simply to "turn a blind eye", it is unrealistic to expect significant changes in already suspicious public and private relationships. After all, there is no legal basis for a firm to perform business outside its legitimate objectives. Lobbying as such is not part of the current law

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<sup>229</sup> For instance, Mateus was an influential PS public-relations person. He joined first of all the PS international department. He was elected a member of both the National Commission and the National Secretariat (1976-86). He was a founding member of several Foundations (José Fontana; Azedo Gneco; and *Relações Internacionais*) as well as some Institutes (*Instituto de Estudos para o Desenvolvimento*; and *Cooperativa de Edições e Impressão Gráfica*). He was elected as a MP in 1979, 1980, 1983 and 1985. He replaced Mário Soares as President of the *Fundação de Relações Internacionais*. Amaral was in charge of the financial administration of PS, and of MASP during Soares's presidential campaign.

books. Equally, there are standards of accountancy practices to be followed and the fiscal authorities should scrutinise these, but when there is suspicion of criminal procedures, the PPS's anti-corruption body should act accordingly, and on its own initiative. This overall scenario reminds us of the climate of "informality" perceived in the McKinsey study referred to in the previous chapter. These are some of the critical matters arising from the Emaudio investigative case which require further analysis.

In summary, without a solid foundation and open minded investigation of multiple hidden connections in determining the extent of corruption, it is difficult to combat it effectively; the anti-corruption policies of the PPS need a thorough revision and study, a better basis of conducting an inquiry and certainly more qualified personnel and resources in sufficient numbers to carry out such an important task.

#### 4.3.3 Judge's confirmation of charges

There is only one critical but major factor to discuss here. In December 1990, the court confirmed the charges but decided to separate the case in two parts. From that point onwards, there is one alleged crime and two trials. This was the most critical decision taken by judge Maria da Conceição Oliveira in Lisbon's *Tribunal da Relação*. She accepted the request from Melancia, based on Law 34/87<sup>230</sup> which allow crimes apparently committed while holding political office to be judged separately from the others, for the sake of a "speedy" process. The PPS strongly opposed but to no avail.

The trial of passive corruption proceeded without the presence of the alleged active corruption defendants. Legally they could be summoned to the trial, but equally legally they could choose not to speak at all. The lawyers also could request their testimony, and there they could be prevailed on to speak. This decision obviously favoured Melancia's lawyer, as the rules dictate that evidence must be finally determined within the court's sittings. Also the jury of an active

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<sup>230</sup> See Article 42 . - "(Separate judgement): The preparation and final decision of lawsuits relating to a crime for which a holder of political office is responsible and committed in the exercise of his duties, will be done, for reasons of speed, separately from those relating to others who also are responsible but are not also holders of political office."



corruption case could not prove key factors, exactly because this separation had been made, which makes the final judgement rather odd.

Therefore, the law in this particular case is a major obstacle against conviction for passive corruption in Portugal. In other words, it does not cater for a mixed public and private reality. This may well have been the reason for former president Soares' refusal to replace the governor for the first seven months. Instead, he stayed in office until the charge was made, thus making the application of the law 34/87 fit the case. However, when the judge reached her decision, Melancia was no longer in an official position. She could possibly have made a different decision without breaching the law if she so wished. Now we know that neither case received any speedy consideration. It seems to have been a tactic well used by the lawyer, to his obvious advantage. The problem lies elsewhere though, in the actual quality and effectiveness of the law in combating corruption, in the privileges and legal norms regarding the fulfilment of political tasks and their respective control mechanisms.

One more detail seems problematic, raising some doubts about the impartiality of the judge C.Oliveira's critical decision. In 1994, the journalist of the *Independente*, Mr Guerra asked the judge to comment about her family links with one of the lawyers involved in the Emaudio case, at least in its very early stages, at a time which coincided with Oliveira's decision. Not pleased with the question, she replied: "I won't make comments on this matter and I think it is great audacity on your part to insinuate like this." The experienced journalist insisted and she asked a question instead: "Who told you to ask such a question?", perhaps surprised to discover that the journalist knew that her husband was acting as Mr Beier's lawyer in Portugal. Guerra kindly explained that his newspaper, *Independente*, had testified in the inquiry and consequently had access to Melancia's criminal process. She then concluded: "the fact of being someone's wife is no impediment."<sup>231</sup> This apparently is not a minor issue as such unclarified suspicion was left in the air without adequate response from the *Conselho Superior de Magistratura* (Judiciary Council) or any other relevant institution.

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<sup>231</sup> See IND:04.03.1994:4.

#### **4.3.4 Trial 1: Passive Corruption Case**

Although this section discusses the active corruption case separately, the following table gives the results from both trials, thus introducing at once critical selected matters. They cover four issues: Weidleplan's objectives, intentions and conduct; Emaudio partners' services and financial expectations; the Governor's views, orders and financial transactions; and the "fatal" fax's emission and reception. Having already discussed the implications of "one crime, two trials", it must be said that in theory, the same conclusion could have been reached if there had been only one trial (Palma 1993, 6). Under this hypothesis, there would be no opportunity for several repeatable conclusions such as "not applicable" as found in both trials as stated in the table below. As noted, the German defendants were absent from the trial but that did not prevent the judges from reaching their verdict. These factors should therefore be considered when evaluating both trials, a summary of which appears in Table 1 below.

**Table 1** Passive and Active Corruption Trials

PROSECUTION CHARGES and DEFENDANT'S CLAIMS*	VERDICT MELANCIA - TRIAL	VERDICT EMAUDIO - TRIAL
<b>WEIDLEPLAN (W):</b> 1. Weidle and Beier of W wished to obtain business contracts in Macau. 2. Weidle and Beier appointed Monteiro (W-trio) as 'middle man' between W and E-trio who had business relations with Melancia (M) 3. W-trio proposed to pay E-trio and M in exchange for contacts and contracts. 4. W did not obtain any contracts. 5. Monteiro gave to E-trio the equivalent of 606.000DM in Escudos. 6. Monteiro acted as mediator and was not aware of E-trio's intention.* 7. In W's accounts 606.000DM referred to as "Prov.Macau" and "Foreign Sub-contract"	1. Proven 2. Proven 3. Not proven 4. Proven 5. Proven 6. Not applicable 7. Proven.	1. Proven 2. Proven 3. Proven 4. Proven 5. Proven 6. Not Proven 7. Proven
<b>EMAUDIO (E):</b> 1. E-trio told M that W was willing to pay unspecified amount as long as M treated W favourably and partially. 2. E-trio told M that 606.000DM received from W referred to the above arrangement. 3. E-trio told M that 27.492.790\$ referred to below was taken from 606.000DM. 4. E-trio knew that they were acting illegally. 5. E-trio were 'lobbying' only.*	1. Not proven 2. Not proven 3. Not proven 4. Not applicable 5. Not applicable	1. Proven 2. Proven 3. Proven 4. Proven 5. Not proven
<b>MELANCIA (M):</b> 1. Ordered goods valued at 15492790\$. 2. Instructed 12.000.000\$ be put into his wife's account, and 3 975000\$ into his own account. 3. M gave instructions to E-trio to pay the above amounts from 606.000DM. 4. The above sums (1-2) corresponded to E's payment regarding M's share. 5. The above sums (1-2) corresponded to private business between M and Morais.* 6. M advised W to associate with EGF. 7. M acted partially and favoured W to the detriment of other participants. 8. M's relationship with W-trio was normal and part of his responsibilities in attracting foreign investment for Macau.* 9. M sold his shares to E-trio.*	1. Proven 2. Proven 3. Not proven 4. Not proven 5. Not proven 6. Proven 7. Not proven. Rather M's attitudes were irreproachable and transparent. 8. Proven. 9. Not proven	1. Proven 2. Proven 3. Not proven 4. Not proven 5. Not proven 6. Not proven 7. Not applicable 8. Not applicable 9. Not proven
<b>FAX OF 18.10.89-SENDING&amp;RECEPTION:</b> 1. Fax sent from W was real. 2. Fax's contents were dictated by Mateus, sent to Monteiro on to Beier and signed by Weidle. 3. M received the fax.	1. Proven 2. Not applicable 3. Considered proven	1- Proven 2- Proven 3- Not proven

Source: Author's compilation based on case's verdicts

The passive case reached a verdict on August 4, 1993, after 150 hours of 24 court sittings, plus 1 hour and 40 minutes to read the final sentence. The decision concludes that both the official Administration of Macau and Governor Melancia's attitudes and behaviour are "*isentos de*

*reparos*” i.e. beyond reproach; that no damage was inflicted on third parties; the entire process of awarding contracts is “transparent” and provides “equal” opportunities for all participants; the relationship between the Public Administration of Macau and Weidleplan is “absolutely normal” without any evidence of “favouritism” for the latter; all decisions, including the consultant contract awarded to Paris Airport instead of Weidleplan, were taken after Melancia had given his formal approval; the additional loss of contract by Weidleplan (construction of airport terminal) happened simply because its proposal touched areas not included in the bid; and finally with regard to the alleged payments that “benefited Melancia”, the verdict concludes that no evidence was given to support the accusation charges (the major part was given to Melancia) nor the defendant’s arguments (regarding investments, payment of shares, service for lobbies, lending to Melancia).

This verdict raises three critical issues. Firstly, the jury president Ricardo Cardoso concluded the sentence saying that Melancia was “not guilty”, but adding: “this statement is signed with my vote cast against it - ‘*voto de vencido*’.” Aware that he was defying the rules (Cf. Penal Code Procedures, Article 367), something which Cardoso argues violates the Constitutional Law anyway, he therefore acted in accordance with his own conscience instead. So, in sixty five handwritten pages, a copy of which was immediately submitted to the *Conselho Superior de Magistratura*, he discloses several reasons underlying his disagreements and specifies a list of parallel episodes, contradictions, and coincidences which, in his views, could only lead to incrimination.<sup>232</sup>

Secondly, the fact that 163 pages of the Sentence were entirely written by the president of the jury appears problematic. Although duty assigns such a task to the president of the jury, in theory, it seems that it will be difficult for him to express fairly the beliefs and rationale of the other two judges. Therefore, it appears difficult to accept some critical words (“beyond reproach”; “absolutely normal”) to have been the style and phrases actually chosen by other judges if they were writing the verdict themselves. The contrast seems so shocking, and make the subsequent explanation of the president of the jury seem pretty obvious at first glance. The other two judges

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<sup>232</sup> Parts of his document appears in (Tribunal Criminal de Lisboa 1993b); PUB:05.08.1993:2-4; PUB:06.08.1993:18; and IND:06.08.1993:16-19.

did not make their opinions known outside the court. Their conduct is correct and merits equal respect as they felt no need to substantiate their views any more. But the rules of the game demanded that Cardoso should write the sentence. So these matters remain for our discussion.

And finally, this verdict unequivocally demonstrates serious internal problems within the judiciary itself. This turns out to be the heart of the problem of this case and perhaps of the anti-corruption cause too. The judges have contradictory perceptions regarding the core concept of corruption. This should not be confused with their varying interpretations of the facts concerning the episodes of a particular case.

Therefore, Ricardo's document, which is not part of the verdict as the Constitutional Court was very keen to emphasize,<sup>233</sup> correctly in our view, remains highly debatable.<sup>234</sup> This precisely enriches the case study for future researchers as almost nothing appears as simple as the discussion of what constitutes corruption, particularly so when the context is taken seriously. With this controversy, the interest of this case is magnified as long as critical matters are raised for further in depth analysis and beyond pure speculation, not least because the first decision - but not the last though - of the Supreme Court (10.02.1994) annulled the trial on procedural matters, thus requiring its repetition in the same court, which also added a further complication to the case - in addition to Cardoso's conduct. One also needs to consider that, on previous occasions Cardoso had done exactly the same thing.<sup>235</sup> As an independent judge, and representative of one of the four sovereign and constitutionally protected national bodies, he has the right to act according to his own conscience and ethical standards. But on exactly the same grounds, his views need to be equally respected and evaluated in an open democratic setting.

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<sup>233</sup> See Acórdão N° 137/2002/Tribunal Constitucional in Diário da República - II Série, N° 223, page 16305, of September 26, 2002.

<sup>234</sup> Cf. Judge Conceição Oliveira's strong criticism in the Congress of Judges held in Tomar - P.Guerra, IND:04.03.1994 "*Ricardo de fora*"; and A.Santos in (Barreto 2000, 58), although she did not specifically refer to Cardoso.

<sup>235</sup> Cf. PUB:05.08.1993:2. Cardoso writes "I take this attitude with the same calm spirit and a sense of duty by which I declared the unconstitutionality of that norm used by the Prime Minister to oppose the coming of secret agent officers to the court".

**Table 2** Verdict and Jury President Defeated Vote on Melancia's Administration

VERDICT	JURY PRESIDENT DEFEATED VOTE ARGUMENTS
<p>Melancia's Administration:</p> <p>"beyond reproach"</p> <p>"absolutely normal"</p> <p>"no favouritism"</p> <p>"equal opportunities for all"</p> <p>"no damage on third parties"</p>	<p><b>1-Fax</b> of Weidleplan (W) is the central proof: so evident that Melancia (M) understood it that he never ever admitted it – its reception was considered proved by the court.</p> <p><b>2-Parallel administration</b></p> <p>(1) The manner in which W introduced to M is indicative of a parallel approach</p> <p>(2) 09/05/88 After the first meeting with Vasconcelos of GAIM, M calls W agents for a meeting in his Palace on following day</p> <p>(3) When Vasconcelos did not answer, W contacted Emaudio Partners instead</p> <p>(4) 15/09/88 Mateus gives W instructions how to proceed with M and Vasconcelos</p> <p>(5) 04/10/88 Mateus informs W that M will receive them shortly</p> <p>(6) 17/10/88 E-p asked for DM 606000 after W's initial contact with M.</p> <p>(7) 16/12/88 Soon after M authorised a direct talk with W and Airport of Paris, he gives Mateus a book to deliver to W's headquartes and asks for payment again.</p> <p><b>3-Unexplainable Coincidences:</b></p> <p>29/12/88 Letter from GAIM + Monteiro signed guarantee of transaction</p> <p>06./01/89 Cash payment received + 31 million for Melancia</p> <p>16/02/89 First proposal submitted by W + Melancia ordered goods</p> <p>16/02/89 W reduced the cost + Morais paid the bill, using a witness</p> <p>05/04/89: M met the Germans + Advised reduction of price and received 3975000\$</p> <p>Aug and Oct/89 Mateus said twice that M had received the greatest part: 31 out of 50m</p> <p><b>4-Lack of Transparency:</b></p> <p>(1) Giving a project-book to Mateus, who delivered it in Stuttgart, falls outside of normal official and administrative channels</p> <p>(2) private meetings held alongside official ones</p> <p>(3) recommendation to join another firm's business (EGF) is not acceptable for a Governor</p> <p>(4) advice to offer another proposal, beyond the time limit is odd</p> <p>(5) all facts between 5-14/4/89 (from the accusation) were proven</p> <p>(6) W relied so much on its payment, following the advice to associate with EGF, that they failed to follow the rules set by Vasconcelos</p> <p>(7) Not deciding on the origin of these money/payments is not transparent either – (in reference to Verdict)</p> <p><b>5-Concept of Corruption &amp; practices:</b></p> <p>(1) "silences"</p> <p>(2) "changing statements"</p> <p>(3) "parallel contacts"</p> <p>(4) "cover up of financial transactions"</p> <p>(5) "impossible to require verification of numerical notes between Monteiro's cash and Auction shop's cash"</p> <p>(6) "money without origin" is unreasonable</p> <p>(7) the value of "rules of experiences" is fundamental</p>
<p>Macao's Administration directed by Vasconcelos &amp; Guimarães:</p> <p>"beyond reproach"</p> <p>"absolutely normal"</p>	<p>"normal procedures of administration" can only applied to Vasconcelos and Guimarães who safeguarded the Airport of Paris bid entirely, by choosing the less expensive and the only one that complies with the norms.</p> <p>They also "correctly refused to accept later attempts to change the figures" as the time limit had expired.</p>

Source: Author's compilation

The above Table 2 is a summary of views regarding the administrative and political conduct of the governor highlighted by Cardoso. This political perspective is valid and should not

be entirely confined to or confused with, judicial matters. Cardoso explained why the verdict interpreted correctly all the “facts” considered “proved” and then failed to reach an appropriate or logical conclusion. In his view, the verdict contains many “irremediable contradictions” and fails to account for the “numerous factors” that he ironically called “coincidences” and “parallel activities”. Furthermore, the judges have the obligation to know the “historical roots” and “judicial characteristics” of each crime, including corruption. In other words, judges must be subordinated to logic, psychology and axioms or rules of everyday experience, this not being confused with arbitrary attitudes. He goes so far as to “accuse” his two colleagues of having missed the “essence of the crime” - something which is undoubtedly serious and polemical to say the least - *“So judges cannot present a fact as proven and then, against logic and the rules of experience, come to the opposite conclusion.”*<sup>236</sup>

This is such a sensitive issue that it was openly criticised in a congress of judges held in Tomar in the following year. There Judge Conceição Oliveira was not short of words when she said “When we (judges) enter into the media show and allow our faces to sell newspapers with ambiguous news...when one of us, before the entire nation, is capable of publicly despising a corporate judicial decision, a deep wound is open in our organisation...” She concludes by saying that the competence of two colleagues “was put into question as if they were blind and incapable of seeing what the enlightened ones saw.”<sup>237</sup>

Going back to the verdict again, identical arguments were made by Maria José Morgado who represented the PPS in the trial. In her view, about ninety per cent of the prosecution charges were proved within the court. She then called attention to the president of the jury’s defeated vote.<sup>238</sup> In this environment of fundamental contradictions within the judiciary regarding the core concept of corruption, the anti-corruption cause must suffer from a severe handicap. If such

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<sup>236</sup> See (Tribunal Criminal de Lisboa 1993b, 33–34); E.Dâmaso, PUB:05.08.1993 “*Juiz não acreditou na inocência do réu*”, in PUB:06.08.1993:18 “*Vencido mas não convencido*”, and “*R. Cardoso expõe coincidências incriminatórias do caso Melancia*”.

<sup>237</sup> See P.Guerra, IND:04.03.1994:4 “Ricardo is out”. The journalist noted that Ricardo Cardoso was about to speak in the congress, held in Tomar, but cancelled it at the last moment because he did not want to give opportunities for further “frantic interventions”.

<sup>238</sup> E.Dâmaso, PUB:05.08.1993:2 “*Juiz não acredita na inocência do réu*”; G.R. and M.V. in IND:20.08.1993 “*Recurso a Melancia*”.

contradictory views are real, then much needs to be done in preparing existing and future judges to deal with the complexity of economy-related crimes. It might imply that one of four sovereign bodies are not yet prepared to fight corruption. This inevitably needs further analysis.

In conclusion, the court made one point very clear: the origin of the money with which Mr Melancia paid for goods in the Lisbon auction shop and credited his wife's bank account; and Mateus' payment in Melancia's bank account, is completely unknown. Therefore, both versions put forward by the prosecution and Melancia's lawyers were equally disregarded.

#### 4.3.5 Trial 2: Active Corruption Case

The active corruption verdict reached a conclusion on January 13, 1994, after 23 sittings. Three judges, under the presidency of Filipa Macedo make a unanimous decision<sup>239</sup> in which all four defendants were found guilty<sup>240</sup> of corrupting the governor of Macao. Article 190 of the verdict summarises why the jury seems sure of the decision taken because the "unlawfulness of factors reaches a high level" and the "defendant's guilt directly fits the framework of the fraud and reaches a high level".<sup>241</sup> It makes it clear that Monteiro, Morais, Amaral and Mateus acted voluntarily and were aware of its illegality. In addition, they all knew the position of the former Governor and "only because of that" did they behave as they did.

This verdict gives special consideration to the core matters of corruption under section III "Judicial framing of factors". Certainly aware of the previous trial's outcome, it goes into greater detail in clarifying the autonomous character of active and passive corruption as a simple promise of undue payment to a public official is legally considered corruption. There is no shortage of quotations from both historical and contemporary authors, including an extended 7 paragraphs from then President Soares' speech when Costa Braz took office as leader of the anti-corruption

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<sup>239</sup> See parts of the verdict in (Tribunal Criminal de Lisboa 1993a); and in PPI:2747-2832.

<sup>240</sup> Monteiro was sentenced to three years in prison together with a fine of 7.000\$00 daily for 90 days or alternatively, an extra 60 days in prison. Mateus and Morais were sentenced to four years and six months in prison plus a fine of 130 days at 7.000\$00 daily or an extra 86 days in prison each. Amaral was sentenced to four years in prison plus a fine of 110 days at 7.000\$00 per day or an extra 73 days in prison. Due to some collaboration, Monteiro's imprisonment was suspended for five years. The remaining three were given a pardon of one year each of their respective prison sentences because they had no criminal records.

<sup>241</sup> See (Tribunal Criminal de Lisboa 1993a, 45, 51).



special unit in 1988.<sup>242</sup> Such an inclusion is perhaps not innocent either, as the Emaudio business is somehow perceived to be associated with the President himself. It cites Silva Ferrão's comments in 1856 saying that "The corruption of public personnel is an extremely great moral plague in society; corruptors and corruptees are more dangerous than public thieves and murderers".<sup>243</sup>

Equally interesting is the emphasis laid on the active corruption agents by citing the severe penalties applied in France, Italy and USA where the maximum is 20 years in jail. While on this topic, and apparently out of context - or maybe not - reference may be made to both Belgium and Luxembourg's penalty for judges (passive corruption) to include "*trabalhos forçados*" (hard labour) for 10 to 15 years, fine and banning from office.<sup>244</sup>

In conclusion, when these two verdicts are jointly analyzed, the evidence of crucial contradictions seems evident. For instance, all the five items under Emaudio's section in the table above testify to the opposite conclusions regarding the motives in spending the money received from Weidleplan. Equally serious are the first five items under Melancia's section - they all reach similar conclusions but their final outcome is different. In matters of economic crimes, the judge's uniform view is the *sine qua non* for the reduction of impunity that prevails in current conditions. This case therefore raises critical questions regarding judges' own perception of corruption which bear direct implications on the application of law. It is not as simple a matter as the journalist Osório thinks to explain what happened: "All of this mess, which was absolutely incomprehensible to the majority of the population, was the consequence of an early decision to separate the trials."<sup>245</sup>

#### 4.3.6 Appeals

The right of appeal is also unquestionable and a natural part of a legal process. This case has seen a number of appeals to the Supreme and Constitutional courts. Defendants can appeal several times during the process, and some of those appeals incur a suspension of prison sentence

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<sup>242</sup> See (Tribunal Criminal de Lisboa 1993a, 49).

<sup>243</sup> See (Tribunal Criminal de Lisboa 1993a, 50).

<sup>244</sup> See (Tribunal Criminal de Lisboa 1993a, 50). Cf. Cardoso's allusion to early Roman jurisprudence, during the imperial period where corruption was seen as a crime of the magistrates - (Tribunal Criminal de Lisboa 1993b, 33).

<sup>245</sup> See Ind:14.01.1994:19.

too. It is generally perceived that appeals are used as part of a delaying tactics for a defendant's lawyers. A critical issue comes from the extended time until the courts make the decisions. When there are more than one, as in this case and others, the problem simply becomes worse.<sup>246</sup>

We refrain from going into detailed analysis behind multiple appeals because they are almost entirely related to procedural matters as opposed to the hard facts behind corruption itself. But consider briefly some of the appeals regarding the passive case. After the first sentence (August 1993), the PPS immediately appealed to Constitutional Court concerning the defeated vote of the president of the jury, and to the Supreme Court as well, requesting that the trial be annulled altogether. Six months later, on February 10, 1994, the Supreme Court made three decisions. Firstly, to invalidate the trial "from the first court session until the process was sent to the Supreme Court." Secondly, to return to Melancia all 43 documents presented in one of the final court sessions held on May 28, 1993. And finally, to repeat Melancia's trial in the same *Tribunal da Boa Hora* in Lisbon.

On the other hand, Melancia's lawyer promptly contested the last decision of the Supreme Court, claiming three "*nulidades processuais*" (procedural annulments), but the same Supreme Court quickly answered, on April 21, 1994 by not altering its early decision taken in February 1994. Melancia appealed to the Constitutional Court (already his third appeal though), by requesting a decision on procedural matters and the interpretation by the Supreme Court of three articles of the Penal Process Code,<sup>247</sup> and to the High Court again. In 1997 the High Court decided this time to cancel its latest decision and reconfirmed the initial acquittal.

Now was the PPS's turn to appeal, this time to the Constitutional Court again. Two years later, in February 1999 the Constitutional Court decided in favour of the PPS and decreed that the verdict - not the trial - be reviewed in the High Court. In November 1999, the High Court reviewed the verdict and decided to maintain the acquittal. The Public Prosecutor requested the "*plenário*" of the High Court (i.e. in plenary session) to declare the latest decision invalid.

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<sup>246</sup> See the Appendix A, Figure 10 Melancia's Court Case Procedure, Expresso 28.01.2000, p.4 which illustrate Melancia's appeal cases. See also Appendix B, Figure 11 Costa Freire's Court Case, Expresso, 08.01.2000, p.12. Both appeared while the legal cases were not fully settled.

<sup>247</sup> For its details, see Acórdão 137/2002 of the Constitutional Court, page 16303.

The rest of the story can be seen in two further complex steps. Firstly, in the Constitutional Court Decision 137 of 2002,<sup>248</sup> where three appeals were discussed at the same time, following the Supreme High Court decision of May 16, 2001. One of these referred to Judge Cardoso's defeated vote, made by the PPS in 1993 - it took nine years for the Constitutional Court to declare that his act "does not constitute part of the court's decision" and therefore was not under any specific control. And secondly, the decision by the Supreme High Court in October 3, 2002 in which Melancia was permanently acquitted. The case nearly reached its prescription, and therefore, it was to no avail to appeal again to the Constitutional Court, although in theory it was possible. The PPS decided not to do it. In the end, simplistically stated, the PPS lost the case, and Mr Melancia won it and, as a result, is free for ever of this case.

The active corruption case is not very different in terms of speedy resolution either. Only in terms of time was it worse - because it extended four years beyond the passive case. Soon after the verdict, the defendant's lawyers appealed to the Supreme Court on two basic counts: firstly, the fact that the judge did not take into account the united version presented by four of the offenders and secondly, the penalty was based on Article 420.1 (old Penal Code) and in their view it should have been on Article 420.2, due to the fact that the objective (Weidleplan winning the contract) was not achieved. The former Article envisaged a penalty of up to six years in prison whereas the latter speaks of a penalty of up to one year in prison only.

A year later, on May 3, 1995 the High Court refused the appeal thus confirming the first verdict which caused another appeal. Over three years later, on December 2, 1998 the Constitutional made a decision - Acórdão N° 680/98 in favour of the reformulation of the Supreme Court's previous decision. In practice, it amounts to an annulment of the sentence, obviously in favour of the defendants. This active case is almost back to square one, so it seems now, and is likely to reach a prescription.

If the passive case had the incident of the president of the jury's defeated vote, this last decision of the Constitutional Court creates another major incident, though not equally well known

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<sup>248</sup> See the Acórdão do Tribunal Constitucional N°137/2002/T.Const. - Processo N° 363/01, published in Diário da República - II Série, N°223 of September 26, 2002, pages 16303-16307.

because the media has largely lost interest, it seems. In fact, after so many years, it is unlikely to gain further attention. Except for one person. The presiding judge of the active case, Filipa de Macedo went public in an angry reaction against the Constitutional Court (hereafter CC).

Consider the following four comments of Macedo. Firstly, her own personal views, perhaps too emotional ones: “*Estou ofendidíssima*”, that is “I am utterly offended by the CC decision” because the first instance court was confirmed by the judges (*Juízes Conselheiros*) of the Supreme Court as “well elaborated, well based, the penalties were just and adequate to material factors seen as proved in the sentence.” Secondly, she sees a perfect correlation with the passive case process which is “entangled” and moves nowhere (“*não ata em desata*”). Thirdly, an accusation against the system of justice, as the decision as such “does not have a minimum basis and it will discredit even more the Justice and the CC”; and as the substance of the decision is “an extremely formal way for the CC to cancel a decision that it intended to cancel” anyway. And finally, the most serious statement: “*The CC is one hundred per cent a political Court*”. These comments put the current judicial framework into question and bring alive the ingrained perception that the economic crimes of the powerful are left unpunished.<sup>249</sup> Or, in the words of L.Sousa, it is a case of “double-standard application of justice in Portugal” (Sousa 2002, 274).

#### 4.3.7 Recovery of assets

This legal case has not included any attempt to revert to the State any misused funds whatsoever. This is an area which the jury of the active corruption case did not consider at all, something that needs a review as well.

#### 4.4 The need for a new moral perspective

So far, several critical matters were raised in the context of this interesting legal case, following its various steps. They are sufficiently broad and not exhaustive, but they are indicative that there are cloudy areas in the current Portuguese context of public and private life. Political intervention lacks consistency; laws are ill made; administrative control mechanisms do not

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<sup>249</sup> See the editorial by J.V. in EXP:22.05.1993:8 “*Tribunal político e tribunal judicial*”; and J.Garcia, EXP:01.05.1993:16 “*Um crime, dois julgamentos*”.

function properly; the judiciary faces several problems which cast doubt on vital aspects regarding the time when decisions are made, and the contradictory results which come from similar pieces of evidences.

With regard to the private sector, business companies operate with little supervision; accounts reveal malpractices as payments cross personal and business accounts without proper justification or documents; banks are used to transfer money which may include illegal activity; certain shops are known to receive millions in cash in exchange for goods; and others exchange cash for cheques with no apparent reason other than to satisfy a friendly request.

Within the mix of public and private sectors, the political parties play confused roles behind the scenes. Its leaders or former leaders have many links with politicians and people in public functions and also in the private sector; the movements to and from political office raise many suspicions; meanwhile critical laws, though imperfect, such as the financing of political parties and mechanisms regarding politicians' interests are not implemented nor checked along the way; and these reflect a rather confused climate which easily favour illegality, as this case illustrates.

As far as this transnational case is concerned, the cooperation between Portugal and Germany functioned well and swiftly. The law in Germany remains too protective of nationals when dealing with international corruption. The impact of recent international agreements by OCDE and the United Nations may bring an effective change. Had Germany similar laws to the United States, Weidleplan agents would have faced criminal actions within the country too. But this case demonstrates that corruption sees no boundaries and it is important that there should be better cooperation among countries in fighting corruption.

So, with regard to Portugal, both the administrative and judicial mechanisms to prevent corruption failed to act swiftly and on time. The complaints about a cloud of suspicion in Macao were continuously ignored. In the three short years of the Melancia administration there were serious charges earlier in connection with the TDM case which received minimal attention. The Emaudio case could have been a good opportunity to reverse the situation of suspicion but the anti-corruption authorities did not seem prepared to deal with the snowball effect and its wide

implications. If it were not for the valuable cooperation of the Portuguese and German Public Prosecutors and Police, this case would have remained a mystery like many others. But even with such massive evidence in written form, this case did not reach a satisfactory conclusion in the courts.

**PART TWO**  
**CAUSE & RESPONSE PATTERN**

## **Chapter 5**

### **Historical determinants of corruption**

#### **5.1 Introduction**

This chapter marks the beginning of Part Two and deals with a critical evaluation of contextual factors of corruption and its responses. As stated in the introduction, it is only possible to undertake a detailed analysis of the latter (see Chapter 7 - Types of existing responses to corruption), whereas the former, here subdivided into two parts, namely the historical (this Chapter) and contemporary factors (Chapter 6) provide an overview of the underlying conditional factors behind an apparent subculture of corruption. This in turn provides a fundamental basis upon which to propose an anti-corruption response (see Chapter 8 - Formulating an alternative moral framework).

Although the author has undertaken a substantial examination of both historical and contemporary nurturing factors, something that has proved to be germane to the preliminary work of this thesis, and despite the restrictions of the word length, it is nevertheless right to concentrate even briefly, on identifying certain regularities or patterns of practice, and perhaps the structure of incentives and of cultural assumptions likely to account broadly for the occurrence of past and present corruption.

This chapter goes beyond the single case study approach. Although the focus in the last chapter was exclusively on the Emaudio case, the purpose there was to identify critical administrative and judicial errors in dealing with suspicion and the occurrence of corruption. Those findings paved the way for this and the following chapter to explore key holistic factors that most likely feed corruption. The first step consists of examining the historical or remote factors that are still perceived to be influential in perpetuating current patterns of corrupt practices.

The following section identifies key political, economic and social historical factors that influence current Portuguese affairs. Each factor is defined, explained and briefly discussed with a view to demonstrating how it is still conditioning the current situation and showing the relevance of



considering its implications when determining and addressing contextual elements which underlie a climate of corruption.

## **5.2 The need for an historical perspective**

The inclusion of an historical perspective is important because current culture is in part a result of inherited conditions. Gary Becker's Nobel Lecture calls on economists to detach themselves from traditional narrow assumptions about self interest by recalling the fact that "Behaviour is driven by a much richer set of values and preferences" (Becker 1992), most of which are passed down over the generations. Therefore, as it is widely perceived, culture is neither static nor easily changeable. Good changes often take a while to be introduced as habits were acquired over a significant period of time (Corkill 1999, 124, 186, 226; Fukuyama 1995). In the overall process of change, a fair perception of past realities and experiences is critical for the following two reasons.

Firstly, as correctly noticed by Johannes F. Linn, the World Bank Vice President for Europe and Central Asia, attempts to quickly "jump" towards solving the "proximate causes and consequences of corruption" in countries in transition suffer from a deficient knowledge of "historical factors underlying the persistence of corruption in the region." (World Bank 2000, viii). Therefore, failure to consider an historical analysis may lead to ill designed anti-corruption strategies and inappropriate prioritisation of critical issues (UNDP 1997).

Secondly, corruption is a contextual concept in which past, present and future realities and expectations are mixed in a complex way. Given the fact that history cannot be changed, the way forward must be based on as correct an interpretation of the past as possible, particularly those aspects that still prevail and influence key individual and institutional performances and outcomes. So the inclusion of remote factors is necessary to explain, for example, why certain changes are either difficult or slow to implement.

A warning, though, is needed regarding the possibility of exaggerating the historical conditioning factors that in the Portuguese case would recall two perceived traits. The first one is "*saudosismo*", a unique Portuguese word that deals with an excessive adherence to past ideals and

views, and the second is a fatalism that leads to resignation and dangerous tautologous explanation: “things are the way they are because they are the way they are.” (Mény and Rhodes 1997, 99).

Both extremes need to be dismissed as we proceed with this cultural and historical analysis.

Additionally, it is equally important to clarify from the outset that Portuguese culture as a whole is not to be seen as corrupt. Such an assumption is wrong because it tends to confuse one aspect, though important in itself, with the total picture. However, there seems to be no question that certain practices of corruption exist and need to be properly identified and accounted for by the competent authorities. Such routine practices constitute something which could be designated as a subculture of corruption.

### **5.3 Historical Determinants of Corruption**

Portuguese political and economic affairs in the 20th century lacked a sense of stability. This was the inevitable result of changes in the political regimes, which within a century alone, moved from monarchy (until 1910) to the First Republic (1910-1926) to dictatorship in the Second Republic (1926-1974) and to the current democracy. Therefore, the country suffered from a permanent period of transitions and from 1960 to 1974 it also experienced a series of military conflicts in its former African colonies.

Within this volatile period the least affected of all major historical institutions was the Catholic Church even though it did suffer a rather arbitrary but short-lived persecution and the confiscation of its property during the confused period following the end of the monarchy. But the New State under Salazar and Caetano’s regime favoured Catholicism in a very special way. As a result, the church expanded its influence in social and educational areas as never before and benefited from the 1940 Concordat that guaranteed it certain unique social and economic privileges, most of which still exist today. These made Catholicism a stable institution which could equip the Portuguese people ethically for vital civic tasks.

Given these general features, the following are eleven remote (secondary) factors worth considering. Each of them will be briefly defined, exemplified, and its inclusion justified with particular emphasis on how it is still conditioning the apparently existing climate of corruption.

### 5.3.1 Clientelism as a consistent feature in political economy

Clientelism covers a vast array of “informal relationship between people of different social and economic status” which includes a “mutual but unequal exchange of favours, which can be corrupt”<sup>250</sup> (Clapham 1982; Kurer 1997, 31–43). Such informal culture and practice was deeply ingrained in all previous Portuguese regimes affecting not only politicians and business agents but also the people in general (Lopes 1991; Lopes 1993; Silva 1997; Mattoso 1998, 101, 108; Shuen, K. H., Public participation in combating Macao’s bureaucratic corruption, 1996).<sup>251</sup> Therefore, in such settings, knowing a very important person is of the utmost importance in securing a special concession. And even knowing someone in certain key areas, such as in the hospital, seems also important to guarantee a medical appointment on time.

Such a clientelistic web always favoured the intermediary functions which also relied on the exchange of favours. In a society largely based on unequal opportunities, knowing the right intermediary was perhaps what was most needed to open the key doors. For a long time, the Portuguese people had been moulded to accept this reality. For instance, the Catholic religion in general had always accommodated a number of intermediary agents in reaching the throne of heaven or God in search for needed favours or grace. There is nothing wrong with that, but it illustrates a common practice as each believer is encouraged to have his own object of devotion.

For instance, the sociologist J.F.Almeida tells of a peasant who visited the village church and decided to donate a gift firstly to Saint Michael and then to the devil whom the saint had stabbed because he was not certain who would win, and therefore, it is better that both intermediaries should somehow be appeased (Almeida 1986, 323).<sup>252</sup> So the entire way of life and not just politics or economics is generally geared towards a similar approach via intermediary relationships. Some may lead to a clientelistic type of exchange, which is not uncommon either.

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<sup>250</sup> See <http://www.u4.no/document/glossary.cfm#clientelism>.

<sup>251</sup> Cf. J.Aguar, EXP:08.07.2000:24 “A Nation held captive by the State”; A.Barroso, EXP:21.08.1999 “In the shade of the banana tree”.

<sup>252</sup> In the Portuguese Popular Religion, the Devil and God are never opponents as each chooses his own clients (Santo 1990, 16; Carvalho 2000). Exactly as Pessoa used to say: “God is good and the Devil likewise is not bad”.

This basically historic clientelistic environment inevitably facilitates both the acceptance, and the giving of gifts in exchange for favours, contracts or important deals from those in positions of power and or authority whether in the State or in private institutions. In many ways, this scenario continues to reflect the current socio-political and economic situation,<sup>253</sup> and according to M.V.Cabral not even the Carnation Revolution has altered clientelistic practices yet (Barreto 2000, 348).<sup>254</sup> From a popular viewpoint, Portuguese has its own unique word which is untranslatable, and known as “*cunha*” (Morgado and Vegar 2003, 57,59; Aragão 1985, 190). It can also involve corruption but it often refers to favours that have been widely accepted and tolerated in all sectors of life.

Another expression from academic quarters widely used is “caciques” and “caciquismo” (chiefs / bosses) (Ruivo 2000, 70–72; Almeida 1991, 129; Sobral and Almeida 1982). According to Lopes, this is largely based on “face to face”, “personalised” and “reciprocal” relationships between politicians and the public, particularly the private business sector (Lopes 1993, 732). All of these varieties of clientelistic habits reveal the negative historical implications behind a climate of corruption which remains largely unchallenged today and exists in different new formats, as Ruivo’s research clearly demonstrated (Ruivo 2000, 12).<sup>255</sup>

### 5.3.2 Monarchical and republican bureaucracy

Many of the clientelistic practices were due to poorly functioning, bureaucratic public administration imposed by the State and its personnel. Such an old and cumbersome bureaucracy had made difficult the lives of so many citizens and business enterprises (OECD 1996, 87–88). All past generations had countless stories to tell about inefficient structures, over regulation and illegitimate discretion of public officials. This prompted ways of circumventing bureaucracy

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<sup>253</sup> J.Cotter, PUB:17.01.2001:14 “The clientelistic cancer and the presidential function”; P.Serra, DE:29.10.2003 “The master who is followed”; J.Guerra, DE:21.05.2004 “Portuguese style elite”; and D.Barroso, EXP:20.02.1999 “State clientelism”.

<sup>254</sup> Likewise think the historians J.H.Saraiva, SEM:05.10.2000:18 “With the Republic, Portugal lost more than it gained”; and R.Ramos, PUB:07.02.2005 “In the last two centuries we made very few reforms but there were some revolutions”. Cf (Almeida 1986, 375; Silva 1994, 373).

<sup>255</sup> Cf. D.F.Amaral in (Barreto 1998, 88); and J.Miranda in (Barreto 1998, 180).

through greasing the blocked system, something often referred to as “petty corruption” (Maximiano 1993, 30).

This petty corruption became a normal part of life, thus causing no great concern among the people. Such a rather trivially conceived attitude was always justified because of the need to speed up the public administration’s answers to citizen requests. However, it always had a negative effect on the general climate of toleration to corruption and most particularly regarding people’s reluctance to denounce such ingrained practices (AACC 1990, 66, 128, 130), something which Antunes called “social apathy” (Antunes 1996, 154). This, after all, was never a minor issue as it first appears because of its snowball effect. Tolerating small errors can often lead to a rather more complex phenomenon, because if one can tolerate small corruption why not tolerate a big one? The former USA Secretary of State for Commerce, William Daley, warned that a prohibition of certain types of bribery might well be interpreted as the legalisation of others.<sup>256</sup>

This appears to be serious in itself. It seems to have been historically based on something equivalent to “venial sin” as opposed to “mortal sin”. Petty corruption is unequivocally perceived as a venial sin, so why bother too much about it? These theological concepts are deeply rooted in historic Catholic doctrine and might have contributed to minimising the seriousness of the so-called, less important sins. Such a minimum moral cost inevitably leads to some kind of willingness to tolerate corruption.

### **5.3.3 Politics of the few and for the few**

A climate of corruption was made much easier because political activity always remained within closed doors where very few people dominated it throughout all the regimes of the twentieth century. The negative side of it lay in the absence of any tradition of accountability on the part of political agents and parties. This enabled a small group of politically empowered actors to manipulate key functions of the State, namely legislative and executive offices, to their own advantage. There corruption may occur but will most likely be unnoticed, except when someone internally breaks the chain and denounces it, or at the beginning of a new political regime, as the

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<sup>256</sup> PUB:24.11.1997:12 “International prohibition of bribery - what corruption?”.

newcomers always accused the previous leaders of acting corruptly, but always for minor political and convenient reasons only.

For instance, during the First Republic, many rather short lived governments came to power, but, on the whole, the same few people returned to public office or else occupied the non-elected administrative posts. Although some alternation did take place, the fact was not followed by any effective political alternatives or changes of personnel.

Another critical feature was centred around a handful of charismatic leaders in detriment of political ideas needed to transform society. Such an emphasis on a individual leader has remained the most popular solution even today, when there is a widespread belief that deep rooted problems can be solved by a single and highly regarded leader. A good example was undoubtedly the former dictator Salazar. He eliminated all political party activities and throughout his regime, politics remained a privilege of the very few, while a large majority of the population were politically illiterate as well as largely uneducated.

This politics of the few also accounts for concentration in main urban and coastal areas to the detriment of rural and interior regions, where not even the national media was interested. The local media in rural areas also lived behind closed doors so that sensitive information rarely reached the public. So, local corruption in rural areas hardly reached the news because attention was always concentrated in major cities.

#### **5.3.4 Political alternation without change**

As mentioned already, political alternation without change had an additional negative impact when dealing with the issue of corruption. For long, the monarchy was regarded as manipulating resources for the benefit of its own members (Maximiano 1996, 375). The historian V.P.Valente said that he could not recall any historical period since the late eighteenth century in which corruption was not present in political economy affairs.<sup>257</sup>

In many ways, the Republic ideal was determined to transform the negative habits of the monarchy. Pires' PhD research entitled "The idea of decadence in the generation of the seventies"

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<sup>257</sup> V.P.Valente, DN:23.04.2004 "Corrupção".

(1870s), recalled how famous writers of the late nineteenth century pictured the negative political influence of all previous governments (Pires 1992), and some writers such as Ramalho Ortigão remained critical in the early years of the twentieth century too.

The concept of decadence was indicative of many poorly-functioning political systems and activities which academics had not been able to fully discern yet (Reis 1984; Amaral 1985; Franco 1994, 258). But one of the most famous discourses of the seventies generation was by Antero de Quental (Quental [1871]1994; Pires 1992, 64–72). His thesis gave a significant emphasis, in addition to religious matters, on the lack of political ability to overcome critical backward and historical conditions of the country. But this type of discourse and analysis was banned by the authorities, leaving critical comments to appear in other literary forms of which Ramalho Ortigão's *As Farpas* is perhaps one of the best known today.<sup>258</sup>

From an ethical viewpoint, the highly praised Republican ethics did not alter the situation, just as Catholic ethics did not do so in the following Salazar regime either. Both, in fact, prolonged political instability and failed to discipline their own members in key places of decision-making and authority. Neither gave any priority to educating the population at large, which was always treated as incapable of grasping the complexities of political activity. So much so that dictatorship was peacefully received by the people as from 1926 onwards, and in 1974 it was similarly removed without much turmoil.

In conclusion, one looks in vain to find any past governments that considered corruption as a serious national issue needing special attention. Instead, the problem remained a taboo, except for short periods during electoral campaigns under the First Republic, and again during contemporary electoral periods. At best, corruption was viewed as exceptional, needing to be contained by appealing for better moral conduct by key agents in the State administration, exactly as the historian F.Rosas attested that changes of governments in the last twenty-five years of democracy do not mean any change of old corrupt habits.<sup>259</sup>

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<sup>258</sup> J.P.Guerra, DE:12.04.2004 "*A-dos-Cunhados*"; and A.L.Marinho, DE:07.05.2004 "Failure".

<sup>259</sup> F.Rosas, 24H:23.12.2000:5 "Corruption in a pure state".

### 5.3.5 Corporativism: a selfish nature of defending one's organisation

The attempt to protect personal and institutional interests has a legitimate social and political side in any society. The existence of corporations and professional associations of various sorts is found everywhere too. But Portuguese history had some distinctive features worth highlighting at this point. The entire New State was built on the specific 1933 Constitutional concept of a "Corporative State", commonly designated as a "Corporative Regime" too. Economic associations organised themselves in accordance with their own collective function, rather than by individual representation.

From this concept there are critical terms which fit well the Portuguese historical context such as "*corporativismo* - corporativism" and "*corporativo* - corporative". However, these terms as Wiarda has correctly pointed out remain "exceedingly ambiguous and often loosely employed" (Wiarda 1979, 89). Conceived originally as a means of enabling associations to perform both professional and civic duties, it was then viewed from the apparently selfish standpoint of defending one's own corporation to the detriment of public interest and welfare. Over the years it became associated with vices, inertia and illegitimate self-protection, something which Aguiar described as the "*absolutização dos interesses*".<sup>260</sup>

In this regard, "corporativism" carried a rather negative connotation. Common welfare was neglected, and instead of a good and healthy spirit of association there existed an inward looking corporative structure. The importance of this rather well rooted idea for a corrupt environment appears significant not only in the past but also in the present. Every collective body strove to achieve its own private objectives independently of whether or not they collided with wider national interests or expectations. Such selfish conduct on the part of corporative bodies was regarded as blocking any idea of reform which might disrupt their individual and narrow purposes.

Lucena has significantly expanded this theme by explaining its function, firstly within the Salazar and Caetano leaderships and then how it carried over into the current democratic regime, which is sometimes regarded as a neo-corporativist regime too (Lucena 1979; Lucena 1977;

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<sup>260</sup> J. Aguiar, EXP:06.02.1999 "Corporativism in democracy".



Lucena 1985; Lucena and Gaspar 1992; Lucena 2002). Vital Moreira sees corporativism and public administration as two “cancers” affecting the national health services, for instance, because the current economy is rather “corporative”, in that cartels and corporations agree together against both the State and patients in favour of their particular interests in a climate of impunity where no one is made accountable.<sup>261</sup>

This sort of example is repeated in many different sectors of life including in the political parties, judiciary and higher education. With such inbuilt traditions, the common welfare is relegated to second place and so is the anti-corruption cause.

### **5.3.6 Negative traits of colonialist attitudes**

Being a colonial power, certain negative work habits were developed and accepted which proved to be conducive to national corrupt environment (Marques 1990, 11) both in the colonies and in mainland Portugal. The case study in the previous chapter dealt with the former colony of Macao. There, in a land distant but nevertheless ruled according to the Portuguese tradition and values, corruption was largely tolerated and even seen as a means of personal or institutional gain, though illicit at times. For long, suspicion of corruption was neglected by all the authorities. Unfortunately Macao was always associated with corruption (Shiu-hing 1993).

In the 1995 Anti-corruption conference held in Beijing, two contributions dealt with Macao’s case. Shuen explains how the Portuguese bureaucracy favoured the “middle man”, and “red tape”, and tolerated the “bad habits of local citizens” in giving presents to government and administrative personnel, including schools and employers (Shuen, K. H., *Public participation in combating Macao’s bureaucratic corruption*, 1996).

The second contribution from Jack Lo is a comparative study between the anti-corruption agencies in Hong Kong and Macao (Lo 1996). Regarding the latter, the Portuguese colonial powers had a very bad reputation for two consistent reasons, namely the lack of political will at the top and unchallenged bureaucratic absurdity in public offices. For decades, he writes, it “has been an open secret that the enclave’s government is riddled with corruption”. The creation of the so-called anti-

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<sup>261</sup> See 24H:14.07.2001:7 “The health system suffers from two cancers”; and PUB:14.07.2001.

corruption unit in Macao was nothing other than a “toothless tiger”, added the author, following the same wrong Portuguese model introduced in 1983 in Lisbon.

Two faulty procedures characterised the Portuguese effort. The first is limited administrative power with no criminal investigative mandate whatsoever which only gave Public Prosecutor services the reputation of being “very slow and tortuous” (Lo 1996, 1611). The relationship between these two agencies was faulty, to say the least. And secondly, investigation in the private sector was “strictly off limits”, that is, there had not been an adequate concept of private corruption. Instead, under the “veneer of human rights”, suspects of corruption managed to escape conviction. And finally, the over “judicialisation” of anti-corruption procedures in clear detriment to an administrative and preventive approach, always prevailed. Such structural and functional problems were not unique to Macao but extended throughout former colonies.

Portuguese colonial conduct with regard to corruption was therefore negative and clearly affected the image of the country both internally as well as externally. Isolated and individual good procedures always existed but were insignificant in dealing with a culture of corruption.<sup>262</sup> Meanwhile, the habits that tolerate corruption abroad were intertwined with unchallenged national habits that left many ill designed control mechanisms within the State and private affairs intact.

### **5.3.7 Negative influence of long-lasting dictatorship**

The long lasting dictatorship had a negative impact on society in general. Such an inheritance has two aspects, one which favours corruption and the other that obstructs effective responses to corruption. Among the first, there was a definite culture of secrecy within the public administration which hindered access to public information. Such a lack of transparency has persisted to the present and facilitated corrupt transactions and deals in closed networks. As Barreto explains in the opening chapter of *A Situação Social em Portugal, 1960-1995*, information is power and those who have power, have information also. But the Portuguese experience is rather painful, after such a long spell of censorship and lack of political freedom and competition. Then

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<sup>262</sup> The resignation of former Governor P.Machado (1986-1987) is one example: “for reasons of institutional dignity which I have not forsaken, reasons which are of such importance to me personally that I should lose my self-respect...” - as cited in (Shiu-hing 1993, 34; Lo 1996, 1609).

he cites Salgado Zenha in the early period of the current democracy saying “In Portugal, more than the secrecy of the State, the true problem is the State of secrecy” (Barreto 1996, 21).

Not only the State but private agents too have a strong tendency to view public information as something “confidential” in matters regarding public and private relationships. Barreto rightly concludes that current attitudes and beliefs still support secrecy as opposed to an open concept of administration and government. And despite recent progress, the Portuguese context remains closed in many vital areas such as the legislative process and State budget (Barreto 1996, 23). The end result is never positive, as Fonseca clarified well in declaring that “The crime of corruption is profoundly linked to the existence of secrecy... which is not compatible with freedom and human rights” (AACC 1990, 102).<sup>263</sup>

With regard to obstructing responses to corruption, the inheritance of the past provides several excuses for not investigating corruption to the final stages. The so-called “traumatic historical experiences” are often used, for instance, to prevent attempts to create or even discuss the hypothesis of a specialised court for settling economic crimes (Simões 2006, 37; GRECO 2003, 12). Such a court recalls old fascist practices of manipulation of justice, argued some, in a clear effort to defend the tolerance of corruption in acceptable political terms.

Past experiences with the special secret police, PIDE, which was notorious for curtailing freedom and infringing on human rights, are continuously recalled when anti-corruption efforts are undertaken. Even the task of whistleblowing is often confused with former secret police officers and their collaborators, and seems to be discouraged as another illegitimate excuse (Ferreira and Baptista 1992, 90). Politicians in particular appeared very keen to lift up the banner of human rights while clearly neglecting the urgent need to reduce corruption.<sup>264</sup> All of these still happen, even thirty years later, because of incorrectly handling past historical experiences, thus using them as excuses for not acting appropriately in reducing opportunities for corruption, and in neglecting adequate responses.

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<sup>263</sup> J.Ferreira, PUB:25.10.2001 “The secret democracy of the PS party”; and (Morgado, et al. 2003, 104).

<sup>264</sup> A clear example is the exchange of arguments between the PSD member, J.Neto and former deputy director of PJ, M.J.Morgado during the parliamentary inquiry - (Parliament 2002).

### 5.3.8 Negative view of the State

For many centuries, the Portuguese population has nurtured a very negative impression regarding the State in general. Former president Sampaio explains this rather negative view against those in positions of public authority quite well, and he quotes one of the most popular sayings that “to steal from the State is not a sin” which expresses a lot about the sentiments held over the years.<sup>265</sup> From this type of comment to actually “rob” the State’s resources and reputation is a small step, as it seems when one recalls another well-known saying that the “thief who robs a thief has 100 years of forgiveness”.

Therefore, as long as one is not caught, not paying taxes or failing to uphold the welfare of the State seems something highly tolerable among citizens. And if one is caught, it is conceived as bad luck, which is not all that unrealistic given the arbitrary conduct of state control mechanisms. So, almost everyone has the apparent right to accuse the State, as if it were an abstract entity and something very detached from a normal Portuguese human environment.

When the State appears not to satisfy someone’s need in the usual paternalistic style, or due to its many faults,<sup>266</sup> the accusation can easily turn into verbal public insults against those in positions of authority, including the politicians in particular. For instance, even a bishop can join the crowd at times. The bishop of Viseu, apparently not happy with the discussions concerning abortion, went public to accuse Portuguese politicians of being corrupt by saying: “The truth is that the people are right, as the politicians are almost all corrupt but it is necessary to choose the lesser evil”.<sup>267</sup>

Such an historically rooted attitude always provided a basis from which to assault public resources for private benefit, of which corruption was just one example. M.Júdice was right in saying that this cultural idea that “we are one thing, and politicians are another”, appears to penalise the political class but in reality it is highly excusable - that is, we are abdicating basic civic

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<sup>265</sup> J.Sampaio’s interview in DN:08.11.2000:6-8.

<sup>266</sup> F.S.Cabral, PUB:02.09.2000:10 “Mission impossible” where he points reasons why the State could no longer be viewed as a “good person”; and PUB:07.10.2000:15 “The disaster of the State”.

<sup>267</sup> DN:27.05.2001 “Bispo of Viseu calls politicians ‘corrupt’”. Cf. J.Júdice reaction in IND:01.06.2001 “Questions of method”. See also another bishop’s comment in accusing the State in IND:01.03.1996 (Revista) “Interview with Dom Eurico” - “From time to time the State comes and rob the church”.

rights, including the responsibility to choose and monitor those whom we elect for public function (AACC 1990, 138). Given such behaviour, it can only stimulate further corruption by clearly neglecting to uphold and even protect State resources.

### **5.3.9 Negative ecclesiastical influence**

The Catholic Church of the past was heavily hierarchical and largely monopolistic, allowing no other religious movement to exist or penetrate society in any basic competitive sense of the term. Throughout history, it was mainly a religion of the masses and rarely a prophetic voice of impartial nature and conduct. Such an absence from public life was largely responsible for the corrupt climate that was then installed in various sectors of national life for two reasons. Firstly, religious leaders were seen as models which people tend to follow but they generally failed to live up to Christian ethical standards. And secondly, they also failed in disciplining believers to uphold critical doctrine and ethics for themselves.

As an influential religion, it had the “totality” of the people on its side, thus controlling the masses rather successfully for the purposes of retaining power and prestige which hardly fitted its fundamental religious and moral causes. This power, together with schools and various sources of income and additional resources, was not used for building a strong and independent civil society. Instead, power made religion a social and cultural force, probably at the expense of a feeble spirituality, which then affected its internal perception of key doctrines and its external ethical performance.

When religion failed in its basic mission, which according to Jesus who founded his church to defeat the evil forces by being instead “salt” against the corruption in the world, and “light” to enlighten minds and hearts of citizens, and when the Catholic Church illegitimately became involved with mundane political temporary power thus compromising itself in exchange for equally temporary material benefits, it then abandoned its very noble and religious reason for existing.

Negative examples were seen, for instance, in the way Jewish believers faced harassment and even death. Not only did their religion disappear almost completely from Portugal, but the country and its people in particular were deprived of their social, professional and economic

contributions which in many parts of the world made an unquestionably positive and long lasting impact. Just as the business sector that functions without fair competition can mostly result in corruption, the monopolistic and inward looking religion of the past failed to challenge the State and its administration regarding its corrupt relationships that impoverished the entire society.

The Harvard historian and author of *The Wealth and Poverty of Nations*, David Landes, unashamedly attributed to the old practices of Portuguese Catholicism the main responsibility for the backward economic conditions of Portugal in the past. Having attended an International Conference on Globalization, Science, Culture and Religion in Lisbon, Landes, in reply to the first interview question “Do you believe that the Catholic Church is guilty historically for holding back the Portuguese economy?” he said “In great measure. I do not know which type of answer you want...”. “An honest answer”, replied the journalist. Then he added: “If one accepts the fact that to remain competitive... it is necessary to work alongside all types of people and accept their differences and criticisms, and one church instead insists on homogeneous beliefs and practices and isolates, segregates, and expels others, it then loses... the advantages of what is now called pluralism. ...This made Portugal a backward country.”<sup>268</sup>

In addition to interviews, several articles appeared in the newspapers citing Landes but it was a surprise not to find any strong opposition to his unequivocal accusation against the Portuguese Catholic Church of the past. Such silence was unusual, so it seems. Instead, commentators preferred to emphasise the errors of Islam and generally refrained from including Catholicism that also fitted the picture.<sup>269</sup>

Such historical factors are now changing as the Catholic Church seeks to internalise new democratic values exactly like other Portuguese institutions today. Such a transformation is bound to take time to adapt and improve existing democratic standards in socio-political, economic and cultural sectors.

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<sup>268</sup> David S. Landes’ interview in IND:12.10.2001:36-37 “The Catholic Church held Portugal back”. Cf. another interview in GR:November 2001:78-86, and in PUB:05.10.2001.

<sup>269</sup> L.Marques, EXP:05.10.2001 “The politics of poverty”; H.Monteiro, EXP:19.10.2002 “Masterly lesson”; J.C.Espada, EXP:19.10.2002 “Worldwide opening”, and previously in EXP:06.06.1998 “A deferred reward”, and afterwards in EXP:08.01.2005 “Open sea: an inheritance and a project”; and much later, J.Vasconcellos e Sá, DE:23.02.2004 “The Arab report”.

### 5.3.10 Conservative and elite manipulation

Apart from the past faults of the Catholic Church's influential organisation as such, the elite, whether individuals and groups, were totally indifferent to corruption also. Not all of them were Catholics though, as many probably were only marginally so while others were clearly hostile and even joined the mass of *anti-clericalist* feeling that permeated various historical periods.

Historians correctly place a special emphasis on the elite's role in changing society.<sup>270</sup> Portugal has not yet received much positive input from its elite which also conditioned any past possibility of reforming backward institutions. R. Borges, a former MP published an interesting article "The elite and power".<sup>271</sup> With few exceptions, he argues, the elite has not truly changed in the last 150 years. It remains "dilettante", without strictness and competence and in favour of a culture of ease. It suffers from historical vices including envy and false rumours that maintain the *status quo* in being for their own ends. He then analyses the achievements of former leaders, namely Salazar and Soares.

Salazar was successful in bringing "peace", firstly among Catholic brotherhoods (conservatives and liberals) and then between Catholics and the Freemasons. The latter, he argues, was cleverly "extinguished" while maintaining good relations with its leading key members, some of whom were colleagues in government, something which Borges called "irony", whereas the former were given added privileges such as the Concordat (1940) and explicit support for its missionary activities in all the former colonies. With mastery, Salazar introduced a common enemy, the Communist Party and set it right in the middle so that the elite could amuse and apply their minds against such an evil threat, in addition to having silenced all the disturbing academic voices without any complaint from the elite.

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<sup>270</sup> The case of Britain, which like Portugal was a colonial power and once heavily connected with corruption, and how it eventually transformed itself due to positive elite influence, including religiously motivated elite and politicians - see (Harling 1996, 7, 262–263): "Similarly, while it is clear that a number of Tory and Conservative ministers felt an ethical impulse to reduce their own perquisite and patronage opportunities, and to govern frugally and fairly, the most powerful ethical impulse to sanitize government would appear to have come from independent Evangelical MPs, most notably William Wilberforce and the Saints, whose critique of wartime 'extravagance' stemmed from their belief that the greed and ambition of Pitt's associates had ruined his commitment to reduce public spending and 'irregular emoluments.'" Cf (Girling 1997, 119, 130–132).

<sup>271</sup> EXP:22.01.2000 "A elite e o poder".

From the seventies onwards, Soares created some basic conditions (secularism, unrestricted freedom, and lack of precision in conducting the State affairs) which satisfied the elite in the modern democratic period. Simultaneously, Soares extended the other hand to the Catholic Church, fostered private education and related to the USA and EU. In this way, argues Borges, Soares manipulated and silenced the elite too. So much so that nowadays, the elite is unable to react coherently to critical social, political and economic issues including corruption. Borges rightly concluded that whether one likes it or not, power in Portugal is dependent on the power of its elite with all the attachments thereof. So it is an illusion to dream of any reform of the political system and the State itself without transforming the mentality of the elite and benefit from its contribution.

#### **5.4 Concluding remarks**

None of the above historical factors, alone, or in combination, is likely to account directly for the occurrence of any single corrupt action. Each individual case needs to be judged by its unique characteristics. But the concern here is not with individual cases but with the man made environment which moulds current institutions.

As Portugal enters the 21st century, it leaves behind a century deeply marked by the rise of prominent isolated individuals, a lack of long-term political stability, a state authority marked by bureaucracy and patronage, a lack of efficient organisation and a vacuum in its associational life to use Wiarda's terminology or "civic community" in Putnam's sense (Putnam, Leonardi and Naneti 1993, 86–87). It is obvious that Portugal has also a deeply ingrained corporatist tradition based upon the widespread acceptance of hierarchy, elitism, state dependence in the economy, religious intolerance, and a pervasive form of clientelism which neither the liberal revolution in the latter part of the 19th century nor republicanism and democracy in the 20th century has been capable of changing or modernising in significant terms (Wiarda 1979). These critical and pertinent historical matters need to be combined with contemporary factors which occupy the central focus of the next chapter.



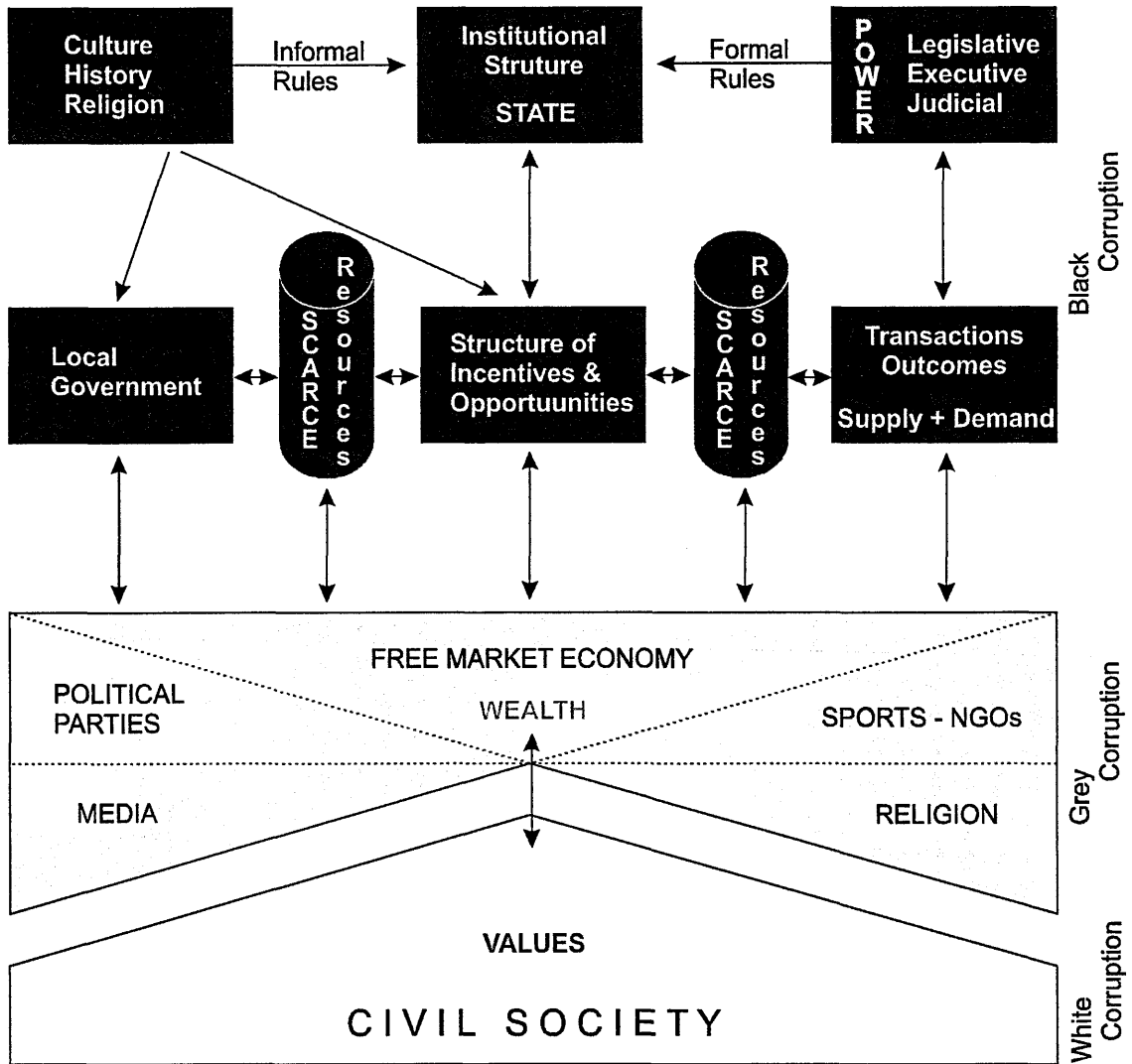
## **Chapter 6**

# **Contemporary Factors of Corruption**

### **6.1 Introduction**

This chapter continues to focus on the environment of corruption by examining contemporary factors, in addition to the historical ones presented in the last chapter. Both offer an overview of an atmosphere that both nurtures and ignores corruption. The aim here is to draw together previously unrelated material in an original and multidisciplinary way in order to inform deeper reflection on the current search for environmental factors of corruption and responses to it. We examine certain individual and institutional practices and omissions that are regulated through a number of systems of norms, which include formal and informal, written and unwritten, and permeate politics, economics, legislation, customs, morals or religion. Figure 2 below provides a global overview.

Figure 2 Institutions at the Interface of State-Market-Civil Society



Source: Author's compilation

Each sector (State, Market and Civil Society and respectively black, grey and white corruption<sup>272</sup>) influences the other and shapes the way national politics and business operate in society. The interaction of power, wealth and values plays a vital institutional role. At the centre lies the fundamental structure of incentives and opportunities that nurture and ignore corruption in search for scarce resources. The following five condensed sections cover an extensive ground of beliefs and attitudes linked almost exclusively to economic-related crimes, starting from fundamental principles, political bodies of sovereignty, religion, anti-corruption policies, and further political, economic and social conduct that nurtures a partially corrupt environment.

<sup>272</sup> See footnote 62.

As stated in the last chapter, this thesis seeks to provide a basis upon which to offer a new and more contextually relevant proposal for an adequate anti-corruption response. This continues to be the main focus which the next two chapters cover in greater detail.

## 6.2 Distorted basis: The case of fundamental principles

Portugal, like many countries, has a Constitution.<sup>273</sup> Such a statute is correctly viewed as the most fundamental basis with which all other ordinary laws need to be in full harmony. Moreover, it functions as a *Magna Carta* to which every citizen and institution must refer in looking for key principles for the enhancement of the country's welfare. But the problem is that the 1976 Constitution does not appear to fit this purpose because it is both incoherent and (therefore) largely not observed by the Portuguese people.

The Constitution is very long, with a total of 32,258 words in 296 articles. It is very difficult to grasp and open to conflicting interpretations. By contrast, the 1787 Constitution of the USA has 7,622 words in 7 articles and 27 amendments whereas the Chinese Constitution has 11,365 words in 138 articles. Although the Portuguese Constitution contains important principles, many articles are rather vague, with good intentions that are difficult to implement and open to all sorts of demagogy.<sup>274</sup> It includes sections that are symbolic in nature and have no practical relevance whatsoever, such as the articles on Economic Plans. It is also marked with ideological preferences, being largely left wing in nature.

The consequences are that the people do not have a credible reference point to turn to.<sup>275</sup> This is highly problematic and one of the sources of bewilderment. With a track record of low law observance, this is highly problematic, for example, for matters regarding the anti-corruption cause. It fundamentally lacks a solid basis of trust, thus making the Constitution largely a "decorative" and

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<sup>273</sup> See the Portuguese and English versions in [www.parlamento.pt](http://www.parlamento.pt)

<sup>274</sup> See J.M.Morais Cabral in DE:23.01.2004 "*As corporações*" in which he views the Constitution as something which easily accommodate "all forms of demagogy".

<sup>275</sup> See J.M.Cabral, DE:26.09.2003 "The Constitution and informality": "*Não pensemos que serão máquinas fiscais ultrasofisticadas e mais tribunais que resolverão esta questão. O que resolverá o dilema onde nos encontramos, é que cada cidadão se reveja numa Constituição, como a sua carta de deveres e garantias na Sociedade que integra. É esse o "trust" que precisamos de criar para todos acreditarem na verdade das instituições.*"

complex statute. Instead of solving problems, it is more likely to provide a basis for apparently endless disputes, including those within the judiciary.

Another, and perhaps even more serious, consequence is the unbalanced views regarding certain constitutional values. For instance, handling human rights standards on one hand, and upholding responsibilities on the other, appears to be deliberately unbalanced. When individuals and institutions can easily get away with certain malpractices and suspicion of corruption because they insist mainly on matters preserving and protecting human freedom and rights while neglecting key, but equally protected, common responsibilities, the anti-corruption cause is likely to suffer a rather serious defeat. This is not unusual in the current Portuguese context.

Because corruption apparently produces no victims, no one seems strong enough to support them and attempts to do so fail on rather false grounds of human rights or similar evasive “banners” that, in the end, prevent full investigation. A good example is the apparently endless discussion regarding the disclosure of bank secrecy. In a country where tax evasion is massive and widely perceived as a national scandal, access to bank accounts has been denied to investigative bodies for most of the periods under discussion, and only recently have there been any important changes. For instance, political party accounts are still restricted. So, the banner of human rights without a proper acceptance of responsibilities remains a Constitutional matter of discussion in which the wrongdoers are so far winning to the detriment of the country’s welfare.

### **6.3 Weak Sovereign Bodies**

This section examines all four bodies that exercise sovereign power. According to the Constitution, they are the President of the Republic, the Assembly of the Republic (a unicameral Parliament), the Government and the Courts (Article 110). The analysis of the top political structure reveals certain features that concern the way anti-corruption issues have been covered in the past thirty years.

#### **6.3.1 Weak Head of State**

In the first two years of the transition to democracy there were two nominated presidents, namely António de Spínola (1974) and Costa Gomes (1974-76). Ramalho Eanes, seen as the hero

of the November 1975 counter coup, won the first presidential election in 1976, and was re-elected in December 1980. He stayed in office for a total of 10 years (each mandate lasts for five years), and so did the following presidents Mário Soares (1986-96, re-elected in 1991) and Jorge Sampaio (1996-2006, re-elected in 2001). The current president is Cavaco Silva.

According to the Constitution, the presidential function includes, among other things, the responsibility to guarantee “the proper functioning of the democratic institutions...” (Article 120), and to either appoint or, when proposed, confirm members for key posts such as the President of the Court of Auditors and the Attorney General, the Council of State and the Supreme Judicial Council (Article 133). Although the role of the president is not to be confused with governance matters restricted to the PM, there seems to be a permanent discussion regarding its effective power. But very few question the influence that a president has in the overall structure and functioning of the remaining bodies of sovereignty. For clarity’s sake, anti-corruption policies and efforts remain primarily matters of governance.

Despite the initial confusing period of political instability and transition to democracy (1974-1985), Portugal has always had stable presidential mandates and the last three stayed a solid ten years in office. Looking back, none of them made any specific or positive impact on the anti-corruption cause. Leaving aside President Eanes who ruled in the difficult years of the transition to democracy and in a context of short-lived governments, the focus concentrates more on Soares and Sampaio. They are both agnostic and former leaders of the Socialist party. Soares had government experience while Sampaio had been mayor of Lisbon. Both, but most particularly Sampaio, raised the issue of corruption very occasionally and at various isolated ceremonies, but none of them succeeded in influencing a move towards establishing a nationwide and comprehensive anti-corruption scheme.

Their anti-corruption discourses to moralise the public administration and appeals for a better judiciary had no practical consequences. Therefore, the influential, as well as the symbolic, role of the former presidents was not effectively used to support the anti-corruption cause. If corruption distorts fundamental democratic rules and thus affects the normal function of the

institutions, the power and influence of all previous presidents were weak to prevent, as well as to account for, many signs of suspicion of corruption.

For instance, the consistent malfunction of so vital a Parliamentary Inquiry Commission on all cases relating to alleged economic misconduct reveals a complete inability of Parliament to exercise a basic checks-and-balances mechanism. Worse still is the fact that the Inquiry Commission has not been functioning for the last four years, indicative of the weakness of the head of State in guaranteeing the proper function of vital democratic institutions. This inevitably contributes to a climate that facilitates the ongoing occurrence and ignorance of corruption.

### **6.3.2 Weak Parliament**

Parliament occupies a central role in politics, including critical matters of legislation, budget control, and checks-and-balances in the exercise of political activity through its Inquiry Commission, and appoints ten out of the thirteen judges of the Constitutional Court (Constitutional Article 222). Examining all previous parliaments, the end result regarding economic crimes is very weak.

Starting with legislation, the field of anti-corruption remains faulty in the sense that current laws are not only sporadic but fail to be comprehensive and adequate. Over the years, the system provided short-lived legislation that kept changing in an atmosphere of permanent trial. So much so that many think of legislating over and over again.

Regarding the control of the national budget, it is public knowledge that one budget replaces another within a year with needed corrections. Additionally, there has never been a time when the opposition party does not pinpoint misleading figures. A lack of effective control of such an important monetary function creates a rather promiscuous climate of illegality with the official accounts. A quick reading of all the past annual reports of the Court of Auditors reveals a climate of permanent omissions and administrative faults that keep occurring, and changes only come gradually. Meanwhile, the country's accounts continue to have many kinds of ambiguities. This indicates a degree of carelessness in running vital public affairs.

And, as stated above, the obvious inefficiency of all the Parliamentary Inquiry Commissions regarding economic crimes is beyond dispute. They were all inconclusive. Unable to come to terms with several controversies, the Parliament passed a very negative message to the citizens. It substantiated a climate of impunity which truly characterised this important parliamentary function. This thesis deals with one of these Inquiry Commission cases in greater detail and explains the extent of its failure. Therefore, the national house of politics reveals a very weak and vulnerable condition that needs major structural changes in order to cut down present incentives and opportunities for corruption.

### **6.3.3 Short-sighted Government**

Good governance is essential to provide the right conditions to fight corruption. Again, if one bypasses several short-lived governments of the first ten years since 1974, the emphasis concentrates mainly on the stable leadership under C.Silva (1985-95), and Guterres (1995-2002). Unlike the previous two presidents, they are devout Catholics and divided their rule between two most influential parties, the PSD and PS. Their record of anti-corruption achievements is equally weak.

Cavaco inherited a difficult economic situation, but he took over from the Central Block government which had already referred to corruption as a national problem. His leadership has ignored such seriousness and treated it mildly. Such a mistake on the part of C.Silva, himself an economist, turned out to be fatal, as he failed to establish a comprehensive anti-corruption policy after the replacement of the former High Authority Against Corruption. His government left the anti-corruption cause divided among conflicting bodies under the Ministry of Justice (PJ and Courts), the Ministry of the Interior (the remaining police forces), and the PPS, in addition to precarious collaboration from diverse institutions across public administration, of which the tax office and local government are just some critical well-known examples.

The continuous misuse of public and EU funds was left unresolved, including unrealistic budgets of most of the public works undertaken which ended up being rather expensive. These features created a climate of carelessness in politics despite economic recovery and achievements.

So after ten years of the PSD governments, the electorate removed it from office, in a climate of saturation and dissatisfaction too.

The PS under Guterres (1995-2002) tried to reform a number of these perceived malpractices. Although the people supported the change, the outcome in the end was far below public expectation. The suspicion of corruption continued to appear significantly widespread, and the Guterres government hardly moved beyond empty discourses and promises.

The case of corruption in the *Junta Autónoma de Estradas* was poorly handled, despite having João Cravinho, one of the most prolific writers on corruption, in charge of the Ministry of Public Works. Some of the more positive laws came as the effort of the Minister of Justice, António Costa, but again only sporadically. But Guterres was unable to provide sufficient evidence of controlling the lobbies and the situation ended in a heavy moral loss, which terminated rather abruptly in the aftermath of the local elections in December 2001.

Portugal therefore remains without a firm and coherent anti-corruption policy and strategy, largely because of the weak anti-corruption governance policies of both Cavaco and Guterres. This was openly acknowledged by members of the Durão Barroso administration (2002-2004) on the occasion of Greco's visiting team, regarding the evaluation of the anti-corruption situation in Portugal. In his short administration, three ministers resigned on moral grounds. He somehow maintained political support when his Minister of Defence, the leader of the other coalition party, was under heavy suspicion of unethical conduct related to his prior involvement with the private firm *Amostra*. Like Guterres, Barroso also abruptly departed from government in 2004 to head up the European Commission in Brussels.

Despite a clear majority in the Parliament, his successor, Santana Lopes had little time to rectify critical political mistakes and even added to them, so much so that he was dismissed by the former president Sampaio in 2005. It is too early to analyse the current government under José Sócrates which has only been in power for just over a year.

Therefore, previous governments are all responsible for the absence of a comprehensive policy and strategy to fight corruption with a minimum hypothesis of success. Instead, anti-corruption remains neglected in this rather accidental nature, discussing trivial matters without any



proper regard for protecting rather scarce public resources. In practice, governments are keen to both talk and promise to defeat corruption but, so far, they are clearly losing this strategic battle.

#### 6.3.4 Ongoing crisis in the judiciary

The justice system is independent and subject only to the law. Although supported by public funds and generally under the Ministry of Justice, the judiciary seems so far unable to bypass an internal climate of crisis and confusion which negatively affects the anti-corruption objectives in particular. And yet, fundamental for any study of corruption is the functioning of justice. This section deals with the problem of the judiciary as a whole while section 5 below refers specifically to anti-corruption issues.

The *Justice in crisis? Crises of Justice*, edited by A.Barreto, consists of forty five individual contributions from people, the majority of whom have inside working knowledge of the judiciary. The result is a pluralist and multidisciplinary perception of critical issues such as the efficacy, accessibility, responsibility and credibility of the judiciary which are worth referring to. To shorten the bibliography, and except otherwise stated, references to individual authors in this section, followed by page numbers, are from this book (Barreto 2000). The purpose is to identify key aspects likely to bear some relevance to the investigation, accusation and punishment of corruption.

As many correctly insisted, this crisis of justice must be seen in its wider context, alongside the societal crisis (J.C.Ferreira, 209; L.Rebello, 341); more specifically the crisis of citizenship (A.Barreto, 26; L.Lúcio, 32; A.Filipe, 113; E.Costa, 173; P.Vasconcelos, 409); of values (A.Cluny, 102; J.Miranda, 253); of law (L.Chorão, 337; A.Cluny, 97) and obviously the crisis of politics (A.Lima, 129; D.Carvalho, 139; G.Fonseca, 208; J. Ferreira, 246).

According to D.Bravo's theory (263-74), there is a growing noise being heard throughout Portuguese society. He concludes that there is indeed a real crisis of justice beyond the "noisy environment". However, the views vary significantly on what are the basic causes affecting the five existing major branches such as the police forces, the Public Prosecution, the defendants' lawyers, the judges and the court officials. Araújo accurately views the major problem as primarily

one of defining the crisis (63). In fact, the situation has always appeared confusing, exactly like the case surrounding the anti-corruption strategy. Consider the following factors.

We have a “pluralist system” (cf. civil, criminal, constitutional, administrative, fiscal and auditor courts, in L.Lúcio, 36) which in the words of E.Costa functions as a kind of “poli-centrismo” (multi-centred system) (179). It includes the following Supreme Councils such as the *Conselho Superior de Magistratura* (of the entire judiciary), the *Conselho Superior do Tribunal Administrativo e Fiscal* (of the Administrative Court in particular), and the *Conselho Superior do Ministério Público* (of the Public Prosecutor Services). Additionally, there are two other bodies, namely the *Conselho de Oficiais da Justiça* (of all officials under the judiciary), the *Autonomia Orgânica* of the PJ (the autonomy given to this branch of the police only). All of these operate with apparently no greater evidence of accountability, cooperation or coordination within and between themselves (cf. E.Costa, 178; L.Lúcio, 37; P.Ferreira, 192). As such, it is a worrying phenomenon affecting one of the basic pillars of democracy.

E.Costa appears to have no doubts in affirming that “From this convergence of phenomena, corruption will be born as a politico-criminal phenomenon of major proportions in contemporary democracies and a new and spectacular focus of conflict between the legislative/executive powers, due to the perversion of the political system.” (178) Although he is referring to the European situation in general, we think this applies to the post-1976 Portuguese Constitution as well.

Maia, himself a PPS official in the Supreme Court of Justice, pinpoints the fact that the PPS has achieved a status of independence as never before. D.F.Amaral takes it further by saying that it is now a “State within a State” (152). But moving beyond the argument either in favour of, or against, the PPS's present status of autonomy from the government, the major relevant problem remains, precisely because the PPS, despite its favourable conditions, has not yet in practice achieved any success whatsoever in fighting corruption. This is the point which Amaral observes specifically too (153). And elsewhere he again affirms how a climate of corruption is created within the judiciary: “*From this (slow justice) to using corruption so certain cases are resolved quicker, or in time, is just one step...*” (Amaral 2000, 250). So, despite its comprehensive

autonomy and responsibility to persecute corrupt offenders, the PPS's anti-corruption results in practice fell well below the minimum expected level of success.

The current judiciary is faced with other critical problems. A serious one has to do with contradictory conclusions reached in different courts over a similar legal issue (D.Bravo, 265-6, 270). It is also noticeable that both the PPS and the judges need further expertise to deal with the increasing sophistication of crimes, particularly with organized crime and corruption (cf. D.Bravo, 265-6; M.Pimentel, 303; and P.Vasconcelos, 409). Another is the re-enforcement of the old corporatist tradition (P.Carvalho, 139,141; E.Costa, 178; G.Silva, 205; J.Caupers, 227; J.Miranda, 256,259; M.Pimentel, 303; L.Chorão, 337; M.V.Cabral, 347-8; M.Torres, 385; P.Magalhães, 420; and R.Pereira, 431), leading to two drastic consequences that coexist, namely the politicisation of justice and justicialisation of politics. Regarding the former, Costa Andrade went public to call this as “*estrondoso falhanço dos políticos*” (resounding failure on the part of politicians). Speaking in the aftermath of a major scandal in a state-controlled orphanage, he theorises the procedure most applied by those in politics. That is, when someone is accused of something, they proceed immediately to the courts. Why? Precisely because the possibility of being found guilty is very small indeed. In the absence of a “civic conscience” based on a proper acceptance of political responsibility, the major problem remains, he argues, “As long as there is a colonisation of the criminal procedures by the politicians” we shall live in the “swamp” (*pântano*).<sup>276</sup> This equally applies to economic crimes which remain largely unpunished.

The judiciary problem extends to matters of shortage of personnel, productivity and blockades within the system. For the former, A. Bica (77-96) presents some self-evident statistics. In 1997 there were 386 criminal courts of which 381 were of the “*primeira instância*” (first instance) and the remaining 5 of the “*Relação*” and the Supreme High Court with 1,267 judges, 964 agents of the PPS and 7,410 of other personnel; 29 administrative and fiscal courts which included the Central Administrative and the High Administrative courts with a total of 131 judges, 68 PPS

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<sup>276</sup> See interview of C.Andrade (law professor, former MP [1975-95] and actively participated in the makeup of the 1982 Penal Code and Penal Process Code and Constitutional revisions) in DN:07.12.2002 “*Falhanço estrondoso dos políticos*” and “*Ausência de punições é uma ‘praga’ in Portugal*”. Exactly a year before, the PM Guterres dismissed from government in order to avoid the “deep mudd”.

agents and 366 other personnel; 7 military courts; one Constitutional Court with 11 judges, 4 PPS agents and 63 other personnel; and one Auditor Court.

Considering just the case of the criminal courts (first instance), there were in January 1991 260,461 pendant lawsuits in the hands of the judges. That number increased every year so that by December 31, 1997 the number had reached 724,086 lawsuits. During the same period the number of judges also increased from 923 to 1,190 although 70 of them were not on duty. In 1991 there was an average of 282 lawsuits in the hands of each judge, but by 1997 that figure had jumped to 608. The final result is inevitably a congestion of legal cases which can take many years to resolve.

These figures would have been much greater were it not for the amnesties given in July 1991 and May 1995. Delays are made even worse when there are appeals to higher courts. When they eventually reach the Constitutional Court, they are significantly increased. This type of criminally-facilitated condition somehow explains why, for instance, the rather simple case of Emaudio has still not been fully and satisfactorily resolved from its detection in February 1990 right up until October 2006.

With regard to blockades, the Portuguese words "*prescrito*" (lapsed/proscribed) and "*arquivado*" (filed) are by far the best examples. For brevity's sake, we shall explain the first one only, which refers to cases that have passed the time of liability for processing criminal charges. A.Filipe (110) tells us that in 1992 there were 569 "lapsed" cases whereas during 1993 to 1998 there were about 40,000. There are several causes including an error in legislation during the PSD government covering the period of 1987 to 1995 (cf. D.Bravo, 269-70); the defendants simply do not obey the courts' notification to appear, and miss the sittings in the trial; lawyers make use of the "facilities" provided in the penal process code and elsewhere; and notifications are simply not delivered - in the District of Lisbon alone, there were 132,000 processes on standby for lack of notification, 15,000 reports to be made by the special police laboratories and 6,000 autopsies to be written by the forensic medicine departments of Lisbon and Oporto. These apparently chaotic situations deeply frustrate the general public and re-enforce the sense of laxity and impunity, thus making the anti-corruption cause, among others, something which every citizen is virtually advised to stay away from.

Meanwhile the problem remains. Proença de Carvalho (141), a highly regarded lawyer in Lisbon categorically affirms that none of the governments thus far has had the courage to confront the powerful corporatist groups within the system of justice (with similar arguments cf. M.Veiga, 393; L.Lúcio, 37; and A.Simões, 59). All governments are keen to reaffirm the independent status of the judicial courts and judges. But all of the above and others tend to agree that the political powers are advocating “independence” as an excuse for not intervening in time. The outcome, in the words of E.Costa (173), is that the entire system is both “*auto-desculpabilizante*” (self-excusing) and “*hetero-culpabilizador*” (blaming others), so that no one is to be held responsible.

M.V.Cabral, himself a sociologist, has no doubts too that the political powers have completely failed to instil democratic values and principles into the judiciary and the police, leaving untouched the oligarchy, clientelism and corporatist attitudes and behaviour (347-8). The crucially needed reforms are constantly being postponed (G.Silva, 206-8) and even the occasional small reforms are quickly being replaced by other “little reforms” (J.Carvalho, 324; A.A.Santos, 56) and without the proper involvement of other key sectors within the plurality of the justice system (R.Francês, 426). With this environment, it seems obvious that our politicians and the elite are turning a blind eye towards certain types of crime, including corruption. The main winners, if there are any, appear so far to be the lawyers who see the accusation of corruption brought against their clients as largely inconclusive, either by escaping trial or by having verdicts annulled or even declared lapsed.

#### **6.4 Weak ‘national’ religion**

Catholicism, as in the past, has contributed in moulding the character and values of various citizens who reached prominent political and economic positions including the roles of the President and Prime Minister. However, its weakness lies in that only a tiny fraction of the elite appears to practise Catholicism in their everyday conduct of public business.

In fact, most Catholics are not yet well informed about fundamental aspects of Christian doctrine and values, something which has proved to be inadequate to cope with the demands of an open and free society today, including fulfilling a vital watch-dog role. This requires a deeper level

of commitment to democratic principles and values on the part of the people in general. Such a fault is primarily an institutional one, it seems.

Catholicism's fault, in general, is due to its own lack of zeal for evangelism (making new converts) and discipleship (training of believers) and appeals towards moving in these directions are now being heard. Meanwhile, one must not ignore the fact that thousands attend moral and religious lessons in public schools and within ecclesiastical organisations every year. Many parents baptise their children and have them enrolled in religious classes. But somehow, there seems to be no in-depth interiorisation of beliefs likely to result in adequate ethical conduct in public spheres. Theologically, it has not been influential either. It has failed to produce a viable contemporary theology and have it open up to a public discussion of relevant national topics.

Nevertheless Portugal remains on the list of European countries that most value religion, although it is still largely a case of a "religious monoculture" according to the European Value Systems Study Group.<sup>277</sup> This study confirmed, through the variable of work ethics and the analysis of nine theological beliefs, that most Portuguese people are unable to articulate beliefs beyond the level of mere "social conformism" (141) (França, L. d., *Portugal, valores europeus*, 1993, 28). Another worrying aspect is that Portugal is among countries that least value politics, and distrust politicians immensely. So much so, that França correctly set a pertinent question: "Can democracy progress in Portuguese society with such low trust?" (França, L. d., *Portugal, valores europeus*, 1993, 17).

As we see it, the answer is negative. Thus there is a need to examine this important dimension of the Portuguese context. Being Catholics only by birth (and baptism), nationality (historical influence) and culture (unquestionable tradition) is not enough to form a solidly-based democratic structures and individuals.

Moreover, the same study reveals an interesting factor that people with fewer religious interests and convictions are the ones that approve and encourage the Catholic Church to be more involved in social problems (França, L. d., *Portugal, valores europeus*, 1993, 172). To some

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<sup>277</sup> See (França, L. d., *Portugal, valores europeus*, 1993). Two other studies reveal important features regarding the practicabilities of religion in current Portuguese society (França, J. A., *Sondagem nos anos 20, 1983*; França, L. d., *Jovens perante a religião*, 1985).

sociologists, religious beliefs and practices are the most powerful criteria for an ethical evaluation of the “Portuguese way of life” (Silva 1994, 227, 234; Santo 1990, 145; Almeida 1986, 310). And the country will only lose if Catholicism remains weak or is tacitly marginalised. The Catholic Bishops, however, appear determined, and rightly so, to see their voice and influence communicated in public, including on matters of social importance.

But only once has the Portuguese Episcopal Conference included corruption in its documents - Pastoral Letter "Joint responsibility for the common good" (Sept. 15, 2003), which identified it as one of the seven social sins. It is no more than a single phrase.<sup>278</sup> Such a simplistic contribution is not all that different from past and present political discourses with no practical consequences.

So, there must be other reasons beyond numbers and general observations. As S.Franco once warned, the diversity of waves and of institutions under the umbrella of the Catholic Church made simplistic all the greater generalisations stated about its relations with the establishment (Franco 1989). If, on the one hand, it is unacceptable to make inconsistent or generalised statements about Catholicism with all its complexity, it is equally unacceptable to bypass a critical view of such an influential religion with fear of misrepresentation. This or similar reasons are not a valid excuse for omitting the most important socio-cultural phenomenon, and it ought therefore to be included in this study of a specific theme such as corruption. One perhaps needs to examine the basis of certain key dogmas (doctrine and beliefs) that shape moral theology thus far.

Dogmas are often disregarded in the context of social ethics studies. We have seen that tendency in some contemporary Portuguese authors too (Santo, M., Religião popular, 1990; Santo, M., Comunidade rural ao norte do Tejo, 1999; Almeida 1986; Silva 1994) though not so much in the case of *Sons of Adam and Daughters of Eve* (Cabral, J. P. 1989). If theory and practice are rarely completely harmonious in any sphere of life, not least in moral theology, it is nevertheless a mistake to disregard either of them.

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<sup>278</sup> It reads: “corruption, the real framework for social sin, which is expressed in perverse ways which violate human dignity and the moral conscience for the common good.”

J.Mahoney, a Jesuit scholar and author of *The Making of Moral Theology* (Mahoney 1989)<sup>279</sup> provides a valid analysis<sup>280</sup> of Roman Catholic Moral Theology, hereafter RCMT. Unless otherwise stated, references to page numbers in this section come from Mahoney's book. His methodology follows a thematic approach rather than a chronological one. In the process, he pays close attention to key ideas, concepts and thoughts and to the fundamental "makers of moral theology" such as Augustine (concept of sin) and Aquinas (nature and the supernatural) without neglecting a number of other less known ones like Abelard, Pope Pius XII, Jansen, William of Ockham and, more recently, Pope Paul VI and Pope John Paul II. He covers several influential ecclesiastical movements and events including universities, the Magisterium, and Church Councils. Through them all, he describes the way key doctrinal issues have been handled and, most important of all, how they have finally shaped the moral aspects of both individual and collective life.

Mahoney correctly starts with the theme of auricular confession<sup>281</sup> of sins as the single most influential factor in the long development of RCMT. Space forbids to expand the influence of critical historical developments from Tertullian (160-220 AD) in linking together early Christian thought and the Latin language in which he introduced a strong legal bias to that thought;<sup>282</sup> to the first Council of Nicaea in 325 which also dealt with disciplinary matters of how to handle sins for which a variety of responses subsequently appeared, including the appearance of meticulous lists,

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<sup>279</sup> The author is grateful to Dr E.D.Cook for introducing the works of Mahoney in the course of developing this section of the thesis.

<sup>280</sup> The advantage of using Mahoney's research is threefold. The author speaks from an inside knowledge of Catholicism. His critical comments represent a genuine effort to evaluate a wide variety of moral themes without neglecting the polemics, events and experiences of history. And finally, far from either emphasizing the past or simply concentrating on the profound changes lately introduced by the Second Vatican Council, the author handles current Catholicism with a remarkable degree of both balance and seriousness, by fully acknowledging the "continuity" as well as the "renewal" aspects of the Church of today. One criticism is that the author showed no explicit consideration of the development of moral theology outside the confines of the Roman Catholic Church.

<sup>281</sup> His analysis covers primarily the anthropological questions of "Who is man? How is he to relate to himself, God and others?" It deals simultaneously with man's view of God and God's relationship with mankind. In the middle, there is a powerful concept of "sin" which, according to biblical theology, needs to be properly acknowledged and personally dealt with (cf. John 20.22-3). The issue centres around the discipline of penance, how to deal with sin and have it either punished or confessed and forgiven.

<sup>282</sup> Tertullian emphasized, for instance, the forensic imagery and the dread of Christ's judgement based on the court of law analogy. God was viewed primarily as the supreme judge.



classifications and family trees of sins.<sup>283</sup> By the time of Augustine (354-430) the traditional division of sins into “mortal”, which can be expunged only by full confession and contrition,<sup>284</sup> and “venial”, as all the daily lapses, were firmly established.

And later, the teachings of Thomas Aquinas (1225-1274) came to occupy so central a place in moral theology.<sup>285</sup> Aquinas’ aim was to construct a synthesis between reason and faith, philosophy and theology, Aristotle and Catholic doctrine. He believed that correct philosophy can greatly aid theology (Lane 1986, 94). His fundamental definition of any law as an order, or arrangement, of reason for the common good (78) was to be distinguished from Augustine’s eternal law which was impressed on human beings.

Aquinas stressed, on the other hand, the functioning of man's reason in building up a whole logical scheme of moral reasoning without neglecting divine help and revelation altogether. His expressed confidence in man's reason being able to come to some knowledge of God's eternal law convinced him that morality is essentially rational conduct, and as such it must be accessible, at least in principle, to human reason and wisdom (106), so that the purpose of revelation, so far as morality is concerned, appears to be essentially remedial, not necessary for man but in practice almost indispensable (107). But Mahoney commented that many Catholics greeted this conclusion with reluctance and unwillingness to accept that there was nothing specifically distinctive about Catholic ethics as compared with the best of humanist ethics.

Returning to the fundamental concept of sin, the penitential discipline begins to develop its criterion upon which confessor and penitents alike were to mould their conduct. One needs to remember that in the earliest stages it was an attempt to draw Christians out of folk religion and their magic and pagan customs into a close fellowship with God himself. But Mahoney (7, 14)

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<sup>283</sup> Cf. The authoritative lists of Cassian and Pope Gregory the Great. The former includes the eight ‘principal vices’ of gluttony, fornication, avarice, anger, dejection, sloth, boasting and pride. This is perhaps the earliest attempt to classify sins using criterion of seriousness, which deeply influenced people’s conduct in both religious and social affairs.

<sup>284</sup> For further explanation see A. McGrath in *New Dictionary of Christian Ethics and Pastoral Theology* (F.J. Atkinson and D.H. Field, Eds, IVP, 1995), pp27-33.

<sup>285</sup> As N. Harvey correctly noted (in NDCEPT:218-9; cf. Lane, 1986:98), “natural law” occupied an insignificant place compared with his extended treatment of the virtues. Rather, it was Pope Leo XII (1878-1903) who gave to the thought of Aquinas a status which his work had not enjoyed in medieval times.

noted that from the beginning the literature of penance was selective in its subject matter, negative in its approach, and shocking in its more lurid passages which resulted in a "self-defeating" system for ordinary Christians. The final result, he added, "seems to have been that the great numbers of ordinary Christians must have lived in what could only be called a permanent state of ecclesiastical delinquency. Until they were dying." (4)

With the monastic influence from the 6th century onwards came the general rule of private and repeated confession.<sup>286</sup> By the time the concept of Pope as successor of St Peter became clearer, that is, around 1215, Pope Innocent III called the Fourth Lateran Council. On that occasion, the Church as an institution increased significantly its influence and power. For instance, there they affirmed that there was no salvation outside the Church; reinforced the condemnation of heretics; approved transubstantiation; founded what was later called the "inquisition" and imposed on the whole Church the obligation of "Easter Duties" which still figures with a few modifications in the Church's current legislation.<sup>287</sup>

The next critical developmental period coincided with the aftermath of the Protestant Reformation, which challenged the very nature and basis of penance. The Council of Trent (1545-63) felt it necessary to give thorough treatment to the subject. It reacted by reaffirming the Fourth Lateran Council and "thoroughly approved the practice of confessing during Lent" (23). The priest is portrayed as a presiding judge who alone is to pass the sentence of forgiveness. Trent, as most historians would agree, remained influential until changes were introduced by the Second Vatican Council (1962-5).

This Council was a call for renewal, including in the moral behaviour of the Church's members (303), and an attempt to make moral theology more Christocentric with the hope of

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<sup>286</sup> The obligation consisted of observing the auricular confession at least three times a year, a practice that lasted for the next four centuries, during which the early scholastic theologians developed, clarified and systematized the doctrine of the seven sacraments (16). In assessing liability to penance, nuances distinguishing ignorance, inadvertence, carelessness and contempt were considered. A habit of sin in a particular area may be considered more culpable than a single act, and external factors were also taken into account. Two features of penance were highlighted namely "self-mortification" and "pilgrimage" as a means of expiating one's sins.

<sup>287</sup> It consisted of confessing all sins before one's priest at least once a year and receiving the Eucharist on Easter Sunday. The penalty for disobedience was to be barred from entering the church in one's lifetime and be deprived of Christian burial at one's death (17).

seeing faith seeking expression in behaviour (340). Mahoney explains that a morality of law (Augustine's influence), and especially of natural law (Aquinas' influence), "is not thereby ruled out, but it is seen to be 'much too abstract and inadequate'" (304).

The much studied Catholic Social Teachings of the last 150 years are another positive attempt to put faith into social order and practices. But these reforms cannot be achieved without individual spiritual renewal first. This is precisely the weakness referred to in the beginning of this section. To be positive, it must be tested in the public domain, in the market places where ordinary men and women, old and young, play a vital part in one's own profession, community and society at large. So far, the result seems not yet to be positive in transforming culture in general, and work ethics in particular.

Mahoney's concluding remarks on auricular confession are threefold. Firstly, he notes the excessive preoccupation with sins. Despite the fact that countless souls have received God's grace and consolation throughout the ages, the penitential system in general was heavily responsible for increasing men's weakness and moral apprehension. The entire system was based on a pessimistic view of anthropology which was concerned "almost exclusively with the darker and insubordinate side of human existence." (28). In the end, it had great difficulty in realizing the need to help the individual to come to terms with his moral responsibility for himself. The preoccupation was not just with sin, but with sins (31). This led to a mentality disposed to discount sins which were not mortal, but "only venial", and more significantly, it led also to an approach to the moral life as "discontinuous; 'freezing' the film in a jerky succession of individual 'stills' to be analysed, and ignoring the plot." (31). Mahoney is right when he says that "for all its preoccupation with sin and its busy cataloguing and subdividing of sins, from the family trees of Cassian and Gregory onwards, moral theology has not always appeared to take sin itself seriously enough... It has, indeed, almost domesticated and trivialized sin, like the scientist or the zoologist handling deadly specimens with careless familiarity." (32).

Secondly, there was a clear concentration on the individual aspect of sin. This stress on the individual, with a view to his confession, is one reason why the Church's moral tradition has found it difficult to handle the ideal of collective responsibility on a large scale. An issue such as macro-

ethics rarely was dealt with officially by the established hierarchy, except perhaps, Mahoney noticed, when it considered the morality of voting for communist or pro-abortion candidates in local national elections (34).

And finally, there was a deep obsession with law. The entire penal theology was heavily legalistic and originated a mentality, which undeniably favoured the defensive and juridical approach of which Trent was the clearest evidence. Mahoney actually devoted an entire chapter on the theme of law to which we are not able to proceed due to imposed limitations on words.

We therefore think that Portugal continues to suffer from a traditional religious, political and social approach that favours a rather casuistic and isolated treatment of “sin”, to which corruption is no exception, it seems. The rather historical tendency to minimise certain ingrained practices (traffic of influence, *cunha* ["leaning" on someone], petty corruption and the like) as trivial; and to ignore the “plot”, as well as its social implications, that is, the interrelationship of corruption with contextually based factors that nurture and therefore lead to impunity, is, after all, indicative of the current confusing anti-corruption status that still characterises Portuguese society.

Although there nothing wrong, as already stated before, in being Catholic and sharing a wide Latin culture, these factors are just a token of the overall culture. But nevertheless, they need to be considered and possibly adjusted to address new challenges evident through the anti-corruption strategy.

However, we are aware that these explanations are incomplete. Other key dogmas such as the assurance of salvation where individual and social trust probably comes from; a sense of God's calling and conviction; faith and works which indicate the social relevance of religion; eschatology, including eternal punishment, - all are equally important and capable of revealing additional critical features. But concentrating mainly on the concept of sin has proved somehow the key to understanding contemporary ethical issues from the perspective of religion, in addition to political and economic viewpoints.

## 6.5 Dysfunctional anti-corruption policies and mechanisms

This section covers two aspects, namely, the inadequate legal basis, and inefficient internal and external cooperation within several administrative and judicial bodies.

### 6.5.1 Inadequate legal basis

Laws regarding corruption are confusing and therefore an obstacle to deterring corruption adequately. And yet, to have a clear and comprehensive legal basis for anti-corruption strategy is of utmost importance. This section explains the contextual problem posed by existing legislation.

J.F.Dias reminds us that dealing with the judicial background of corruption is a vast theme which includes almost the entire fields of our legal system (Dias 1991, 58). He is right, and J.Costa's article is a major contribution to understanding the connection of corruption with many other types of crime (Costa 1996).

Crimes are divided under two categories, namely specific and common crimes. The former includes a total of eighteen "proper" and "improper" crimes as described in the previous 1982 *Código de Penal Português*, (Portuguese Penal Code) hereafter CPP.<sup>288</sup> He briefly expands seven of them such as (1) "personal favouritism"<sup>289</sup>; (2) "public official's omission"<sup>290</sup>; (3) "illegal prison",<sup>291</sup> (4) "prevarication"<sup>292</sup>; (5) "denial of justice"<sup>293</sup>; (6) "disclosure of secret material"<sup>294</sup>; and (7) "peculation or embezzlement".<sup>295</sup>

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<sup>288</sup> For current penal laws relevant to corruption, see 11 eleven articles selected, and a list of 29 other relevant laws in (Morgado and Vegar 2003, 147–151).

<sup>289</sup> As shown by a civil servant (cf. articles 410 and 411 of CPP) to cover up, and / or to frustrate the prevention and prosecution of criminals by the authorities.

<sup>290</sup> It is the reverse side of personal favouritism (acting in favour of someone) is a public official's omission (cf. art. 414) consisting of a failure to act against someone who violates legal norms and, or to impose restrictive measures to prevent further illegalities.

<sup>291</sup> Cf. Article 417.

<sup>292</sup> Cf. Article 415, in which a public official uses his/her competencies to break the law or falsely administer matters of justice.

<sup>293</sup> Cf. Art. 416) including a non application of legal rights on the part of a public official.

<sup>294</sup> Cf. Art. 419; and 433-435 on "violation of secrecy" - apparently a common one in the judicial matters. This often compromises the efficiency of our system of justice in dealing with economic crimes.

<sup>295</sup> Of funds and other benefits for personal advantage (cf. art. 424-427), which covers various crimes of that kind.

Among the “common crimes”, Costa cites seven of them including (1) the falsification of documents (cf. art. 228); (2) the invention or falsification of technical information (cf. art. 230); (3) the destruction, alteration and subtraction of documents or technical information (cf. art. 231); (4) issuing of false certificates (cf. art.234); (5) and organized crime (cf. art. 287).

Before moving to remaining “isolated” laws, we include the new “traffic of influence” law, which entered the Penal Code for the very first time in 1995 (cf. art. 335). Margarida Pereira’s article discusses critically the rather conceptually problematic history behind its approval, and its debatable usefulness (Pereira 1998).

Maximiano’s article consists of a systematic presentation of a total of twenty-two new laws directly related to corruption, something which we call “isolated laws” (Maximiano 1997).<sup>296</sup> Notice that these alterations took place between 1982 and 1996, that is, since the 1982 CPP replaced the 1886 CPP. A majority of the laws, that is, twelve out of twenty-two, deal with the definitions and the nature of the public official, including accumulation of wealth and incompatibility matters. The remaining are five laws dealing with anti-corruption strategy; two laws regarding the financing of political parties,<sup>297</sup> and laws concerning corruption in sports,<sup>298</sup> money laundering,<sup>299</sup> and the citizen's access to public administration information.<sup>300</sup>

And lastly, the current penal code laws concerning corruption. Like the 1982 CPP,<sup>301</sup> the 1995 CPP<sup>302</sup> places corruption under Title V (Concerning crimes against the State), of Chapter IV

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<sup>296</sup> Not all of them will be referred to because some were already changed since Maximiano’s article!

<sup>297</sup> The original regulation concerning the political parties is defined in the Law 595/1974 (cf. Sousa 1999:15-6). The laws 72/1993 and 27/1995 represent the government attempt to legislate one of the most essential aspects of political corruption in Portugal.

<sup>298</sup> Cf. Law 390/1990 which include the case of corruption among referees in football games.

<sup>299</sup> Cf. Law 313/1993 concerning the transposition of EU law into the national legal system.

<sup>300</sup> Cf. Law 65/1993.

<sup>301</sup> Notice the following summary of laws that replace laws in a speed that seems difficult to cope and justify. So, soon after the publication of 1982 CPP, the law 371/1983 appears to extend the concept of public official to include regional and local government officials, managers and workers of nationalized firms and institutions in which the State has a majority of assets. Law 4/1983 covers the issue of the accumulation of wealth by political officials which was revised through Law 34/1987 and Law 25/1995. The former introduced special regulations for public officials and allowed them to be judged separately from private officials involved in the same corruption process. The Law 9/1990 consigns a list of incompatible aspects related with public and private officials. This law was revised through laws 53/1990; 64/1993; 196/1993; 28/1995; and 12/1996. The Law 7/1993 deals specifically with the members of parliament which was revised through Law 24/1995.

(on crimes committed in the course of public duties), in Section I (of corruption), and consists of articles 372 to 374. These replaced and altered the articles 420 to 423 of the previous 1982 CPP. The current penal laws are broadly defined under eight key terminologies falling under three major classifications.<sup>303</sup>

The first refers to the status of the agent: corruption is “passive” (art. 372, 373) if it is performed by a public official; it is “active” (art. 374) if done by a private agent. The passive consists of either “proper” or “improper” corruption. It is “proper” when the corrupt task performed is illicit, prohibited or unlawful (art. 372). It is “improper” when the corrupt task is licit, permissible or lawful (art. 373).

The law unequivocally conceives of passive corruption as more serious than active corruption. This results in heavier penalties for the former - from one to eight years imprisonment for proper corruption, and up to two years imprisonment or a fine for improper corruption; whereas active corruption is penalized with imprisonment for from six months up to 5 years for proper corruption and imprisonment for up to six months or a fine for improper corruption. In both cases, the law contemplates forms to attenuate the penalties, particularly in cases where the agent voluntarily contributes to ensuring that justice is done.

The second relates to the timing of the crime: corruption is “antecedent” when the request or receipt of the gift whether in money or in kind or simply a promise of it, occurs before the actual consummation of corruption. It is “consequent” when the corrupt deal is effected afterwards.

The third relates to the final objective of corrupt action: corruption is “immediate” when the final purpose is achieved simultaneously with the corrupt deal. It is “mediate” when the corrupt deal is effected without obtaining any automatic benefits. The point here relates to “preparing the ground” for future benefits.

There are two fundamental legal issues that deserve further comments. The first is regarding the actual juridical value or values that the law is aiming to protect. Is it equality?

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<sup>302</sup> For a brief comparative analysis between the two penal codes see (Gonçalves 1996; Leal-Henriques and Santos 1996).

<sup>303</sup> The most complete discussion on legal matters of corruption is found in (Costa 1987). See additional short articles by J.F.Dias, J.S.Moura and others in (AACC 1990; AACC 1991).

Fairness? Justice? According to well-known jurists (Costa 1987; Dias 1991; Moura 1993; Maximiano 1996), the penal code aims to prevent, first and foremost, the violation of the State's autonomy in the course of the administration of public services. This fundamental violation consists of any attempt to "trade" or to engage in a shady business by using the official position or duty to obtain all sorts of benefits. This "affair" brings further consequences characterized by a lack of equality, fairness and justice within society.

The second aspect discusses whether corruption is an "autonomous crime" or not. There are basically two theses in dispute. One is in favour of a "unit crime", sometimes designated as "bilateral crime" or a "joint crime" in which there will be no crime of corruption if there are not simultaneously a corruptee and a corruptor. This also implies that, if corrupt deals do not take place, then corruption cannot exist. The other theory is in favour of "autonomous crime" or "independent crime" in which one may be found guilty of being corrupt independently of having found or not the corruptor or vice-versa. In this case, corruption takes place independently, whether the corrupt deal took place or not, as the mere promise is sufficient to assert the crime of corruption, be it a case of active or passive corruption. Most legal commentators agree that the current penal code is in favour of the "autonomous crime".

All these penal laws, further laws and amendments, by no means complete, reveal among other things, that the government is concerned about the issue of corruption, particularly among its own political class; and "in between the lines", it is possible to perceive corruption as, somehow, a serious phenomenon. However, the government's attitude unequivocally reveals also a high degree of confusion, lack of planning, and above all, an intermittent approach to combat corruption. The legislation is profoundly diverse with important aspects frequently being added, replaced or altered (Barreto, A., Ed., *Justiça em crise?*, 2000, 53, 254, 373, 405). As such, it does not facilitate comprehension of its workings. Conceptually, corruption is unnecessarily subdivided into many parts as discussed above. Additionally, it fails to bring together multiple interrelated crimes of embezzlement, traffic of influence, and money laundering, to mention only a few. The end result justifies the current confusion and venial penalties. This is a sign of weakness.



For instance, the Singapore anti-corruption legal history since 1960 has just three steps! Just a unified legislation<sup>304</sup> - The Prevention of Corruption Act, Chapter 241 with two additions. In 1989, The Corruption (Confiscations of Benefits) Act which was then substituted by The Corruption, Drug Trafficking and Other Serious Crime (Confiscation of Benefits) Act. This is simple, short, accessible, and comprehensive legislation which helped Singapore to become a case study of anti-corruption success in the world.

Therefore, we conclude that such a legal complication and unclear concepts constitute an inconsistent legal system, and as such, it is another incentive for corruption to remain largely unpunished. As it is, the law remains open to endless debates and multiple interpretations of something which could be much more simplified and unified.

### **6.5.2 Inefficient internal and external mechanisms and cooperation**

Existing anti-corruption agencies such as the PPS (DCIAP), PJ (DCICCEF), and the Courts are suffering from two rather chronic diseases. They seem unable thus far to project for the outside viewers an image of stable cooperation and coordination among themselves. The actual structural concept of these critical bodies was created in such a way that complicates any attempt to secure a viable cooperation, something which is, in fact, a pre-condition for anti-corruption success. This justifies why key leaders of these agencies often appeal for changes within the system. For instance, Cândida Almeida, director of DCIAP, wishes the PJ to be under the PPS.<sup>305</sup> Others, perhaps not satisfied with the results of the PPS, wish it to return to the government's jurisdiction. So, tensions between these bodies are not exceptional.

The judiciary as a whole remains unfit or unwilling to respond to economic crimes, as both the Law and its application are faulty. It affects critical areas of investigation, procedures, and structural matters. Firstly, the investigative process is weak. Only a few people with limited resources are involved in supporting the investigation. Appeals for more personnel and means are

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<sup>304</sup> It consists of 37 articles under 6 main sections (Preliminary; Appointment of staff and personnel; Offences and penalties; Powers of arrest and investigation; Evidence; and Miscellaneous) with a total of 7,554 words. Note also that following two additions did not alter the basic foundation set in this law.

<sup>305</sup> See her interview in IND:17.05.2002:32-33 "PJ devia depender do Procurador-geral da República".

not uncommon.<sup>306</sup> There is little tradition of teamwork. The Emaudio case study revealed this weakness. As a lawyer, Garcia Pereira, who followed the alleged case of corruption denounced by his client, Pequito, inquired how a complex investigation involving twenty-eight laboratories had only one investigator.<sup>307</sup> Morgado severely, but rightly, criticised the backward techniques of these investigations, which are largely confined to office and paper work, as opposed to what she calls proactive and on the spot investigation.<sup>308</sup>

There are obvious unresolved tensions between different branches of the judiciary (PPS, various Police offices, and, in particular, the PJ and its various branches) that seriously compromise the end results. The investigations also suffer from various kinds of blockade (Barreto, A., Ed., *Justiça em crise?*, 2000, 18, 48, 405). The excess of secrecy approach on the part of various hierarchical superiors often delays or obstructs the investigation.

Secondly, in terms of the penal and court procedures, there are several undecided issues. For example the wiretapping procedures have not been fully clarified, thus compromising several critical cases. Another issue relates to the disclosure of bank secrecy and how certain critical bodies, such as the PJ, could gain access.

Judges often neglect the rule of experience (tacit silence, lapse of memory and similar evasive attitudes), as well as the context of incentive and opportunity structures that nurture and tolerate corruption across society. Too many delaying tactics are accepted, most of which centre around matters regarding penal procedure. The Constitutional Court is used and abused because it has provided some assurance of its effectiveness in delaying the cases for years. For instance, the appeal raised immediately by the PPS regarding the defeated vote of the jury president in the Melancia case (1993) was only dealt with by the Constitutional Court in 2002 (Tribunal Constitucional 2002, 16305). All those years to state that the Jury President's attitude did not constitute a part of the verdict and therefore cannot be subject to appeal in the Constitutional Court.

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<sup>306</sup>See C.Almeida, DCIAP's director in EXP:11.12.2004 "DCIAP combats crime with computers and cars in poor condition", and in VIS:20.05.2004 "*Há um crescendo de policialização*"; and PUB:12.12.2004 "Director of DCIAP denounces lack of means to combat criminality."

<sup>307</sup>See VIS:02.11.2000:44 "VIP crimes not punished".

<sup>308</sup>See (Parliament 2002b; Morgado, et al. 2003, 123–127).

The final set of reasons is structural. With several agents and agencies, the success largely depends on coordination as well as cooperation. These are lacking (Barreto, A., Justiça em crise?, 2000, 37, 178, 192). Accountability in and among these bodies is also weak. There is not a trustworthy mechanism to ensure adequate checks and balances within the judiciary (Barreto, A., Ed., Justiça em crise?, 2000, 25, 70, 105, 181, 204, 302), most particularly in the PPS, which benefits from a wide legal and independent status but fails to achieve minimum anti-corruption results.

Vagueness in defining key objectives dominates the attitudes of critical bodies. The Public Prosecutor manages it, others conduct it (PJ or others), thus allowing them to throw the blame on each other. The multitude of control mechanisms rightly scattered throughout institutions is often a means of delaying investigation, supposedly due to a lack of communication and cooperation, as if criminal investigation is not legally entitled to enter public institutions.

The same is true regarding external cooperation, that is, between these anti-corruption agencies and the outside bodies, including particularly those from the public administration. Both former PJ members, M.J.Morgado and A.Salvado, alluded to extreme difficulties in obtaining cooperation on time from dozens of vital institutions across public administration and the private sector too (Parliament 2002b; Parliament 2002c). With this difficult scenario, again corruption receives a further incentive and corrupt agents are well aware of this rather unhealthy national condition.

## **6.6 Further critical political and citizenship matters**

The following three issues are raised with the citizen's concerns primarily in mind. Although they largely cover structural political matters, the issues deeply affect society's perception and its willingness to become a co-partner in the fight against corruption. Firstly, an analysis concerning the most used gateway into politics, the political parties; secondly, the functioning of the State and citizens' affairs; and finally some further practical implications.

### **6.6.1 Confusing political party policies and ethics**

Political parties play a vital role in democracy. L.Sousa's article, *Corruption and Parties in Portugal*, poses several critical questions: Why did it take so long for parties to be publicly condemned? Why so little transparency? Why does legal action only become effective in a context of social unrest? His hypothesis favours an answer which blames the general climate of tolerance and impunity in society (Sousa 1999, 34). Though relevant, this is only partly to blame. It is relevant because he correctly emphasizes the irreplaceable value of civic action, including its watchdog responsibility. Such pressure does not yet exist, either upon political parties or in general.

But apart from looking internally at a party's organisation, as well as externally on whatever enforcing mechanisms that are likely to control certain aspects of a political party's activities, political financing being one of the most serious issues in itself, one must clarify another major anomaly perhaps rarely observed, that is, that political parties have not yet shown any conviction or determination to create a democratic structure, which is actually a foundational basis upon which to develop vital political activity in transparency and accountability.

By foundational structure we mean a clear framework, without vagueness and trivial matters, where checks-and-balances mechanisms can truly function irrespective of the party in power. One example already mentioned above is the complete inability of the Parliamentary Inquiry Commission to perform its function with the current rules. The key issue, we argue, is precisely the lack of a reasonable framework where rules cannot be manipulated as easily as they have been thus far. Because of its inexistence, the Ethics Commission in the parliament, the Ombudsman, former AACC and current DCICCEF and DCIAP, and similar bodies are not succeeding in moralising political and administrative activities.

And yet, political parties hold enormous powers including those of nominating most individuals for critical institutions such as the Constitutional Court. Almost ironically, it is that same Court which is responsible for examining and approving the annual political parties' accounts. The end result is public and amounts to a fiasco, year after year. Additionally, party history has developed from a one party state (1926-74) to fifty parties that appeared after 1974, and it is now largely dependent on two major parties. The problem is not numerical either. Although many

democratic countries have almost the same scenario, the difference lies in the existence of adequate internal and external checks and balances.

Otherwise, how can one explain the fact that an obsolete 1974 law regulating the activities of political parties took nineteen years to change, when laws and decree-laws were multiplying in other areas?<sup>309</sup> Never in those long years, nor in the present, was the issue of corruption treated seriously by all major or influential party leaders throughout the democratic transition and consolidation process (Lobo 1996; Bandeira 1996; Cruz 1988).<sup>310</sup>

And finally, perhaps much to the blame of political parties, one is almost obliged to raise suspicion on one item of the most recent agreement between parliamentary bench leaders of PS and PSD signed in September 2006, concerning the reform of the judiciary. According to the list of solutions envisaged, under the Penal Process Code, item 4 reads: "A preventive imprisonment is only applicable for crimes punishable with more than five years imprisonment." If this is applicable, and the expected new Penal Code does not raise the penalties substantially, which seems unlikely and even unnecessary, the defendants of active and passive corruption (licit only) cases will escape being detained altogether. This appears inconceivable and truly jeopardises investigation. Although some news highlighted this matter and was followed by a statement from the authorities guaranteeing that such a case will not recur, one can only question why such hopes were unambiguously stated in the first place.

Political parties need a far better environment upon which to develop their vital function. Being both players and referees just increases their need of impartiality and accurate checks-and-balances beyond the casuistic cases. Such a gateway to politics represents the best route to alter critical national issues concerning the country's own development.

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<sup>309</sup> Despite some earlier attempts (cf. 1991 Law Proposals 540 and 661 by the PS and PRD respectively), the new Law 72/93 was finally approved by the majority PSD party only on November 30, 1993. The remaining parties voted against, which testified to the very low level of consensus over this important aspect of Portuguese democracy. Meanwhile, the consequences of this lack of consensus helped various ingrained political habits to persist, causing devastating damage to the image of the new-born democratic regime. Cf (Franco 1994, 211–2; Portas and Valente 1990).

<sup>310</sup> The main parliamentary parties since 1974 were party to this situation. To start with, the PCP used the initial chaotic period (1974-76) to replace the old notables in the bureaucratic sectors with people sympathetic to them. The subsequent massive nationalization process was the ideal environment for replacing the leadership of key economic activities with party-connected members too. The PS, CDS and PSD all had their turn as well.

### 6.6.2 A case of a labyrinth State?

This section seeks to grasp certain informal exchange regulations and mechanisms that occur between the State and citizens in a variety of situations. Three studies introduce critical matters likely to constitute a feeding ground for malpractices in which corruption becomes a much easier crime at the interface of public and private individual and institutional relationships.

The sociologist B.Santos argues that the country is thoroughly intelligible. In its intermediate level of development, it could not be simply identified with the “First World” nor with the “Third World” countries (Santos 1994, 49–67). It is both a “bridge” and a “plug” in an intermediary role between the two worlds. Thus his preference for Wallerstein’s concept of “semi-periphery”, as expanded in another book (Santos 1990, 105–150).

Being a semi-peripheral country, Portugal has not yet a fully functioning market economy, precisely because State power and influence hardly allow civil society in general and economic agents in particular to flourish. Instead of having a healthy welfare state, it encounters another contrasting reality, namely a “welfare society”. It includes a web of relationships among family members, neighbours and friends in which mutual support, help, and exchange mechanisms of various sorts often take place in parallel with the legal way of life.

Two concepts illustrate this dilemma. Firstly, the “strange civil society” (alien) is when an anonymous citizen (i.e. without any sort of reference to begin with) has to relate to the extreme form of rigidity, distance and formalism of state bureaucracy, thus facing the difficulty of many inaccessible services, filling in unintelligible papers and even paying unjust taxes. Secondly, the “intimate civil society” (friendly) in which a known citizen (i.e. with good personal references) encounters a quite different environment of extreme flexibility and intimacy with casual forms of achieving the same services from exactly the same bureaucratic personnel. This ambivalent state attitude probably accounts for the apparent failure to eradicate the old habits of clientelism, personalism, nepotism and corruption (Santos 1994, 86, 88, 116).

In *Portugal: Um Retrato Singular*, B.Santos and eighteen other social scientists, including J.Reis, A.Fortunato, E.Estanque, and F.Ruivo argue that the establishment of a democratic state is characterized by two distinct phases, namely, a “Parallel State” (1974-85) and a “Heterogeneous

State” (since joining the European Union in 1986). But throughout these phases, the political developments pave the way for “micro-states” (informal conduct), “state ambiguities”, “state absenteeism”, “business-state”, discrepancies between law in books (normative state) and law in action (everyday experience) which foster both clientelism and an illegitimate relationship between public and private entities<sup>311</sup> (Santos 1993, 17–55).

So, it is not exceptional that the State continues to create, support and promote private non-profit institutions and then re-direct state funds and personnel to those institutions. Santos calls this initiative a “secondary civil society” in which the welfare state is weak and the welfare society is strong. He concludes by noting the irony of the state's own discourse characterized by its “anti-state” approach.

In many ways Santos argues that until 1989 (cf. second constitutional revision), the conflicting ideology between all the constitutional governments since 1976 and the Constitution itself resulted in the proliferation of beliefs and practices (i.e. disregard for fundamental laws, carelessness, ambiguities) that account for the “parallel State” situation (Santos 1993, 30).<sup>312</sup> Since the Constitution does not provide such a reference point, nor any other potential sources such as the government, parliament, and political parties, let alone individuals like the president and judges, the ground becomes rather propitious for illegal and unethical practices.<sup>313</sup>

While Santos’ sociological approach appears scientifically based and debatable, J.M.Júdice, a well known lawyer, writes his reflection on the nature of political culture, discourse, support and conduct. His “non-scientific” approach (13-14), is based entirely on careful observation (Júdice 2000), based on three concepts: discontinuity, pendulum, and conservatism. The overall result is a “de-synchronized” status of political culture.

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<sup>311</sup> B.Santos quotes M.J.Rodrigues’ identification of several State practices that foster a climate of some illegality such as clandestine work, subcontracts, feminine manual-labour, and self employment.

<sup>312</sup> According to B.Santos, the early outcome resulted in a “parallel state” in which the new adopted Constitution (1976) envisaged a socialist concept of the state with no classes and exploitation (cf. Article 83 on the irreversibility of nationalization that took place already between 1974-75). However, since the first constitutional government, the political leaders have adopted new objectives that were openly contrary to the Constitution. This state conduct (formal) inaugurated a new space for “micro-States” (informal), with disrespect for the law. The state ceased to be consistent.

<sup>313</sup> Elsewhere the author established the lack of solid reference to which the Portuguese people could refer to, which does not include the Bible, even among Catholics – (F. Fernandes 2004).

Discontinuity is the process of jumping from one political task to another without keeping any sense of a stable purpose in the long term. The winners are always those who acted in the “centre”. Centrism, in recent times, corresponds to Soares<sup>314</sup> acting on the right of left-wing, and Cavaco on the left of right-wing, politics. Historically, Salazar, Cunhal, Caetano, Costa Gomes or Eanes were, in their group of action, the “centristas”. They all won, but their victories were nothing more than a real tragedy for the ultimate project of reform.

Everyone re-started his political programme thus introducing discontinuity. He reminds us that the “centrist is acceptable rather than being wanted” (15). So, instead of having a cohesive political culture, based on diversity and pluralism, we end up with all kinds of inconsistent political “tastes”. This kills any chance for one project to be explored in its specificity.<sup>315</sup> The present continuous change of programmes leads to the concept of pendulation.<sup>316</sup>

He insists that it has nothing to do with “alternation” attitudes. The pendular rhythm is rather a-rhythmical. The end result is massive destruction of any stable political aim or motivation. The people in general welcome a “moderate” or “centrist” personality as a means of contradicting a radical tendency, and then the same people drop them halfway through the process, and move on to another opposite solution. The pendulum swings between the pulse of modernity and archaic tendencies.<sup>317</sup> The entire political system goes in the direction of a conservative mindset. The ultimate goal is to keep on re-adapting rather than reforming and change.

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<sup>314</sup> Cf. The consistent accusation against Soares that he has placed the socialism in the drawer (*socialismo engavetado*). See H.Monteiro in EXP:23.05.1998-Revista “*Socialismo na gaveta (1978)*”; F.Esteves in IND:10.08.2001 “*Cobrador de promessas*”; and M.Carvalho in VIS:13.03.2003 “*Soares e Freitas*”.

<sup>315</sup> Aguiar reaches a very similar conclusion (J.Aguiar 2000:84). Commenting on the 1995 parliamentary election, he says: “In fact, it is not the parties nor the political personalities who are leading the development of Portuguese society. This is given to its own dynamics of crisis consisting of the impossibility of supporting any continuity.”

<sup>316</sup> His example goes back to Caetano who was massively applauded in the Lisbon football stadium and a few days after was enthusiastically replaced by Cunhal and Soares at the First of May, 1974 celebrations. A more recent example is with the PSD supporting the creation of a democratic alliance with the PP and months later voting for an opposite proposal.

<sup>317</sup> The excess of modernity causes an inside reaction in the archaic social fabric of Portuguese reality. The archaists are those who want to maintain the *status quo* whereas the modernists are those who want to change it.



If Santos' analysis points towards a culture of deep informality, Júdice's observations seem to fit, for example, what we argued above concerning the confusing and intermittent legislative action and inconsistent anti-corruption policies.

The third analysis comes from Ruivo's research, *The Labyrinthine State* (Ruivo 2000). Contrary to both Santos and Júdice whose analyses were based on the general overview of the central State relationships, Ruivo's contribution focuses primarily on the attitudes and beliefs of local politicians in their need to attract resources emanating from central bureaucracy (1976-1996). He demonstrates how certain old Portuguese administrative customs such as high centralization, webs of relationships based on personalisation and manipulation, socio-political and economic inequalities, parallel state, clientelism and corruption remained almost the same despite all the democratic changes; in short, how absurd practices are suddenly made new.

The research is based on a confidential enquiry sent to 275 presidents of Municipal Boroughs, to which he obtained a remarkable 142 responses (51.6%), and 45 personal interviews with key agents including presidents and former presidents, high-ranking civil servants, local deputies and "privileged local actors". He rejects the traditional view of north and south divide (including religious-based explanations) to explain the striking differences that exist in political administration of northern developed countries and the relatively backward systems of the southern territories of Europe. Instead, Ruivo favours a model based on "the dynamics of dependency on the part of the periphery". In his view, this fits the context more seriously. It is also capable of better illustrating the weblike mechanisms and hidden social forces in operation, which enable some "notables" to enter and capture the resources partially available from central administration.

The local political agents are profoundly dependent (politically and economically) on the central government and bureaucracy, largely due to its concentration on major cities and coastal areas to the detriment of interior and less populated regions. So they need to exercise their creativity to attract scarce resources. The means used are largely based on "informality", within a "subterranean" man-made context, with greater emphasis on a singular phenomenon of "personalisation" - the relevance of "knowing" the right intermediate person in the central establishment and beyond, somewhere in Brussels.

The dynamics of dependency follows the *Circuito Topográfico Organizativo* (organizational topographic circuit), which includes the laborious process of “procurement, mediation, and decision making”. To reach a favourable conclusion, a complex web of networks needs to be activated. Firstly, the entire process is presented as something ordinary (“natural”, in the sense of being trivial) - “everybody does it” type of argument. Secondly, the process is deliberately detached from any reference to morality, i.e., it is amoral. This is a relevant factor which both nurtures and self-justifies a favourable environment of “promiscuity” (literal translation) within the public administration. And finally, there is a need to “rationalize” the entire process, which is easily perceived as one analyses both the enquiry and the interviews used throughout the thesis.

Ruivo lists several negative effects which truly nurture clientelism and corruption (257ff). He questions the true nature of Portuguese democracy which seems to limit its function primarily to providing regular and fair elections. Although the author's focus is on the local agents' attitudes and beliefs, he blames the central government and bureaucracy as the main “promoter of exceptions”. Additionally, the confusing party politics and the electoral system also distort fundamental democratic principles, which require major structural reforms.

With this threefold and global scenario, which appears to be fair, one may legitimately argue that it is an open door to multiple malpractices, illegalities and unethical conduct being exploited to exhaustion by citizens operating either alone or on behalf of private sector and state institutions alike. From this reality it seems a very small step indeed to massive tax evasion (IRS and IRC), false contracts, bad work ethics, unusual appetite for laws, absenteeism, misappropriation of state resources, low productivity, confused media with its own dependency status on certain economic forces, inequalities in accessing public information and resources, illegitimate lobbies, fictitious companies and assets, offshores, accumulation of “benefits and privileges”, illegitimate immunities and impunity, demoralised civil servants and the waste of common resources for the benefit of agents working for public companies and the private sector.

Time and space forbid us to elaborate a detailed examination of each of these “normal” anomalies, for which there would be no shortage of material. These anomalies are often portrayed

as “small matters” (petty corruption, venial sins, *cunha*, *sacos azuis*) that appear regularly in the news and some academic writings.<sup>318</sup> It is perhaps pointless to emphasize particular areas of corruption and cases that permanently hit the news, as scandals replace scandals continuously. The pendulum exists beyond the noisy environment, giving substantial grounds for a parallel state and not just a parallel economy; for strange/alien and intimate/friendly civil societies; for the State acts both as father and step-father; for promoting “exceptions” rather regularly, and thus contributing to the growth of the welfare society while delegating civic action to secondary place, to the clear detriment of citizenship. It is the toleration of this environment that needs changing.

So corruption in the judiciary and particularly in the police forces, local governments, construction firms, football, central government and administrative services, private sectors, and the pervasive tax system is therefore much facilitated by this contemporary environment which nurtures and ignores corruption. Unresolved suspicions in all these areas abound as the judiciary fails to respond adequately. And yet almost nothing will be changed overnight, it seems. Such a miracle does not exist, not even for those who are believers in some kind of supernatural force. *Sebastianism*, Catholic and Republican ethics, applied as they were, have thus far taken us nowhere.

## 6.7 Concluding remarks

Both the historical and contemporary conditions as sketched in this and previous chapters indicate that anti-corruption strategy is a genuine need that has been slow to appear in Portugal. The following two chapters focus on understanding contemporary responses to corruption and why they remain inadequate; and finally on some guidelines likely to fit the national context for

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<sup>318</sup> It appears rather unfortunate that prominent citizens fall into this ‘temptation’. When F.Felgueiras was briefly detained for interrogation, the Bishop of Porto, D.Armando Coelho expressed publically his views. He supported Felgueiras by admitting difficulties in viewing those irregularities as crime. He stated: “A crime or sin are far more serious” – for further details see *O Comércio do Porto*:09.01.2003:4.

implementing a much needed reform that resists the swings of the pendulum that for so long have destroyed our own potential human and organisational resources.

## Chapter 7

### Types of existing responses to corruption

#### 7.1 Introduction

This chapter concludes Part Two of a critical evaluation of Cause and Response Patterns by analysing existing responses to corruption. Two previous chapters briefly examined both historical and contemporary factors that nurture the current environment of corruption. But such a combination only refers to one side of the twofold nationwide problem identified in chapter one, then generally explained in chapters two (The problem of corruption) and three (The problem of impunity). They were exemplified through *Emaudio* case study in the final chapter of Part One's summative evaluation of the Problem-Awareness Pattern.

Throughout these chapters corruption has been primarily seen as a result of the yet unchallenged opportunity and incentive structures which both nurture and ignore corruption and its environment. They usually flourish in the midst of specific cultural assumptions within a complex mixture of socio-religious, political and economic fields which are closely interrelated. But corruption is also a matter of risks (Doig, Watt and Williams 2005, 50). If corruption carries a high risk, people are most likely to refrain from corrupt practices. So the way to analyse the risk level is by assessing the actual effectiveness of both administrative and judicial responses to corruption.

There is no doubt that constraints on corruption exist in different forms. Anti-corruption discourses and codes abound everywhere in the executive, legislative, administrative and judicial fields. But the following complex legal case confirms that responses to corruption are rarely straightforward. As Araújo writes, "The mayor of Felgueiras... hurried through the streets of the small north-western Portuguese city in the early afternoon of May 5, 2003. She was late for a funeral. But before she arrived at the cemetery, she took a phone call, returned home - and disappeared."<sup>319</sup> Actually to Rio de Janeiro, via Spain, and it was on that very day that the Court

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<sup>319</sup>See R.Araújo's article "Corruption notebook" in (Sousa and Araújo 2004, 5).

ordered her detention on 28 charges, including 11 of corruption.<sup>320</sup> Such evasion had its costs though. She was forced to stay in Brazil for twenty-eight months without the company of close family, friends, church and country even at times such as Christmas. Whilst constraints set some limits, they are not sufficient in themselves, as the remainder of the story reveals.

Felgueiras (her surname too), returned to Portugal on September 21, 2005, which took many by surprise,<sup>321</sup> not least by the speed in which, within just a few hours, she was detained at Lisbon airport, taken up north to Felgueiras' Court, and then liberated. Outside, an euphoric local population waited for her. There she announced herself as an independent candidate for the December 2005 local election.<sup>322</sup> Less of a surprise though, and despite the legal case, was that she won a comfortable majority for the third consecutive time, though now without her former PS party.

Like corruption, this rather complex legal episode confirms that responses to corruption are often confused. They need explanations, and actually demand a deep contextual analysis because inadequate responses have a certain rational basis. This undoubtedly makes corruption flourish more easily, not least because of the multiple and still largely unstudied, shortcomings that need to be properly identified and put together in coherent models of responses to corruption, in order to grasp a holistic picture. This provides the basis for Part Three where a Possible Solution Pattern will be proposed and discussed.

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<sup>320</sup>Cf. CM:02.01.2006 "Justiça: Estudo inédito analisa 224 processos e traça perfil dos criminosos".

<sup>321</sup>Among others, C.Silva, then a possible candidate, now President of Portugal, said: "*É óbvio que estou estupefacto com o que está a acontecer em Portugal nesse domínio [justiça]*", and concluded "*Eu não sou jurista e por isso tenho interrogações semelhantes àquelas que tem um cidadão normal*" in CM:24.09.2005. Cf. F.M. Flores, perplexed, comments: "*Ela é a metáfora sobre a grave crise e a grande barafunda em que estamos metidos. Chegou legalmente, foi detida legalmente, foi legalmente posta em liberdade, cumpriu os preceitos legais para se candidatar e pode, dentro de toda a legalidade, ganhar as eleições na sua terra. Não é ela que está mal mas sim a legalidade...*" in CM:26.09.2005 "*O país da barafunda*".

<sup>322</sup>This is not a unique episode though. Rui C. Pinto, VIS:19.12.2002 writes: "*Hoje, incrédulos, tentamos compreender como é possível um cidadão - Pimenta Machado - ser preso para dormir nos calabouços VIP da PJ ao domingo, ser ouvido por um juiz ao longo de mais de nove horas na segunda-feira, passar na RTP como uma vedeta na madrugada de terça-feira e ser recebido como um herói, em Guimarães, na quarta-feira.*"

## 7.2 Aims, Definition, Scope and Methodology

The aim here is twofold. Building on the knowledge of opportunities and incentive structures previously identified, the first aim is to complete the “holistic picture” of national corruption by examining both administrative and legal responses including cases that have ultimately seen the courts’ verdicts.<sup>323</sup> And secondly, it is to construct critical patterns of response that characterise current Portuguese ways of counteracting signs and evidences of corruption.

In the literature, responses largely refer to ideal remedies,<sup>324</sup> something that still needs to be introduced and enforced. As has already been noticed, there are comparatively few noteworthy books that undertake a national holistic approach to corruption (Nieto 1997; Morris 1991; Phongpaichit and Piriya-rangsan 1996; Mitchell 1996). None of these authors analyses responses in context. The general tendency is to jump immediately from timeless and general causes to equally general remedies. Fewer give an interdisciplinary and contextual treatment. Perhaps a good exception is *The Anatomy of Corruption in Kenya* by Kibwana, Wanjala and Owiti.<sup>325</sup>

So, in this chapter, responses refer exclusively to the manner in which Portugal has actually tackled corruption. It deals with current and past situations as a way to understand why corruption remains largely unchallenged. Such an understanding is of utmost importance prior to advancing any form of contextual remedies (see Chapter 8).

This thesis continues with a holistic, dynamic, and contextual approach. Therefore, responses are viewed as a process rather than a single, isolated, or sporadic event. As such, responses should comprise prevention, enforcement, investigation, detection, prosecution, punishment and finally seizure of funds earned through corruption. But as national experiences so

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<sup>323</sup> Although the court’s verdicts are very limited in numbers and affected only the “small fish”, it is nevertheless a gross mistake to think that corruption has been flourishing without many responses from leading politicians and institutions alike.

<sup>324</sup> This is the case, for example, of the USA Center for Democracy and Governance’s Handbook on Fighting Corruption, which puts causes and institutional hypothetical responses side by side - See (Center for Democracy and Governance 1999, 18). Most literature takes a universal rather than a national approach moving from a core set of cross-country rounded causes or sources to effects or consequences and finally to remedies or solutions, either treated separately (Geddes and Neto 1992; Gomes 1993; Ouma 1991; Olowu 1992) or in combination form (Rose-Ackerman 1999; Elliott K., 1996; Hope and Chikulo 2000). They tended to be descriptive rather than analytic.

<sup>325</sup> See (Kibwana, Wanjala and Owiti 1996).

easily demonstrate, in between any of these stages in the process, the desired response can so easily be delayed, confused, diverted, diluted, trivialised or even aborted altogether.

So, within this wide spectrum lie multiple forms of administrative and judicial responses which we seek to typify in what follows. On the administrative side, an ideal response must rely on prevention, effective control and enforcement mechanisms, each on time as well as on sight. When these are either not likely to be sufficient or have not functioned well, then one must look towards a judicial settlement. An ideal judicial response implies reaching its final phase on time, with fairness (full compliance with human and legal rights) and success (clear punishment, and significant assets and trust restored whenever possible).

With regard to methodology, a comprehensive understanding of existing responses depends on contextual analysis anchored in specific cases. So context, again, is the key to understanding the uniqueness of the Portuguese situation prior to any attempt to launch a relevant anti-corruption strategy (World Bank 2000, 39). There are twelve types of response, selected on the basis of the author's own observation and analysis of recent cases. As types, they reveal a model that keeps reproducing itself on a fairly regular basis. For clarification and analysis' sake, the twelve models are incorporated into three cluster groups. The first typifies the preliminary stage of response; the second covers the administrative response; and the last relates to judicial answers. Each type will be clearly defined one after the other within the cluster. But because of its close relationships with others, the analysis will be based on the entire cluster group thus avoiding unnecessary repetition, except for the second cluster. The analysis seeks (1) to indicate how the solutions were tried; (2) by means of relevant examples; (3) with an explanation why they failed or were inadequate.

### **7.3 Five Individual Types of Responses on Behalf of Institutions**

The first cluster represents five distinct but interrelated types of individual response, often made on behalf of key institutions. They reflect the preliminary phase of response. Although a final response matters most, the initial response phase is actually more crucial in determining its degree of seriousness and in deciding if the case is worth pursuing. Experience tells of so many cases that



died out in the early stages without proceeding to any kind of administrative or judicial inquiry. Therefore it is important to undertake a serious analysis of this preliminary phase too.

### 7.3.1 Re-Active Response

The word “re-active”, with hyphen, is chosen to further distinguish between proactive and reactive attitudes. The latter represents what could be a merely responsive attitude whether good or bad, whereas the former envisages a reasonably well prepared response. But “re-active” here has a rather negative sense of a backfiring response. Almost as if one is left with no other alternative but instinctively, intensely and insensitively to react to a stimulus factor, thus causing an immediate “explosion”. So, re-active response can be further illustrated as “gut reaction” denoting an unthinking as well as uncoordinated response.

When the fax of the Macau scandal became known, former President Soares re-acted immediately in support of the governor whom he had nominated. He did not dismiss him until the judiciary could settle the issue. Nor did the governor step down immediately but he stayed in office until the charges were confirmed by the court. At that time, another major scandal affected the PSD party in power too. When the first news about C.Freire and others’ involvement in corruption appeared, the party leaders had a similar attitude. In F.Felgueiras’ case the Socialist Party had a profoundly mixed reaction to start with. B.Moura stood up and requested immediate disciplinary action which was not supported by the leadership. Instead Moura was put aside within his own party.<sup>326</sup> The allegations in the *Junta Autónoma de Estradas* (JAE) led former PM Guterres to react by demanding the whistleblower prove the case before the PPS. The traditional sayings are: “if anyone knows about corruption, he or she should contact the PPS immediately” and “Any member of government who finds evidences of corruption will certainly not hesitate to contact the PPS immediately”.

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<sup>326</sup>See the following revealing articles, some of which appeared after the death of J.B.Moura: S.Galvão, DE:04.04.2003 “*Barros Moura em 4 lições*”; R.Vaz, DE:06.05.2003 Editorial “*Eleições já*”, and in DE:21.05.2003 “*Populismo ou corrupção?*”; and E.Dâmaso, 26.03.2003 “*Barros Moura, o adeus de um combatente*”.

Re-active behaviour gives no regard to internal administrative control mechanisms. Re-active conduct places the burden on vulnerable individuals who later have difficulty in substantiating the claims because they are not in a position to prove it.

### **7.3.2 Blaming Response**

The old biblical narrative of Adam and Eve blaming each other and even the serpent is a fair portrait of this type of behaviour. The key idea consists of eccentrically discharging oneself of any full-blown responsibility in a alleged corruption case by unashamedly accusing others instead. Because response often involves several national agents and agencies, it seems very easy to go on and on, in circular rounds of one endlessly blaming the other.

In the JAE case, the blame was against the former president who blew the whistle. Cravinho, the Minister in charge, even called him “out of his mind”. And yet, no current or past leaders seem to hold any responsibility whatsoever. Instead, blame is levelled against the inefficient political system as a whole. Cravinho claimed that a democratic regime was in deep crisis which demanded special attention from all. This blaming attitude repeats itself within the judiciary system in which it is easily transferred in circles.<sup>327</sup> A common excuse is that economic crime has developed faster than the system of justice. Judges lack skills to deal with complex corruption. Politicians protect themselves under the traditional separation of powers, the so-called “independent judicial status”. In summary, the blame is always transferable from a Minister to the independent courts, to judges, to public prosecutors, to the police in endless futile circles, in addition to blame for lack of qualified workers, resources and expertise too.<sup>328</sup>

### **7.3.3 Moralistic Response**

Although corruption intrinsically invokes morality, the point here is its unreasonable use to the extent of becoming deplorable. Such an exaggerated appeal to moral ideas makes morality effectively useless. Deep down it is another “righteous” simulation. But in the process it shows not much regard for basic matters of principle, including administrative ones in performing

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<sup>327</sup>See various authors’ comments in (Barreto, A., *Justiça em crise?*, 2000, 20, 60, 173, 393).

<sup>328</sup>See (Barreto, A., *Justiça em crise?*, 2000, 69, 139).

fundamental every day duties, such as effective control mechanisms. In the end, moralistic response turns out to be a virtuous farce in favour of a self-pitying and judgmental attitude often against general matters, namely the political system as a whole or even the “abstract” State.

Such examples were often put forward by politicians who usually come from minority parties. Former CDS-PP leader Manuel Monteiro was known to be a moralist who often spoke about corruption. At the occasion of the 1998 referendum about regional governments his party campaign spread everywhere large posters of “Corruption x 8” as if regionalism, in itself, would necessary bring more corrupt officials into the political scheme. Instead of arguments, they exploited populist anti-political feelings. So, after several years of moralistic talks there has been no progress in the anti-corruption cause from the CDS-PP party, despite all the promise “to moralise the system”.<sup>329</sup>

Paulo Portas, once director of a weekly newspaper, was directly involved in accusing many politicians of both PSD and PS parties of using a deplorable moralist language too. Ironically, when he entered active politics, and replaced Monteiro as the CDS-PP leader, he seemed to have forgotten some of those moral values.<sup>330</sup> He appeared to make a mess of his own alleged Amostra/Moderna case which led the opposition parties to demand his resignation from the government. He stayed on in the midst of profound criticism.<sup>331</sup>

#### 7.3.4 Diffuse Response

Whereas the blaming response has a target, the diffuse model engages in wordy discourses, deliberately vague and often extensive in which loose ideas have no specific people or group in

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<sup>329</sup>Sousa reminds that the early 1990s were dominated by the “moralisation of politics” (Sousa 1999, 31). See also J.A.Saraiva, EXP:09.05.1998 “*O PP serve para quê?*”; S.J.Almeida, PUB:13.02.2002 “*Seis anos de maioria socialista no Parlamento*” refers to “moralist fury” of Monteiro’s PP; and in IND:24.03.1995:26 “*Sondagem*” in which 8,3% of 1200 people recognised Monteiro to be the hero in the fight against corruption.

<sup>330</sup>See J.M.Fernandes, PUB:30.07.2001 “*Paulo Portas vive dias difíceis. Por sua exclusiva culpa*”, and in PUB:21.09.2002 “*Dr Jekyll and Mr Hide*”. Cf. J.B.Moura strong criticism in DE:04.09.2002 “*As acusações de falta de transparência no financiamento do CDS-PP e do próprio Paulo Portas pelos gestores da Universidade Moderna, não apenas revelam um flagrante contradição entre o moralismo do opositorista populista e a recusa de agora ministro dar explicações convincentes; elas inquinam a relação de confiança com os eleitores que é exigível aos responsáveis políticos.*” (Also cited in PUB:05.09.2002 “*Lido*”).

<sup>331</sup>A.P.Azevedo, EXP:14.09.2002 “*Portas mantém popularidade*”; E.Lourenço, PUB:19.09.2002 “*Portas explicou-se na TVI*”; and T.S.Dias, CM:28.11.2003 “*Portas saiu ileso*”.

mind. Occasionally, there seems to be some objectivity in the discourse that is somehow used to bring in an appearance of seriousness only. But the end purpose is to diverge from the core problem in a dilatory fashion. Corruption then becomes something circumlocutory. No one is to blame or gets the blame, and life goes on as usual because something else happens or is made to happen so that attention is now concentrated on the latest “new” case. This denotes no strategic thinking concerning patterns or paradigms of corrupt cases. The isolation of cases together with “interesting” parallel issues are deliberately introduced to confuse the analysis.

In the JAE case, after all those re-active and blaming comments, there was very little follow-up in finding the root problems. The inquiry (*sindicância*) was used to divert public attention and nothing concrete has ever come out. Likewise, all the Parliamentary inquiries concerning allegations of economic crime have failed to lead to any concrete disciplinary measures. So many meetings and hearings, and so much time and money have been used to absolutely no purpose, apart from diffuse conversation or apparently intense disputes.

### 7.3.5 Escapist Response

The recourse to an utopian, platonic type of symbolism aims to illustrate what turns out to be an enthusiastic escape route out of a corrupt case. The entertainment set in motion around the scandal, including diffusive talk, somehow makes escape possible. Mere dismissal becomes an honorable attitude from a “politically correct” point of view. Corruption as a problem is not dealt with. Such a circumvented response brings no concrete charges or consequences against anyone. Responsibility is simply avoided.

When the bridge Hintz Ribeiro, also known as *Entre-Os-Rios*, fell down in March 2001, killing 59 people, the Minister in charge of Public Works, including JAE, resigned in what was considered a correct political attitude. In fact, he simply escaped from any responsibility, as did all the previous Ministers, including current and former directors within JAE. After a while, when emotions had calmed down, the case simply disappeared, so it seems. Often, an extended period of time passes by and then the escape route seems very easy to follow. One or two cool reactions make no difference whatsoever.

Some Ministers have resigned after being caught in tax evasion.<sup>332</sup> They stepped down, paid the bill, and nothing else happened. They returned to “private” life, where a journalist could no longer demand a public explanation. This response makes illegality appear permissible with few consequences. People even perceive that such cases end with former politicians occupying key leadership roles in well paid State companies.

### **7.3.6 Global Analysis of Five Individual Types of Responses**

Any of these models can happen on their own, in combination, or altogether in a single case. For the last of these possibilities, perhaps the best example is the Parliamentary Inquiry Commission (CPI) concerning the dismissal of two deputy national directors of the Judicial Police (PJ) in November 2002. The political and administrative response in this case seems relevant for several reasons.

Firstly, it appears to have obstructed the fighting of corruption, a serious matter in itself particularly when many correctly think that corruption flourishes due to inadequate investigations. Secondly, it happened at a unique time.<sup>333</sup> If ever there was a single moment in which anti-corruption progress seemed convincingly visible that unquestionably occurred when Maria José Morgado was Deputy Director of the PJ anti-corruption unit (2000/11 - 2002/8). Thirdly, it provides unique internal insights about criminal investigation conditions. Fourth, Morgado’s team resolved old pending cases which were still “lost” in a multitude of bureaucratic papers. Fifthly, they started a dozen or so highly sensitive investigations touching places where they were unheard of before such as the tax offices, football clubs and their associations. And finally, such a “high” moment lasted less than two years of what could have been a three-year renewable commission.<sup>334</sup>

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<sup>332</sup>M.Santos, SEM:06.09.2002:12 “Crise no governo, ou crise no Estado?”.

<sup>333</sup> Three key factors are worth mentioning. The former President of the most popular football team (Benfica) was taken into custody and found guilty, and the legal case was completely over in a record time, that is, less than a year. Needless to say such a case was highly complex, involving assets located in foreign off-shore accounts. Secondly, massive investigation among Traffic Police officers was started. And finally, there were sensitive ongoing investigations, which included top agents of the tax office in the Ministry of Finance, and top leaders of football clubs and agencies. Some were taken in custody but in total there were more than one hundred detentions fully endorsed by judges.

<sup>334</sup> For instance, the former PJ Deputy Director of CDCOC, Orlando Romano, replaced by P.C.Lopes, stayed in office for 16 years, making this special branch a good example in combating crime in general. Something

Why? Answering this illustrates well the types of response of this cluster group. The task begins with a general background description, followed by critical analysis of both the format and the substance of the Parliamentary Inquiry.

Morgado's leadership and initial achievements certainly disturbed some "comfortable" sectors. Thankfully she was not eliminated like the Italian judge Giovanni Falcone or the Spanish prosecutor Carmen Tagle. Instead, she was abruptly interrupted, literally put aside in what appears to have been an arbitrary decision by any democratic standards. It happened soon after the new coalition government of D.Barroso (PSD/CDS-PP) took office in April 2002, following Guterres' unprecedented withdrawal as PM. The new Minister of Justice, Celeste Cardona (CDS-PP) appointed Judge Adelino Salvado (May 24, 2002) as the new PJ National Director in place of one who was already due for a replacement.

In less than three months, Salvado got rid of two of the three Deputy National Directors. Like Morgado, Judge Pedro Lopes was asked to resign as Deputy National Director of the Central Directorate for Combating Organised Crime (CDCOC). Unlike Morgado, he refused it. But he could not stay either. Likewise, he was arbitrarily fired three months after Salvado had selected him in a Lisbon coffee shop.

For Lopes it was an abrupt, confused and mysterious decision.<sup>335</sup> His successor, José Leite, when asked "how did you find the CDCOC?", he replied: "*Normal. I hope to give continuity to a machine that is well refined.*"<sup>336</sup> So, if that department was fully operational at that time, why then was he dismissed? One must certainly look beyond those three general administrative reasons<sup>337</sup> provided which nevertheless raised additional serious doubts anyway, not least because within 24 hours, Cardona and Salvado agreed the terms of both dismissals, not having even personally discussed the matter with either of the two (former) deputy directors. Salvado refused to do so

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which does not yet happen with economic crimes, where the average length of stay for a Deputy Director of DCICCEF is 20 months.

<sup>335</sup>See (Parliament 2002a, first and second interventions).

<sup>336</sup>See the interview in CM:21.11.2002.

<sup>337</sup>According to A.Salvado, the three reasons are: change of strategy within PJ; Pre-defined orientations not fulfilled by Lopes; and his lack of profile for leadership. But none of these seems to fit the case, nor was sufficiently and convincingly explained during the inquiry except the freedom that any National Director has to implement changes as he so wishes.

when she requested it as she was only 40 minutes away from Lisbon (according to Morgado); he appointed the replacements with their full consent, even when one of them needed by law to be granted special prior permission from *Conselho Superior de Magistratura*. How this came about was never explained either, despite the persistence of several MPs and evasive responses. What a speedy process for the notoriously backward bureaucracy! So much so that in the words of one MP, it is guaranteed an entry in the Guinness Book of Records.<sup>338</sup>

Both cases happened in August when Morgado and Lopes, like the majority of Portuguese, were enjoying the final days of their holidays. But that did not prevent political turmoil. The Parliamentary Commission of Constitutional Matters called all four to an open house inquiry on September 11, 2002. Morgado and Lopes refrained from substantiating their claims on the basis of professional secrecy and criminal justice restrictions. From the outset, Salvado and Cardona refused any political interference in criminal investigation. But contradictory views as to the form and substance of both dismissals were pretty obvious and thoroughly exploited by the media.

With great reluctance<sup>339</sup> on the part of coalition parties, the Parliamentary Inquiry (CPI) began its work, by examining all four individuals again, this time behind closed doors (in ‘secrecy’), on Tuesday morning, Nov 5, 2002 at 10.20am with the following wide terms of reference: “Inquiry concerning the behaviour of XV Constitutional Government which led to the dismissals of Deputy Directors of PJ three months after being appointed”.<sup>340</sup> In practice finished, nearly three days later in the early minutes of Friday, at 00.10am, after 22 hours of direct inquiry – see Table 3 below and subsequent ones in this section with detailed counting of words spoken by key individual and party’s participants – numbers in bold represent a total of words. The double numbers under the President represent his words plus editorial (e) words in the document (i.e. list of MPs in introduction).

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<sup>338</sup>See A.Filipe in (Parliament 2002d).

<sup>339</sup>Reluctance, first of all to agree on the usefulness of the inquiry; secondly on the actual terms of reference; and finally on the methodology.

<sup>340</sup>Actually, only Lope was nominated three months before. Morgado was already a Deputy National Director when Salvado took office. He chose not to dismiss her at the time.

**Table 3: CPI, Summary of Four Inquiries, 5/6 Nov 2002, 22 hours**

	PRESIDENT	PSD	CDS-PP	COALITION	PS	FCP	BE	OV	OPPOSITION	Sub Total (Pres+Coal+Oppos)	WITNESS	TOTAL INQUIRY
Pedro Cunha Lopes	1,337 +122	2,625	1,965	4,590	3,896	1,111	900	489	6,396	12,445	13,849	26,294
Maria José Morgado	3,397 +150	6,310	9,278	15,588	3,558	1,202	943	0	5,703	24,838	37,265	62,103
Adelino da Silva Salvado	6,345 +106	3,939	4,627	8,566	12,396	4,086	2,606	1,577	20,665	35,682	38,890	74,572
Maria C. Cardona	3,516 +200	3,017	718	3,735	6,260	2,023	2,823	666	11,772	19,223	7,723	26,946
Total	14,595 +578	15,891	16,588	32,479	26,110	8,422	7,272	2,732	44,536	92,188	97,727	189,915

Source: Author's calculations based on CPI (Parliament 2002a; Parliament 2002b; Parliament 2002c; and Parliament 2002d)

The actual reason for the abrupt closure of the inquiry is simple. The opposition MPs demanded more inquiries, including a joint confrontation between Salvado, Morgado and Lopes knowing that one or more of these magistrates had unequivocally lied to the Commission. Upon rejection, the opposition MPs suspended their participation for a while. In the meantime, they appealed to the President of Parliament while the President of Portugal closely followed the case too. The former was unable to help and the latter summoned all party leaders but to no avail either. So on Friday, November 8, the media announced the unilateral closure of the Commission – without the opposition parties it is pointless to proceed, argued the coalition parties.

In short, the MP J.Magalhães' conclusion is right because “eternal doubt” and “galloping suspicion” remained exactly the same despite a marathon 22 hours of hearings. There was simply no conclusion or consequences. The way the commission acted contrasted with what was done before to Garcia dos Santos who refused to declare the names of people involved in corruption. For him the commission proceeded to the court whereas in this case no legal action was pursued even though one or more of the deponents lied to the commission.<sup>341</sup>

However, the country is left with four rather relevant documents unusually disclosed on the Parliament's website.<sup>342</sup> Surprisingly, the media only vaguely explored it. Such a release somehow

<sup>341</sup>This was not only obvious but J.Magalhães openly said that the commission was faced by a “clash of versions” and “deceptive clashes” - (Parliament 2002c, last set of interventions).

<sup>342</sup>These are incomplete documents though. It excludes the minutes of the MPs discussion of the hearing's outcome. The elected ones preferred to hide their comments from the public eye. The four documents, totaling 320 pages are herewith identified as (Parliament 2002a) for P.C.Lopes' inquiry; (Parliament 2002b)



demonstrates the extent of disorientation that follows. So much so that Marinho (PSD) summarises well the point: “I think that no one will win this (dispute); the country will not win either; and even less so the PJ.”<sup>343</sup>

In any investigation, methodology plays a critical role. The inquiry’s format is a flaw of major significance though. The following Tables and Figures provide details of each of the four inquiries. The first (Table 4) and last (Table 7) inquiries were the shorter ones, which lasted about 3 hours each. P.C.Lopes’ inquiry begins to reveal critical features, and they get worse with both M.J.Morgado (Table 5) and A.S.Salvado’s case (Table 6).

**Table 4** CPI, P.C.Lopes (PCL), Inquiry, 5 Nov, 2002: Duration 10:20-13.20 = 3 hours

PCL	PRESDENT	PSD	CDS-PP	COALITION	PS	PCP	BE	OV	OPPOSITION	Sub Total (Pres-Coal+Oppos)	WITNESS	TOTAL INQUIRY
Words spoken	1,337 +122	2,625	1,965	4,590	3,896	1,111	900	489	6,396	12,445	13,849	26,294
Interventions	47	8	6	14	11	4	2	1	18	79	26	105
1st Q		1,930 (6)	1,238 (5)		1,193 (1)	351 (4)	702 (3)	489 (2)				
2nd Q		80	352		588	294	0	0				
1st Ans		990	949		3,292	671	3,840	735				

Source: Author’s calculations based on CPI (Parliament 2002a)

Each MP willing to inquire has up to five minutes to place all the questions (identified as ‘1st Q’ in Table 4 above, followed by the number of words, and the number of intervention in brackets which only include the first six interventions). The witness is free to reply by taking as much time as needed (see ‘1st Ans’). Then the inquirer would finish by making a brief comment or seek further clarification if they so wish (see ‘2nd Q’).

Such a method hindered the search for truth. The length of questions gave the witness an easy opportunity to either answer partially, omit questions, ignore fundamental points, or above all, confuse the inquiry. For instance the first intervention-question set by the PS took 1,193 words (w)

for M.J.Morgado; (Parliament 2002c) for A.S.Salvado; and (Parliament 2002d) for M.C.Cardona. They were released in December 2002 in ([www.parlamento.pt/comissoes/inquerito/xi\\_pjudiciaria/index.html](http://www.parlamento.pt/comissoes/inquerito/xi_pjudiciaria/index.html)). References will identify the speaker, followed by the speaker’s intervention number whenever possible.

<sup>343</sup>See (Parliament 2002b, Marinho’s first intervention). His additional words were: “*Foram, pois, cometidas aqui inconfiđncias que me levam a perguntar: como é que vamos deslindá-las? Dado tratar-se de conversas tidas a dois, qual é que vale mais, a sua palavra ou a palavra dele, Sr.ª Procuradora? Ambas são palavras que, à partida, merecem e têm de merecer todo o crédito. Mas pergunto-lhe como é que vamos sair disto.*”

long, whereas the sixth intervention by PSD had 1,930w. The remaining three inquires made things look much worse as Table 5, Table 6, and Table 7 below indicate.

**Table 5** CPI, M.J.Morgado (MJM), Inquiry, 5 Nov, 2002: Duration 15:15-23.15 = 7 hours

MJM	PRESIDENT	PSD	CDS-PP	COALITION	PS	PCP	BE	OV	OPPOSITION	Sub Total (Pres+Coal+Oppos)	WITNESS	TOTAL INQUIRY
Words spoken	<b>3,397 +150</b>	6,310	9,278	<b>15,588</b>	3,558	1,202	943	0	<b>5,703</b>	<b>24,838</b>	37,265	<b>62,103</b>
Interventions	<b>80</b>	16	43	<b>59</b>	19	22	1	0	<b>42</b>	<b>181</b>	70	<b>251</b>
Palav. 1st Q		2,227 (2)	3,138 (3)		1,164 (1)	423 (4)	946 (5)	0				
2nd Q		587	334		626	31	0	0				
1st Ans		3,918	3,137		11,079	1,338	1,765	0				

Source: Author's calculations based on CPI (Parliament 2002b)

**Table 6** CPI, A.S.Salvado (ASS), Inquiry, 6 Nov, 2002: Duration 10:30-19.30 = 8 hours

ASS	PRESIDENT	PSD	CDS-PP	COALITION	PS	PCP	BE	OV	OPPOSITION	Sub Total (Pres+Coal+Oppos)	WITNESS	TOTAL INQUIRY
Words spoken	<b>6,345 +106</b>	3,939	4,627	<b>8,566</b>	12,396	4,086	2,606	1,577	<b>20,665</b>	<b>35,682</b>	38,890	<b>74,572</b>
Interventions	<b>144</b>	11	36	<b>47</b>	144	65	16	4	<b>229</b>	<b>420</b>	165	<b>585</b>
1st Q		1,794 (3)	2,989 (1)		2,264 (2)	1,408 (5)	1,830 (4)	1,409 (6)				
2nd Q		0	279		298	329	473	68				
1st Ans		675	1,435mt 1,240l		1,456	1,278	2,156	820				

Source: Author's calculations based on CPI (Parliament 2002c)

**Table 7** CPI, M.C.Cardona (MCC), 6 Nov, 2002: Duration 20:45-00:10 = 3,5 hours

MCC	PRESIDENT	PSD	CDS-PP	COALITION	PS	PCP	BE	OV	OPPOSITION	Sub Total (Pres+Coal+Oppos)	WITNESS	TOTAL INQUIRY
Words spoken	<b>3,516 +200</b>	3,017	718	<b>3,735</b>	6,260	2,023	2,823	666	<b>11,772</b>	<b>19,223</b>	7,723	<b>26,946</b>
Interventions	<b>74</b>	20	7	<b>27</b>	42	21	15	2	<b>80</b>	<b>181</b>	43	<b>224</b>
1st Q		1049 (2)	459 (6)		2,242 (1)	300 (4)	1,929 (3)	590 (5)				
2nd Q		0	0		0	162	363	70				
1st Ans		540	305		1,295	180+	906	461				

Source: Author's calculations based on CPI (Parliament 2002d)

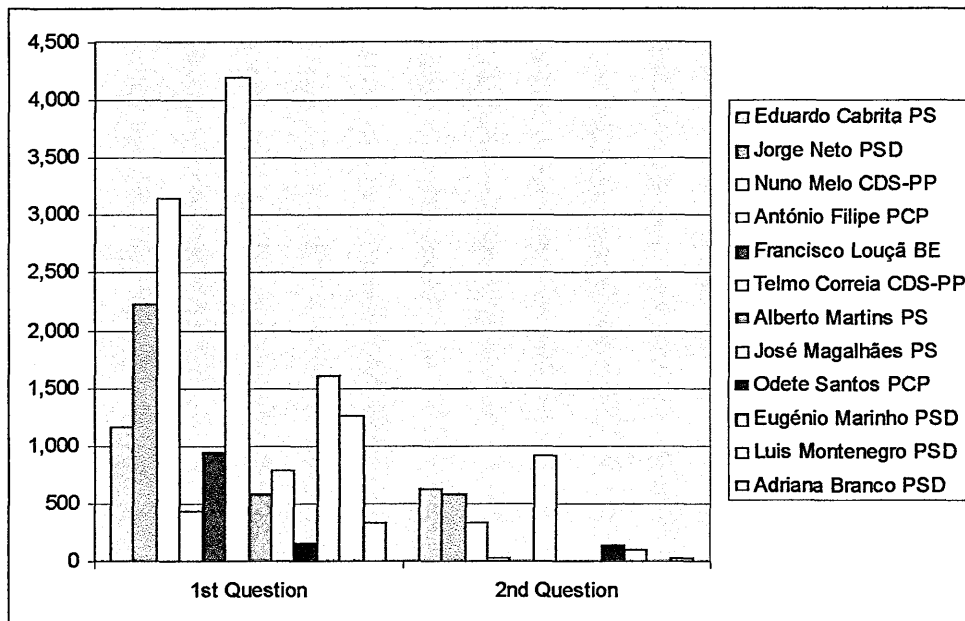
In Morgado's hearing (Table 5), the first PS question has 1,164w. Her reply consists of 5,468w. These facts make the entire inquiry look rather bizarre. The minor CDS-PP party of the coalition, which appointed Cardona as Minister of Justice, exploited this weakness to the utmost extreme. Two of their MPs (Teixeira de Melo/3rd Intervention, and Telmo Correia/6th Intervention, included in the Table 8 below) spent in total 7,337w in only two questions.

**Table 8** CPI, M.J.Morgado, The First 12 MPs Intervention-Questions

<i>Inter</i>	<i>Member of Parliament</i>	<i>Party</i>	<i>1<sup>st</sup> Question</i>	<i>2<sup>nd</sup> Question</i>
1	Eduardo Cabrita	PS	1,164	626
2	Jorge Neto	PSD	2,227	587
3	Nuno Melo	CDS-PP	3,138	334
4	António Filipe	PCP	423	31
5	Francisco Louçã	BE	946	0
6	Telmo Correia	CDS-PP	4,199	912
7	Alberto Martins	PS	577	0
8	José Magalhães	PS	790	0
9	Odete Santos	PCP	158	132
10	Eugénio Marinho	PSD	1,605	99
11	Luis Montenegro	PSD	1,260	0
12	Adriana Branco	PSD	331	31

Source: Author's calculations based on CPI (Parliament 2002b)

The following Figure 3 visualise the point in a much clear way. It globally reveals the extent of the methodological errors, democratically approved prior to the start of the CPI. It also confirms the usual tendency to politicise the inquiries into economically related crimes, particularly by two major parties MPs (PSD and PS) in this particular case.

**Figure 3** CPI, M.J.Morgado, The First 12 MPs Questions

Source: Author's calculations based on CPI (Parliament 2002b)

The coalition parties (PSD/CDS-PP) in particular, and the major opposition party (PS) made long introductions before setting the questions. The worst case was in Salvado's hearing (Table 6 as well as Table 9). The first CDS-PP's intervention-question consists of 2.979w long, something that exceeds a normal undergraduate essay. It prompted Salvado to answer in two stages. Firstly, he spent 1.435w to complain on methodological (identified as 'mt' in Table 6, 1<sup>st</sup> Ans. above) issues alone, plus 12.401w to actually reply, making a total of 13.836w. There seems to be no better way of providing both diffuse and escapist responses.

Although the rules so dictated, the opposition PCP's MPs refused to follow them. They refrained from any extensive introductions and comments, particularly Odete Santos. She was so sharp that Salvado could not contain himself: "*Senhora Deputada*, do not ask me such a question because I do not accept it" he commented.<sup>344</sup> Table 9 and Figure 4 below illustrate the point only partially because out of 1,585w attributed to the 1<sup>st</sup> Q is somehow misleading. In fact, O.Santos,

<sup>344</sup>See (Parliament 2002c).

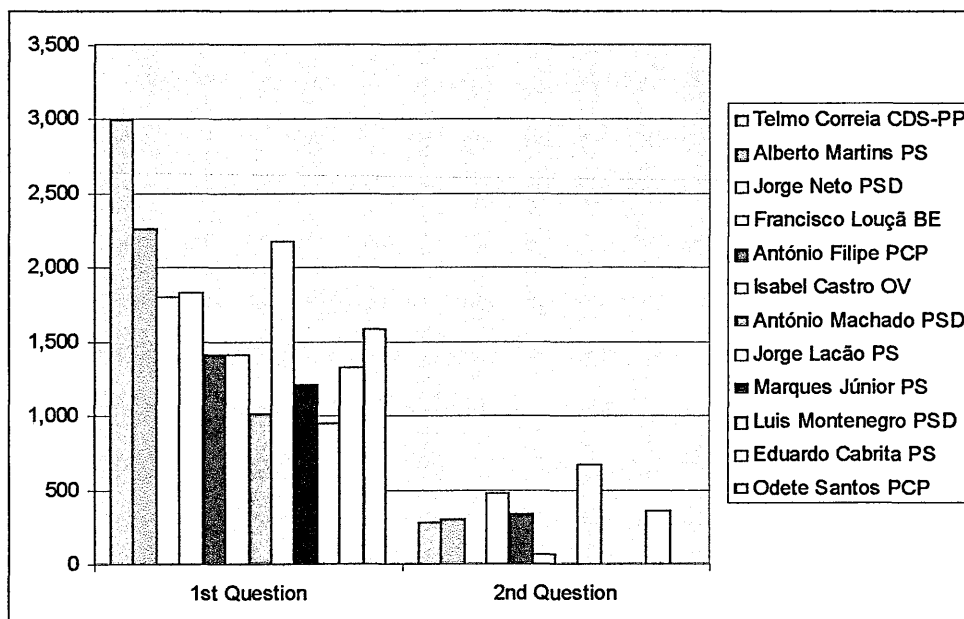
upon permission from the president broke the rules and asked 42 short separate questions, which give an average of 37w per question. So did her colleague A.Filipe.

**Table 9** CPI, A.S.Salvado, The First 12 MPs Questions

<i>Inter</i>	<i>Member of Parliament</i>	<i>Party</i>	<i>1<sup>st</sup> Question</i>	<i>2<sup>nd</sup> Question</i>
1	Telmo Correia	CDS-PP	2,989	279
2	Alberto Martins	PS	2,264	298
3	Jorge Neto	PSD	1,794	0
4	Francisco Louçã	BE	1,830	473
5	António Filipe	PCP	1,408	329
6	Isabel Castro	OV	1,409	68
7	António Machado	PSD	1,011	0
8	Jorge Lacão	PS	2,171	663
9	Marques Júnior	PS	1,205	0
10	Luis Montenegro	PSD	944	0
11	Eduardo Cabrita	PS	1,327	353
12	Odete Santos	PCP	1,585	0

Source: Author's calculations based on CPI (Parliament 2002c)

**Figure 4** CPI, A.S.Salvado, The First 12 MPs Questions



Source: Author's calculations based on CPI (Parliament 2002c)

When the author first analyzed this data, another sensitive inquiry was under way in England regarding David Kelly's death in August 2003.<sup>345</sup> The style and methodology were completely different. There, for instance, each question (250 in total) to the Prime Minister Tony Blair has an average of 20 words or less each and lasted only 2 hours. And the answers were equally concise. Lord Hutton, or any other person minimally qualified to lead a successful inquiry, would simply not approve the methodology or tolerate such evasive questions or responses.

Why then did this happen in the Portuguese Parliament? Is it the case that our MPs are less qualified? Certainly not. Neither politics nor the Parliament should be belittled in value or respect. It has much to do with irresponsible concrete behaviour left unchallenged which nurtures the highly popular feelings against politicians. Additionally, the lack of a proper democratic basis for the exercise of political power is also responsible which points towards the legislators' fault too. This Portuguese inquiry was poor because a few known MPs, under the leadership of the President elected to moderate the inquiry, chose an odd methodology, which was apparently "democratically" supported.

Therefore, bad politics dominated over good politics, so much so that minutes regarding their analysis of all the inquiries were not released to the public. The country was not able to know what each MP said regarding crucial matters of the case. This violates basic democratic principles regarding access of information. Individual accountability and adequate checks-and-balances did not exist, leaving some political parties free to behave against fundamental principles.

The working times and conditions became a needless marathon. Morgado and Salvado's hearings took over seven hours each with just one short break. The first day of hearings (Lopes and Morgado) started at 10.20am continuing until close to midnight making a total of nearly fourteen hours' work. The second lasted from 10.30am until 10 past midnight with a short lunch break at an unusual time (after 3 pm). What a distressful and unreasonable schedule - ideal to promote both exhaustion and confusion.

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<sup>345</sup>The inquiry was available in <http://www.the-hutton-inquiry.org.uk/index.htm>.

On comparative grounds, Lord Hutton's inquiry had a fixed and strictly observed schedule from Monday to Thursday, 10.15am to 1pm and 2pm to 4.15pm. The first phase lasted from August 11, till September 4; and the second from 15 to 25 September. In the first phase alone, 67 individuals were summoned to bear witness. Permanent reports were released during the inquiry. In the Portuguese inquiry, the majority party MPs simply refused to call any witnesses apart from the four mentioned individuals.

Lastly, in matters of format there is a criticism of the president's style and apparent partiality. Firstly, when Salvado went on and on (1.435w) complaining about methodology, the President did not tell him that he himself was the actual author of such a methodology.<sup>346</sup> Secondly he did not himself comply to the rules at all. The five minutes allocated for questions was ignored continuously, especially by the majority party members such as J.Neto (2.227w), N.Melo (3.138w), E.Marinho (1605w) and the worst of them all, T.Correia (4.199w) in Morgado's hearing (Table 8.).

The president waited an hour (8.461w) to warn Morgado to abbreviate her reply, which took a total of 11.079w with 13 interruptions, to answer the first PS question question by E.Cabrita (1.164w). But in Salvado's case, his similar appeal came only after 9.356w (excluded 1.435w of complaint about methodology) of a total of 12.401w used with 4 interruptions, to answer the first question (2.979w) by the CDS-PP, T.Correia.

Thirdly, the president should not have allowed Salvado to come so close in dictating the rules and mandate of the Commission, something yet unseen in previous inquiries,<sup>347</sup> not least because the previous two hearings (Lopes and Morgado) happened in the way that Salvado was now opposing.<sup>348</sup> His revealed sympathy with most of Salvado's views allowed further ambiguity to prevail to a point of almost considering the inquiry as a "forced" matter imposed by the proponents (opposition parties) and not by the Parliament itself.

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<sup>346</sup>The job of clarifying it was done much later by Odete Santos who patiently awaited her turn to speak. See (Parliament 2002c, O.Santos' first intervention).

<sup>347</sup>See the comment of one experienced MP in parliamentary inquiries, A.Filipe in (Parliament 2002c, penultimate intervention).

<sup>348</sup>As pointed out by A.Filipe - see (Parliament 2002c, first intervention).

The President unreasonably qualified the relevance of some questions posed by opposition MPs. For instance, when A.Martins (PS) in Salvado's inquiry sought clarification about a journalist's visit to PJ headquarters, the President minimised such an event as "*historieta*" (a 'little tale') and actually said it was irrelevant to the inquiry. But it was not because Salvado freely used it before.

Lastly, what is no doubt the most serious charge for which the President has some direct responsibility concerns the agreed secrecy of the inquiry. Just over twenty MPs meeting in closed doors in the Parliament buildings was not sufficient to prevent the media from quoting, with precision, excerpts of the inquiry that happened on the same day. Actually, the CDS-PP T.Melo was the first one to tell Morgado "not to be '*ingénua*' (naive) because later in the evening the television will tell everything". Such 'prophecy' was fulfilled. That is, confidentiality became utterly meaningless. Later on, when he had no right to speak, he switched on the microphone again (to make sure his words would be recorded), and let the Inquiry Commission know that Morgado's recent words have been aired by Lusa, the Portuguese News Agency, and on television. Morgado simply said "I did not abandon my seat nor did I use the telephone". But someone passed it to the media. Who? Why? This remains a mystery in the midst of unaccountable Parliament.

A moment later, another MP, A.Filipe of PCP interrupt to ask permission to pass on to Morgado a copy of the Lusa's latest news release. Osvaldo Castro of PS and Vice-President of the inquiry said "Fonte da maioria" (the source is the majority parties). The President categorically classified Filipe's interruption as "completely irresponsible", something which he did not explicitly say in the first case. Why? Another mystery perhaps. Looking back, the President took no action whatsoever to investigate the leak.<sup>349</sup> In fact, several news agencies published inside information in the following days too.<sup>350</sup>

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<sup>349</sup>Such a serious national problem was easily coped with, exactly as something very usual that causes no reaction. The Executive Editor of *Correio da Manhã* called the leak as "*sigilo de polichinelo*" and concluded that the Parliament's Channel could well compete with the Big Brother - see CM:08.11.2002 "*Inquérito Parlamentar: Concorde com tira-teimas entre Morgado e Salvado?*".

<sup>350</sup>For instance, Portugal Diário published twice on the same day (at 19:16 and 20:14 hours), that is, while Morgado was being inquired: PD:05.11.2002 "*Moderna: Portas e Cardona implicados*"; and in PD:05.11.2002 "*PSD e PP não acreditam em M.J.Morgado*". Cf. PUB:07.11.2002; and EXP:09.11.2002 (Online) "*Várias histórias, muitas versões*". F.Madrinha was right in saying "*O caso PJ, com a extravagante*



With regard to substance, all five individual types of responses occurred in this case. The Parliament solution began to be a “Re-Active” type. The first attitude is a defensive response. The representatives of both coalition parties reacted quite strong against any view likely to point towards illegitimate political interference. The re-active mood was equally shown by “guaranteeing” from the outset the blameless conduct of both the Minister of Justice and the Director of PJ.

The second attitude moves towards a more offensive approach of a “Blaming” type. Above all, they blame the opposition parties for wishing to “politicise” the case that purely curtails to matters of straightforward strategy which any PJ National Director is entitled to propose and implement at his own discretion. They also blame Morgado by accusing her of excess of visibility, and illegitimate self ambition.

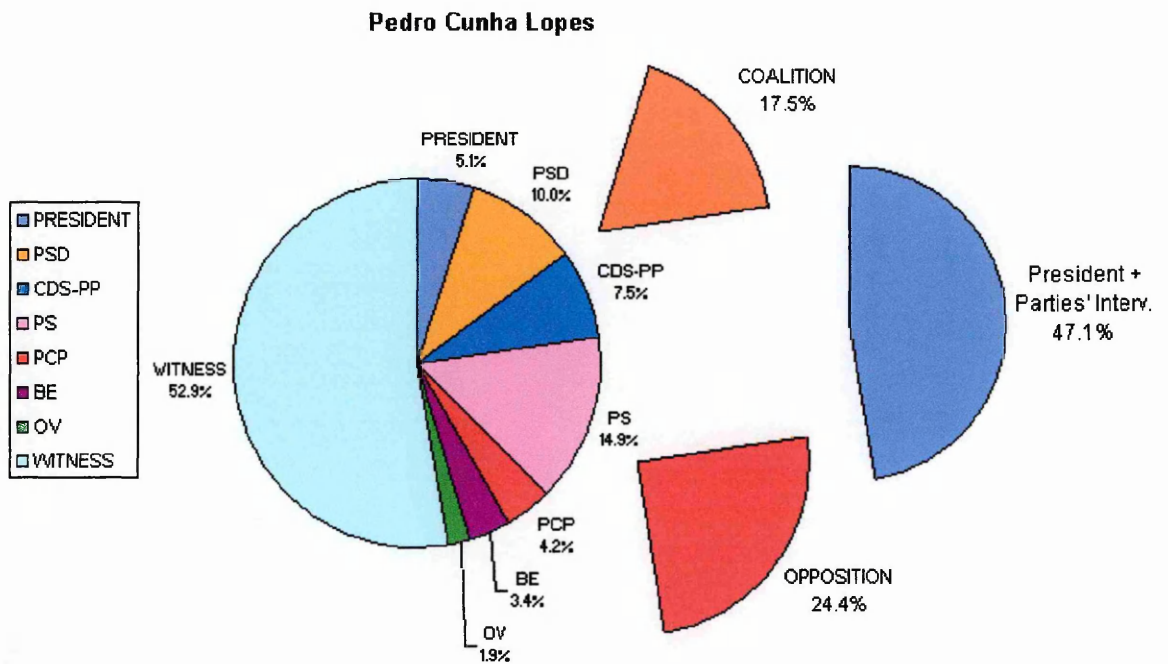
The third attitude has a “Moralistic” element which is meant to protect the “blameless reputation” of the PJ. Basically, the coalition parties accused the opposition MPs of disrespecting the hard work of more than two thousand PJ nationwide agents. Moralism confuses a tree with a forest. Such a moralistic protection pays no attention to potential abuse nor does it allow any independent inquiry because such action is previewed as an ‘attack’ on the entire institution.

The diffuse response type of attitude was a direct result from the wrong methodology. Salvado’s attitude was to divert attention to peripheral issues (methodology, fear of invalidating Moderna’s trial case of corruption, wiretapping). Morgado’s attitude was to elaborate on how corruption should be tackled. Altogether they all spent a lengthy time discussing false issues or matters not pertinent to the inquiry. In this way, critical questions were ignored and confused “successfully”. Because this is indicative of this cluster of response, the following four Figures reveal the extent of the political parties’ behaviour in using a significant part of the inquiry for their own purposes. In this way, emphasis centred on institutions too.

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*comissão de inquérito à porta fechada mas de onde saíram relatos minuciosos acerca de quase tudo o que por lá se disse, já foi suficientemente danoso para os dois magistrados envolvidos - isto para não falar dos deputados incontinentes.” - EXP:23.11.2002 “Equívocos mal esclarecidos”.*

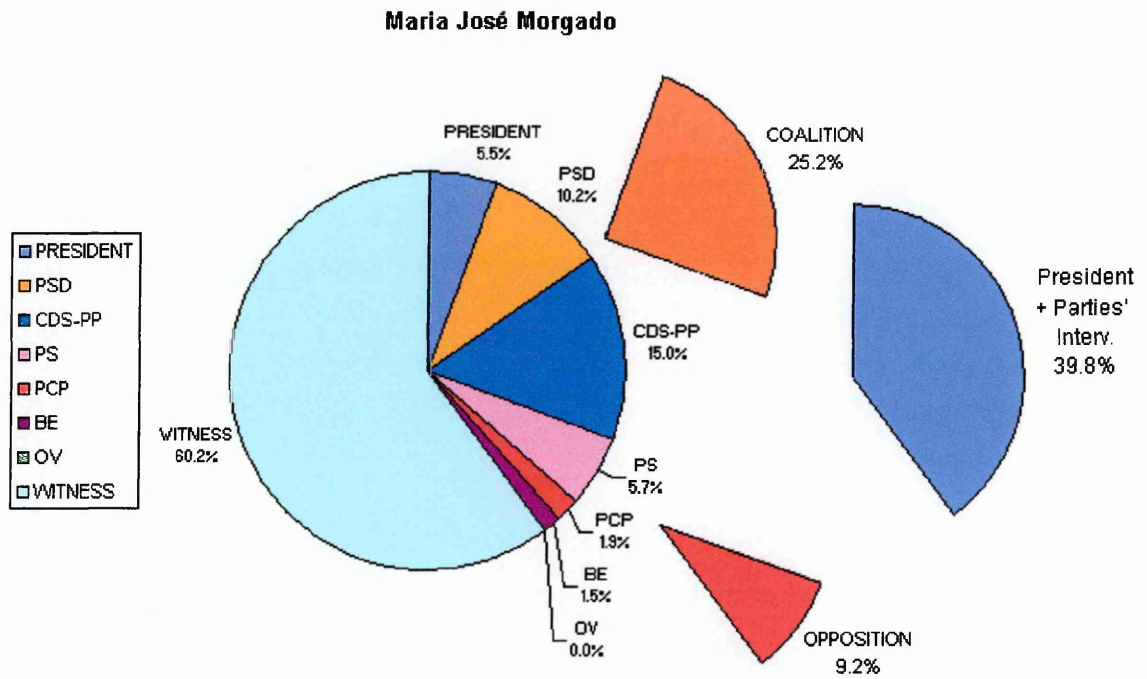
Figure 5 CPI, P.C.Lopes, President, P.Parties and Witness Interventions



Source: Author's calculations based on CPI (Parliament 2002a)

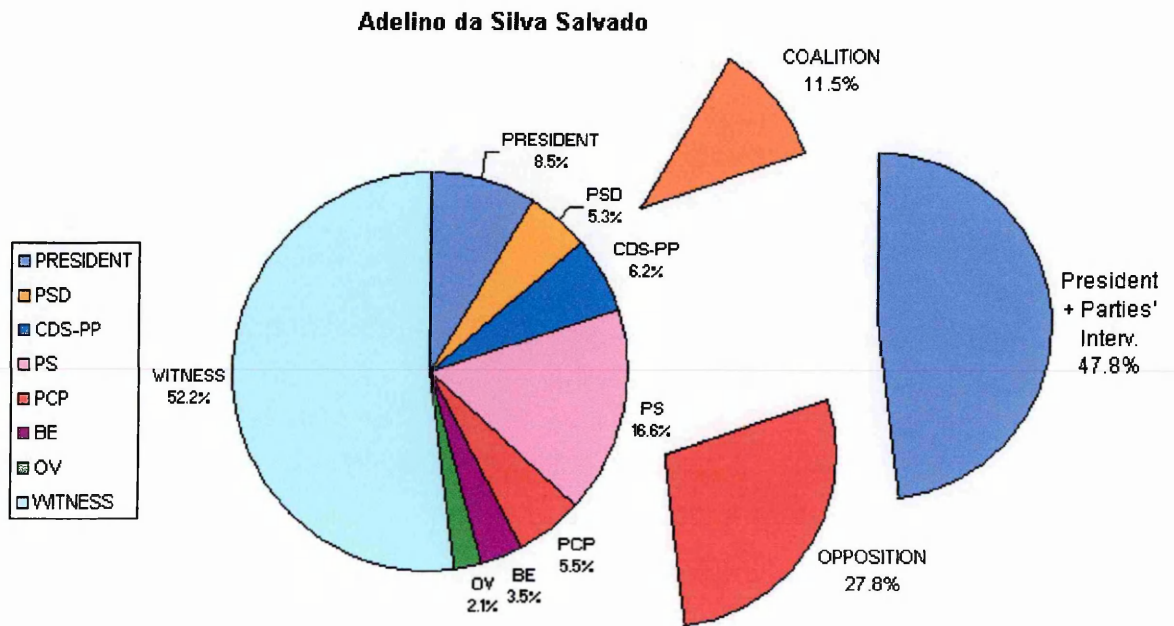
The Figure 5 above and Figures 6-8 below illustrate the time spent by each political parties, coalition versus opposition and finally President-parties versus Witness. These reveal the extent that inquires were 'politicised'.

Figure 6 CPI, M.J.Morgado: President, P.Parties and Witness Interventions

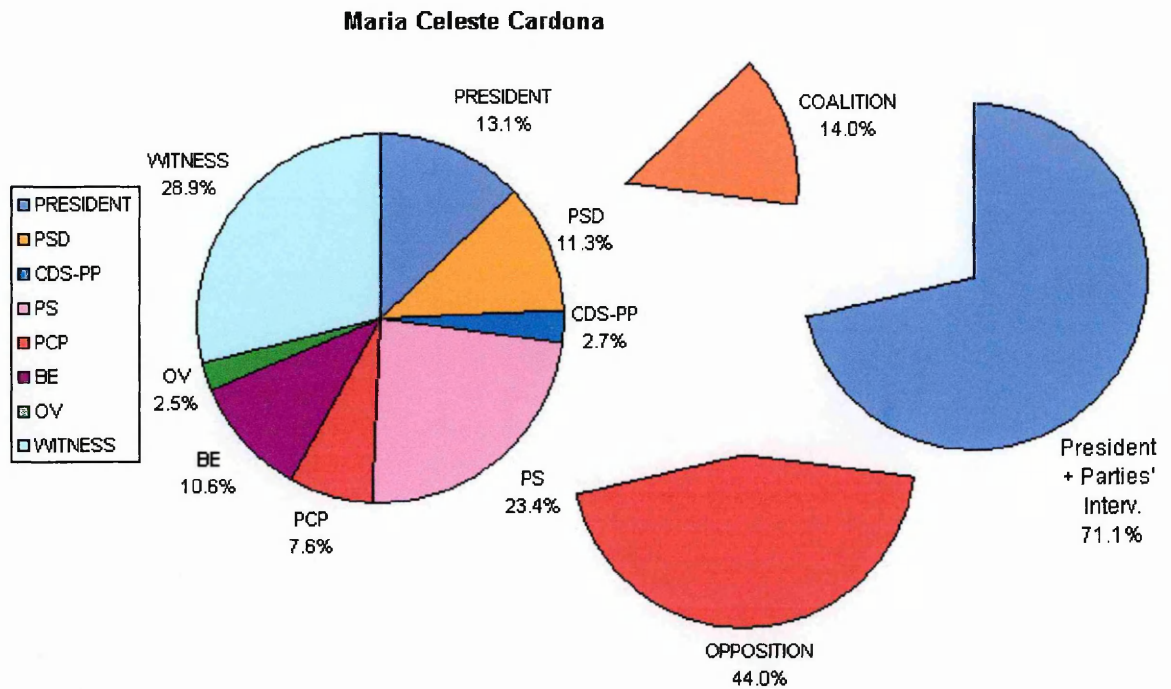


Source: Author's calculations based on CPI (Parliament 2002b)

Figure 7 CPI, A.A.Salvado: President, P.Parties and Witness Interventions



Source: Author's calculations based on CPI (Parliament 2002c)

**Figure 8** CPI, M.C.Cardona: President, P.Parties and Witness Interventions

Source: Author's calculations based on CPI (Parliament 2002d)

Lopes and Salvado's inquiries reveal an almost fifty-fifty situation, which clearly indicate that witnesses were not the main focus. Instead, party politics prevailed over the interest of the inquiry. The worst case is in Cardona's inquiry. Calling the Minister of Justice to give a testimony, at 3pm which only started at 8.45pm, and then saw MPs using 71.1% of the time seems rather odd. The opposition parties and the president himself wasted the Minister's time whereas the CDS-PP, which proposed Cardona as Minister of Justice, remained quiet (2.7%) leaving the task to the PSD instead (11.3). The coalition parties, and most particularly the CDS-PP manipulated Morgado's inquiry using together 25.2% of the time whereas the opposition reached its lowest point (9.2%) in all the inquiries. There is a rather consistent contrast between leading and opposition parties largely dependent on the witness of which Morgado's case is the obvious example (coalition/25.2 versus opposition/9.2%) whereas in Cardona's case the reverse happened (coalition/14.0 versus 44.0%). The main opposition PS was not a good example in any of the inquiries (14.9 – 5.7 – 16.6 – 23.4%). Likewise for the president who increases his time consistently (5.1 – 5.5 – 8.5 – 13.1%).

Lastly, having explored the four interrelated responses to the extreme, which added confusion and unnecessary complexity to facilitate an “Escapist” route without solving the problem and knowing that the environmental democratic structures are weak, the coalition MPs escaped by arbitrarily closing the inquiry. Common sense simply did not prevail. The opposition parties, being a minority, were legally unable to reverse the situation. Neither the President of Parliament,<sup>351</sup> nor the President of the Republic,<sup>352</sup> theoretically the source of guarantee for “the proper functioning of the democratic institutions” (Constitution, Article 120) resolved the problem, and the case was arbitrarily dumped as if democracy were entirely powerless. Since then, there has been talk of reforming the Commission of Inquiry’s rules, but as of June 2006 there have been no concrete changes approved.<sup>353</sup>

To sum up, this case illustrates how individuals representing key institutions such as political parties, government, Parliament, and PJ among others appear to pervert the normal cause of justice in matters of economic-related crimes, thus perpetuating a wider sense of illegitimate immunity in association with impunity - obviously not by advocating corruption but by astutely obstructing opposition to it.

#### 7.4 Three Institutional Types of Responses

This second cluster represents three models of institutional response by means of legislation, disciplinary and organisational measures. These reflect a further stage beyond the initial individual responses analyzed above. Due to distinct characteristics of each of these responses the analysis is done separately.

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<sup>351</sup>He was away in an official visit to Hungary, and delegated specific comments to Leonor Beleza, the acting President then - See VIS:08.11.2002 (Online) “Terminou investigação parlamentar ao caso PJ”.

<sup>352</sup>He did call all party leaders to his palace but to no avail - see CM:09.11.2002 “*Presidente chama todos a Belém*”. Before, he made the following specific comments “*As comissões parlamentares têm funcionado mal. Há que tirar as necessárias lições para que o seu funcionamento melhore e sejam mais eficazes, porque só dessa forma se pode prestigiar o Parlamento.*” in CM:08.11.2002 “*PR descontente com Comissões Parlamentares*”. The President also called Mota Amaral, the President of the Parliament to Belém - VIS:12.11.2002 “*Sampaio recebe Amaral*”.

<sup>353</sup>See PUB:11.11.2004 “*Parlamento pondera voto secreto nas comissões de inquérito*”; DN:20.06.2005 “*Inquéritos parlamentares estão nas mãos de Sócrates*”.

### 7.4.1 Legalistic Response

A legalistic response consists of a strict or literal adherence to the existing laws while largely neglecting other critical interrelated aspects deriving from wider socio-cultural, political and economic contextual factors. It also consists of either changing, replacing, or even creating new laws altogether. This behaviour aims to assure the public that governmental leaders are deeply concerned with the eradication of corruption.

All Portuguese parliaments in recent times have engaged in this, making it by far the most recurrent and inefficient type of administrative response. L. De Sousa is not alone in calling this a rather paradigmatic case in which the “law has regularly been perceived as a substitute for ethics” in what turn out to be no more than “cosmetic legislative reforms”.<sup>354</sup>

This is certainly the case with the former anti-corruption agency - the High Authority Against Corruption (1983-92), created by the *Bloco Central* (centre-right/left government, PS-PSD coalition, 1983-85) in October 6, 1983 through Decree-Law 369/83. From this point onwards, consider the following laws:

Two months later, the *Resolução do Conselho de Ministros* (RCM) (D.R. 292, II Série, 21.12.1983) appoints the High Commissioner. Through the *Decreto Regulamentar 3/84* (January 12, 1984) the nature of the High Authority is further explained and matters of recruiting personnel are covered in more detail. A year later, Decree-Law 327/84 (October 12, 1984) aims to clarify some doubts in the two previous laws concerning personal status and authority. The RCM 21/85 (May 17, 1985) has the sole purpose of instructing all official bodies (no specification whatsoever) to cooperate - willingly and speedily whenever solicited by the High Authority.

When C.Silva became PM firstly of a minority government (1985-7) followed by two consecutive majority periods (1987-91 and 1991-5), there also appeared additional laws. On April 1986 the RCM 31/86 dealt again with matters of career recruitment. The *Resolução da Assembleia da República* 15/88 of July 30, 1988 appointed the same High Commissioner chosen more than

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<sup>354</sup>See (Sousa and Araújo 2004); and L.Sousa, PUB:07.10.2001 “*Legislar não basta para combater a corrupção*”. Many others have acknowledged this enormous appetite for creating new laws without solving critical ethical issues. Cf. E.Dâmaso, PUB:30.05.2002 (Editorial), “Parreirão e Arnaut”.

four years earlier. The Decree-Law 446-A/88 of December 9, 1988 partially reformulated the earlier personnel norms set out in Law 327/84. In addition it dealt with routine matters of office space within the House of Parliament and official identity cards for its members.<sup>355</sup> Then, a new Law 45/86 of October 1, 1986 was meant to update as well as to replace the original three laws, namely Law 369/83, Decreto Regulamentar 3/84 and Decree-Law 327/84. In addition, it stated the need to regulate again, within sixty days, the High Authority Commission and demanded another nomination of the High Commissioner within ninety days.

The entire on and off regulation process followed again. The location of the office moved from the Presidency of the Council of Ministers to the House of Parliament. And eventually in 1992, following a debate in Parliament, a decade of legislative history ended with Law 26/92 on August 31, 1992 that extinguished the High Authority altogether. It was then seen as an unnecessary duplication and something unfit for a democratic society which they thought already had good mechanisms for addressing corruption. Therefore its task was re-directed to the PJ within which a special anti-corruption unit was created.<sup>356</sup>

Without going into a detailed legal analysis of the various changes in the Organic Law that regulates the PJ, it is noticeable that the average length of service of a national deputy director in charge of the anti-corruption unit is only twenty months.<sup>357</sup> This factor alone causes all sorts of disruption and anomalies. So legal changes concerning personnel, plans and strategies occurred with short intervals, thus becoming the recurrent key pattern that obstructs any possibility of implementing a successful and consistent anti-corruption project.

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<sup>355</sup>It is not uncommon to see top political and administrative leaders more concerned with mundane matters of career, office, buildings, cars and even mobile phones. The same happened within the PJ under Salgado's leadership. According to both Lopes and Morgado, the National Director and the Minister of Justice were more preoccupied with these little "cosmetic" things. See (Parliament 2002a) concerning car registration plates, and (Parliament 2002b) regarding mobile phones and cars.

<sup>356</sup>A similar process is also happening with the PJ's special anti-corruption agency. Initially designated as *Direcção Central de Investigação de Corrupção, Fraudes, e Infracções Económicas e Financeiras* - DCICFIEF, created by Decree-Law 295-A/90 on September 21, 1990, it was then called DCICCEF. Some new legal norms were introduced via Law 34/94 on September 29, 1994; Decree-Law 299/94 on December 13, 1994; and Decree-Law 275-A/2000 on November 9, 2000.

<sup>357</sup>According to R.C.Pinto, VIS:10.04.2006 "Sem meias palavras".

This intermittent legislative action surrounding the High Authority was largely inadequate. The first set of reasons is found within the legislative body itself. Firstly they intended generally to moralize the entire administration without first creating a wider consensus amongst all political parties. The first law which created the High Authority was a Decree-Law (government only) put forward by the fragile coalition government. It was not a Law of the actual Parliament itself.<sup>358</sup> Thus it evaded political debate in the first place. Therefore, the High Authority somehow lacked political legitimacy from the very start.

It also lacks solid foundations upon which to build an anti-corruption unit because politicians approach it mainly as a legal issue with clear disregard of key political, economic and administrative concerns, particularly those related to monitoring agencies - a vague concept in a critical moment when the re-privatisation of banks and insurance companies began to take place. Political mistakes made at the start of the 1974 revolution, namely nationalisation of private activity, were about to be repeated at the start of new re-privatisation period simply because no minimal political foundations were laid beforehand.

And thirdly, the special unit was largely experimental in nature rather than a decisive, well-conceived initiative. That justifies the ongoing regulation on trivial matters regarding career status and office location when critical issues of defining concrete goals, priorities and timings seem absent altogether.<sup>359</sup>

The other set of reasons covers matters of methodology and efficacy which left the High Authority with bare minimum of conditions needed to succeed. The agency did not have comprehensive powers at all. It had only limited administrative powers set in a context largely dominated by secrecy and self-defensive corporate attitudes with highly ineffective control

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<sup>358</sup> Abel Barreto wrongly affirms that the High Authority was created and extinguished by the Parliament. Only the latter is true (Law 26/92). See (Barreto, Abel. 2005).

<sup>359</sup> See for instance critical words which are vaguely expressed in the introduction of the first Decree-Law (368/83): suspicion of corruption must be clarified "with greatest brevity, giving immediate and full accountability to public opinion". Never in this law or subsequent ones are such goals specified or measured. The following laws include key revealing words of uncertainty such as "The innovative characteristic of this institution demands precautionary reserves and confers on High Authority a greater level of experiential exercise" (see *Decreto Regulamentar* 3/84). Such behaviour led to the need to call all state institutions to cooperate, with a sense of priority and urgency, as if the earlier laws had no power in themselves to demand such conduct (see *Resolução do Conselho de Ministros* 21/85).



mechanisms right across the public sector. Thus the pathetic law of the Council of Ministers (Resolution 21/85) demanding an urgent “duty of cooperation” as if such a thing could ever be achieved through legislation. They completely failed to address the cultural incentives that perpetuate the lack of transparency and accountability across state and private institutions alike.

Secondly, such abortive legislation is based on the traditional slogan of “divide and rule”. In a Portuguese saying, the plethora of legislation resembles a “*manta de retalhos*” - patchwork. The High Authority depends on “genuine cooperation” from a number of external and autonomous bodies so that it is simply unrealistic to expect a successful administrative inquiry. It is interesting to note that those bodies were never identified either but certainly included the tax officers, banks and a multitude of inspectorate offices in various places. Each argues its own case to the detriment of a national cause. So, as experiences elsewhere clearly reveal, corruptors will not give in voluntarily and rarely cooperate in investigations, particularly administrative ones (Passas 1997; della Porta and Vannucci 2000).

Thirdly, the agency was supplied with practical and personnel means through a hiccup process. That is, three years after its constitution, basic rules regarding personnel recruitment were still appearing on an intermittent basis. And finally, the High Authority did not have any criminal powers of investigation whatsoever. It totally depended on police cooperation. And three branches of police, with perceived rivalry disputes between them, made the task for the newly born High Authority doubly difficult. After all, it took almost a decade for the High Commissioner to perceive the structural weaknesses of his own organisation, so that when he finally requested more powers, the government simply chosen to terminate its mandate.<sup>360</sup> In practice, these were ten wasted years of anti-corruption experience.

In summary, the legislation is weak, irregular, dispersed and highly confusing both conceptually and strategically. There never been a tendency to create a unified anti-corruption

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<sup>360</sup>In an apparently remarkable speedy way, the proposal Law 199/VI which favoured the extinction was submitted, debated, approved generally as well as specifically, and the final vote took place in a single day of July 17, 1992 with votes in favor from PSD, PS and PSN; the abstention from PCP, Os Verdes and two independent Members of Parliament (Mário Tomé and Raul Castro); and a single vote of discordancy from Leonor Bezeza - See (Barreto, Abel. 2005).

code.<sup>361</sup> Thus the continuous appeal from various sources and individuals to reform the law altogether in a way that gives consistency and breath to the an anti-corruption agency and strategy.<sup>362</sup> This partially explains why the “small fry” remain the favourite target of economic crime investigation.<sup>363</sup>

This paraphernalia of legislation is not unique to the an anti-corruption agency. It is repeated in other relevant ethical fields.<sup>364</sup> For brevity’s sake we simply refer to three examples namely the disclosure of assets by politicians<sup>365</sup>; the financing of political parties,<sup>366</sup> and the electoral system.<sup>367</sup> Taking them all together, it is interesting to see how the government of C.Silva approved, in the very last days of his ten consecutive years in office, a rather abrupt set of moralising laws widely but ironically perceived as a “transparency package”.<sup>368</sup> It was an obvious cosmetic exercise imposed unilaterally through the abusive use of majority parliamentary status. That following governments had to either dismiss or alter them, again and again, without achieving any basic level of consistency either.

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<sup>361</sup>The problem of dispersed laws affects other critical fields such as forestry and labour policies. The latter has recently been unified by former Minister B.Félix (see his article written on the same day when the Labour Code was approved in DN:01.12.2003 “O código de trabalho” whereas the former, despite the Basic Law of Forestry, Law 33/96 of August 17, 1993 it did not assemble together all the dispersed laws that existed for over a century ago - see Vital Moreira, DE:21.08.2003 “Um código florestal”).

<sup>362</sup>See the appeal of President Sampaio in DE:24.04.2003 “*O caminho da reforma imposta pelo Presidente*” by J.Andrade and M.Baptista; M.M.Carrilho, DN:10.10.2001 “*Um novo pacto*”; P.A.Sande, DN:04.05.2002 “*Reformar um país*” and in DN:17.03.2003 “*Azuis como a neve*”;

<sup>363</sup>See B.Santos in (Maxwell 1986, 188).

<sup>364</sup>For a good general legislation overview see (Maximiano 1997).

<sup>365</sup>The first is Law 4/83 of April 2, 1983 which was altered by Law 25/95 and further regulated by *Decreto Regulamentar* 1/2000 of March 9, 2000.

<sup>366</sup>The legislation started with Law 72/93 of November 30, 1993 that changed in 1995 (Law 27/95), in 1998 (Law 56/98) and in 2003 (Law 19/03). Despite these, there have always been claims for a change. See among others R.Vaz, DE:14.01.2003 “*Pela transparência*” and in DE:21.05.2003 “*Populismo ou corrupção?*”; H.B.Moura, DE:08.01.2003 “*O financiamento partidário*”; and J.P.Guerra, DE:23.01.2004 “*Ligações perigosas*”.

<sup>367</sup>P.Pereira, PUB:11.01.2002 “*Os partidos não são eternos*”; Jorge Miranda, PUB:20.01.2002 “*De novo, sobre a reforma do sistema político*”;

<sup>368</sup>It basically consist of four laws issued in August 1995: Law 24/95 which altered the Statutes of Members of Parliament; Law 25/95 which altered Law 4/83 regarding the declaration of wealth by politicians; Law 27/95 which altered Law 72/93 concerning the financing of political parties; and Law 28/95 which altered Law 64/93 dealing with the incompatibility rules for political office. For a brief commentary on these laws see (Victoria 2005; Maximiano 1997, 25). Cf. F.B.Costa, IND:08.01.1999 “*Financiamento escondido... com cauda de fora*”; H.Monteiro, EXP:22.01.2000 “*O vírus da transparência*”.

According to Tavares and Ferreira the multitude of regulation also affected the highly critical aspect of financing the political parties. It suffers from complexity, secrecy and irresponsibility.<sup>369</sup> This legal paraphernalia led R.Maximiano, himself a former member of the High Commission, to affirm years later that “national legislation is the first obstacle in the fight against corruption”.<sup>370</sup> The anti-corruption laws then and now suffer from chronic problems without addressing the root causes, thus making corruption largely untouchable still.

The same is true with regard to supervisory institutions. It is remarkable to see the actual comments of one of the Presidents of the Constitutional Court which is responsible to oversee the politician’s declaration of assets. When asked if the Court has some means to monitor the veracity of declarations he replied “It does not have nor does it need to have”. So the journalist concluded that Portugal is confronted by a “simulacrum of transparency”.<sup>371</sup>

#### 7.4.2 Corporative Response

This model seeks, first and foremost, the interest of one’s own corporate body as well as of its individual members over and against everything else including wider public interest. This functions as a solid protective wall even when allegations of corruption are held against one of their members. Representatives of the corporate body use its influence to either directly protect the accused individual or introduce mechanisms most likely to prevent accountability and transparency. This is quite common particularly in regard to economic deviance crimes.

As already noticed, Portugal was constitutionally regarded as a “*corporative state*” during Salazar’s dictatorship and Caetano’s interlude. Some of its effects remain influential and even developed into *neo-corporatist* forms of various kinds. The economist J.S. Lopes sees a striking

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<sup>369</sup>J.Tavares and P.Ferreira, PUB:14.05.2001 “*Quem paga a democracia?*”. For a good background information regarding the legal basis of political parties’ finances see (Costa 1998).

<sup>370</sup>See his interview in EXP:24.12.1999. Cf. V.Moreira in (AACC 1991, 80–83); L.Sousa, PUB:23.12.2001 “*A democracia chega amanhã*”; C.Almeida, Director of DCIAP in DN:05.07.2006 “*Lei impede combate à corrupção*”.

<sup>371</sup>See interview with Cardoso da Costa, President of Constitutional Court in PUB:21.04.2000:8-9, and three years later in DE:04.02.2003 “*Tribunal Constitucional recusa aplicar sanções*”. See also the opinion of another President, António Maurício in PUB:05.02.2005 “*TC não se dá bem com papel*” in which he said that the Court cannot monitor the declarations too. Cf. An interesting article by S.Sapage and C.Teixeira, VIS:30.06.2005 “*Eles ganham mais que o Presidente*” which notes that a vast majority of declarations are not updated annually as the law demands.

difference between these two periods. Having lived half his life under a dictatorship he argues that the State then effectively ruled over corporations whereas now they actually obstruct governments from fulfilling their functions.<sup>372</sup> But, as Vasconcelos puts it, “Portugal is full of old and new *corporativisms*. In this way we go nowhere” he claims.<sup>373</sup>

The following example illustrates the extent to which politicians (with or without political parties) have “corporately” and inadequately responded to allegations of corruption. According to Marques Mendes, an experienced politician, the parliamentary immunity scheme, as applied in the last decades, largely accounts for the current discredit of the Parliament and democracy.<sup>374</sup> But illegitimate immunity cannot be confined simply to parliamentary affairs. There is also the electoral immunity<sup>375</sup> in addition to what one may perceive as functional immunity. The last refers to a variety of practices that enable someone, somehow, somewhere to be almost untouchable without any explanation being given whatsoever at the time.

In a well publicised case, António Cruz (PSD) was apparently involved in an allegation of corruption in Águeda prior to being elected as an MP. It took a long time for the Ethics Commission to decide on this case.<sup>376</sup> And when they did, the decision was inconceivable and even

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<sup>372</sup>See his interview in DE:15.06.2003. Cf his views on the effects of corporatism upon the economy in (Barreto, A., *Situação social*, 1996, 338–340).

<sup>373</sup>J.C.Vasconcelos, VIS:12.06.2003 cited in DE:12.06.2003. Cf. J.Aguiar, EXP:06.02.1999 “*Corporativismos em democracia*”; and (Sousa 1999, 6–7).

<sup>374</sup>See DD:23.06.2003. He favours a drastic change in PPS’s statutes. But this lacks consistency within Mendes’ own party. For instance, Guilherme Silva (PSD bench leader in Parliament) conveyed an ambiguous message concerning the immunity of politicians - see PUB:24.06.2003 “*PS e PCP apontam contradições entre Governo e PSD*”; PUB:28.05.2003 “*Braço de ferro entre direcção do PSD e Cruz Silva*”. On the other hand, M.J.Morgado’s advice is for the Parliament to apply an automatic loss of immunity to anyone being investigated on charges of bribery and traffic of influence - see DD:05.06.2001 “*Falar claro*” by F. Madrinha; likewise thinks the Bloco de Esquerda (PD:22.01.2003 “*BE quer que deputados investigados ‘abandonem cargos’*”); and most recently, the Council of Europe - CM:10.08.2005 “*Greco - Mais rapidez... Corrupção deve retirar imunidade*”, which requested a change of law until December 31, 2006. Cf. also VIS:28.08.2003 “*Portugal corrupto*” by S.Sapage; and CM:29.09.2005 “*Crime económico*”.

<sup>375</sup>The most extreme case is F.Felgueiras who escaped being imprisoned by flying to Brazil. Two years later returned to Portugal as an independent candidate to local election thus acquiring immunity status in a complex, even puzzling, case for the public.

<sup>376</sup>According to PUB:22.03.2003, the judge requested urgency in the withdrawal of immunity. It took a month for the Commission to decide. Such a delay can so easily disrupt or compromise the efficiency of the criminal investigation.

regarded as anti-constitutional.<sup>377</sup> The Parliament lifted his immunity which allowed him to give evidence only in writing. And worst of all, it forbade the court to take any measure apart from confining him to a “term of residence”. That is, the judge could not imprison him at all. This fits the *corporatist* model of response for the following reasons.

The PSD party used its influence in Parliament in general and within the Ethics Commission in particular to protect the interests of one of its party members by neglecting the interests of the nation in a case that had nothing to do with the actual exercise of political or parliamentary activity. It is rare for an MP to be charged with corruption and therefore this case is of great significance for anti-corruption analysis. Irrespective of the case’s outcome, the PSD clearly obstructed the course of justice by delaying it, as well as by perverting the law. PSD also took illegitimate advantage of its majority position in government. Worth noticing is the fact that V.J.Silva, a couple of months later, and while still a member of the Ethics Commission in Parliament, went public to announce his desire to abandon it. He argued the Commission was heavily *corporative* in its rather blind defense of the party’s own members.<sup>378</sup>

One recalls that Cruz’s case took place prior to his being elected. Therefore immunity should not have been used for past episodes. Otherwise, this conduct seems to confirm Parliament as a safe haven.<sup>379</sup> As it was widely noticed then, the law clearly obliges Parliament to lift immunity status as soon as someone is charged with a crime for which the penalty extends to three years of imprisonment. This case fitted that category too but was not applied consistently. The idea of imposing conditions on the court is beyond justification in a democratic context. For the public, this causes disbelief, not least because the party might have benefited financially.<sup>380</sup> And finally, there seems to be no effective separation of powers. That is, politicians make rules regarding

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<sup>377</sup>See CM:17.04.2003 “House of Parliament makes unconstitutional decision”; PUB:13.05.2003 “*Situação de Cruz Silva sem alterações*”.

<sup>378</sup>See PUB:12.06.2003 “V.J.Silva wants to leave Ethics Commission”. The context refers to Edite Estrela’s case in the Ethics Commission which disappointed Silva.

<sup>379</sup>Former PS Minister of Justice António Costa in the (hit) of parliamentary debate affirmed that if it is serious to fly to Brazil (referring to PS Felgueiras case), even more so is it to run away to the House of Parliament to evade justice (in reference to António Cruz of PSD) - DN:16.05.2003 “It is more serious to flee to the House of Parliament than to Brazil”.

<sup>380</sup>See DN:27.05.2004 “PSD admits having cheques from Cruz”.

themselves. In practice it makes accountability and transparency almost impracticable because they also supervise themselves. In summary, this illegitimate protection, supposedly to safeguard the freedom and rights of politicians, seems to pervert the course of justice.

Other political examples are Paulo Portas' alleged participation in the Moderna University case via Amostra; Fátima Felgueiras' disappearance to Brazil and her return two years later, Isaltino Morais who resigned from a ministerial position,<sup>381</sup> and Avelino Torres.<sup>382</sup> Also relevant is the above mentioned case of dismissals in the PJ.<sup>383</sup> They all merited wide media coverage.

Outside politics, the multiple football cases are notoriously known for their obvious *corporative* attitudes. When Morgado publicly accused some football associations and clubs of being heavily corrupt, their leaders reacted strongly including Valentim Loureiro, the League's President. Later when he was himself involved in the "Apito Dourado" corrupt case alongside others, the public began to believe that some justice was finally underway. Despite much publicity the case was watered down and no one now thinks that there will be any exemplary punishment. The police, Public Prosecutor and the Justice system seem powerless to act swiftly and promptly against these apparently powerful and often self protected corporations. Other similar *corporative* attitudes include professional bodies such as doctors<sup>384</sup>, and lawyers<sup>385</sup> to mentioned just a few.

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<sup>381</sup>Morais left Durão Barroso's government on charges of tax evasion. Then he bypassed his own PSD party which refused to support his return to Oeiras Municipal Borough. But his popularity granted him a majority election again in 2005 even when the legal case had not been dealt with.

<sup>382</sup>An apparently compromising article published by VIS:11.03.2004 "And we see them go by" by M.Carvalho says that despite many judicial processes no one stops the man who rejoiced to have bought the PJ for 500 thousand escudos and evaded taxes - "For years the complaints that entered the Court of Marco de Canaveses against Avelino Ferreira Torres were filed (or dismissed)". Cf. DN:25.01.2003 "Do azul dos sacos ao verde dos terrenos"; and P.I.Carvalho, JN:25.01.2003 "CDS-PP mantém confiança política".

<sup>383</sup>J.A.Lima in his weekly column heavily criticises the former President of Parliament M.Amaral for the inconclusive inquiry commission. He goes on to accuse the coalition parties of acting anti democratically in favour of a "dictatorship of the majority" - EXP:16.11.2002 "altos & baixos".

<sup>384</sup>See the views of A.B.Veloso, EXP:01.08.1998 "Os médicos e a sua Ordem"; of E.Rangel, CM:31.05.2003 "O último tabu do regime"; F.A.Silva, DN:27.08.2003 "Faltam médicos, sobram bons alunos"; F.Madrinha, EXP:19.11.2003 "Contra a Ordem"; and F.S.Cabral, DN:25.11.2003 "Médicos".

<sup>385</sup>See H.Garrido, DE:30.01.2004 "Os advogados instalados"; P.Oliveira, JN:25.01.2003 "Notícias de Portugal"; and V.Moreira, PUB:23.07.2002 "O exemplo da Ordem dos Advogados".

### 7.4.3 Replacement Response

Similar to the legalistic model, this response, instead of reformulating or creating laws, either replaces problematic institutions or creates new parallel ones without addressing its original fundamental root causes too. It is the same as changing the outside labels only but the personnel, habits and structures usually stay almost the same and without any reasonable internal administrative control mechanisms to safeguard corruption. Such an elusive process often succeeds to assure the public that something is being done.

While the international exhibition of Expo98 was taking place, JAE's case reached the news with the usual suspicion between private construction companies and political parties. The former Minister Cravinho, who is the PS's most outspoken person on matters of corruption decided to close down the historical JAE in 1999. Three brand new public companies<sup>386</sup> replaced it while an inquiry over the allegations of corruption was going on.<sup>387</sup> Without dealing with any convincing case of corruption, the solution of merely replacing the institution had taken place already.

Such a decision, backed by the Council of Ministers, did eventually cool down the overall climate of suspicion among the public.<sup>388</sup> And in such a process, there were no changes of personnel except at leadership levels.<sup>389</sup> But none of the previous leaders have been accountable either. Meanwhile, in the spring of 2001 a major tragedy occurred when the Hintz Ribeiro bridge fell down at a time when a tourist bus and three cars were crossing it, leaving a total of 59 people dead.<sup>390</sup> This event immediately raised concerns over the quality of maintenance work by the former JAE including those three replaced institutions. It is highly likely that an illegal extraction

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<sup>386</sup>They were the Instituto de Estradas de Portugal (IEP), Instituto para a Construção de Obras Rodoviárias (ICOR), and Instituto para a Conservação e Exploração de Redes Rodoviárias (ICERR).

<sup>387</sup>See VIS:15.03.2001 "*Castelo de Paiva - Ao sabor das correntes e das marés*" by A.T. Ribeiro and R.C.Pinto; VIS:07.06.2001 "*A idade do Ferro*" by F.Luís.

<sup>388</sup>As usual, "small-fish" were bothered only. See EXP:13.02.1999 "*Casos sob investigação - JAE: corrupção só atinge funcionários*".

<sup>389</sup>To add an element of complexity and even perhaps deliberate confusion in the analysis of critical matters of accountability lies the fact of a short-lived leadership. For example in 15 years (1986-2001) there were 8 Presidents in charge of the former JAE and subsequent three Institutes created by Cravinho in 1998. See DD:13.04.2001. In a comparative basis, criminologist Moita Flores recalls that JAE had 8 presidents during 1927-1996 and equally 8 for 1996-2003 - CM:14.09.2003 "*As pontes do inferno*".

<sup>390</sup>See chronology of the events in CM:18.04.2006 "*Tragédia de Entre-os-Rios*" by J.A.Miranda.

of sand caused some structural damages to the 1888 bridge. Others pointed out that the three new companies were not formally prepared to carry on with general maintenance tasks.<sup>391</sup> In actual facts, there were many unclarified suspicions about the case.

At least, there was an immediate suspension of extraction for the following three years (2001-4).<sup>392</sup> But as usual, the official accident inquiry took more and more time and five years later there has been no proper accountability yet. However, one judge attributed the cause of such a disaster to bad weather due to heavy rain at the time. In another parallel situation, a court case started in April 2006 involving six former engineers.

But the saga of closing and opening continued, as soon as Barroso took office as PM. His government closed down all three of the above created companies, in 2002. They merged them into one company again thus calling it *Instituto das Estradas de Portugal* (IEP). Two years later, its status was changed thus becoming an “*entidade pública empresarial*” - (a public business entity) with similar designation “EP - Estradas de Portugal”.

This represents an inadequate response. The habit of setting up a new organisation, thus giving the impression that everything is new and deserves another chance, appears irresponsible on several grounds. To start with, a sensible question is if nothing true comes out of the immense cloud of suspicion, why then close down these institutions? Why interrupt the extraction of sand just for a limited number of years? What justifies the creation of new ones, using the same personnel and procedures?

The problem it raises is simple. Starting afresh without dealing with problematic causes is simply either transferring the disease or postponing it for later times. Meanwhile the problem persists and critical matters are left untouched, causing even more suspicion which inevitably corrodes any institution from within.

Equally serious is the fact that potential corruptors from the private sector are almost completely unaccountable too. And the old issue regarding illegal financing of political parties

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<sup>391</sup>See an interesting article by J.B.Moura, PUB:29.03.2001 “*Funções não privatizáveis do Estado: as estradas*”.

<sup>392</sup>See CM:01.12.2004.



remains both unclarified and unchallenged. All of these inevitably represent an heavy blow for any anti-corruption efforts, sending the wrong message to the public in general, and to wrongdoers in particular, that corruption is indeed a very low risk crime in Portuguese society. This, in turn, nurtures those incentive and opportunity structures that make corruption a way of life rather than an exception.

## 7.5 Four Judicial Types of Responses

This cluster deals with judicial institutions in their ultimate attempt to respond to corruption. It covers cases that went beyond the realm of administrative inquiry. The judiciary includes police forces<sup>393</sup> as the auxiliary agents of criminal investigation; Public Prosecutors whose magistrates are responsible for criminal investigation; and Courts such as the First Instance, *Relação*, Supreme, and Constitutional.

The following inconclusive, abortive, delaying and venial models characterise most of the judicial Portuguese responses to corruption. An overall joint analysis explain why the judicial response remains broadly weak.

### 7.5.1 Inconclusive Response

Inconclusive response refers to criminal cases which the system of justice, in particular the PPS, Police and/or the *Tribunal de Instrução Criminal* (Court of Criminal Investigation), somehow failed to proceed with charges without being able to provide convincing justification. In those circumstances, the case simply died out, often after extended bureaucracy. When such an inconclusive approach repeats itself frequently, it inevitably becomes a pattern of inadequate response known by the well-known Portuguese word “arquivado” - filed - forever, that is..

This outcome is not exceptional as the Minister of Justice, Alberto Costa, recently stated on the occasion of another internal legal reformulation of the PJ: “There are many non-investigated

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<sup>393</sup>As recalled by M.Flores, since the introduction of the Law 20/2001, the PJ lost its exclusiveness in criminal investigation because up to two thirds of crimes from the Penal Code are in the hands of PSP and GNR. In addition there are also the following institutions: DIAP, DCIAP and SEF which, in his view corresponds to a state of “general confusion” - DN:11.03.2002 “Investigação criminal”.

crimes. More than half of the cases are left on one side.<sup>394</sup> Among the non-investigated ones there are several political cases.<sup>395</sup>

The daily newspaper *Público* was the first to disclose what became widely known as the Saleiro case in November 1997. According to *Público*, Saleiro was allegedly involved in an apparently complex corruption case.<sup>396</sup> After two years of investigation (1100 pages of inquiries and documents) the Public Prosecutor in Beja decided not to proceed with formal charges. This, according to Madrinha, is relevant because Saleiro was the Governor of Beja district.<sup>397</sup> The case had other apparently serious episodes which were not investigated such as the *Fundação de Amizade Holanda-Portugal*, the *Radio Voz de Almodôvar* and the Chinese fax known as *Semblana Golfe*. Such complaints were openly expressed by the *Público* which led the newly appointed Attorney General to re-open the case in early 2001. He trusted the DCIAP in Lisbon to re-examine the case.

Over two years later, it reached a similarly inconclusive end.<sup>398</sup> But this time they acknowledged the existence of certain indicators (*indícios*) of crimes which could not be criminally pursued because their liability has been proscribed,<sup>399</sup> something which unequivocally

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<sup>394</sup>M.Moreira, CM:08.11.2005 “New criminal policy will be to establish priorities”; and O.Ribeiro, CM:08.11.2005 “Crimes without punishment”.

<sup>395</sup>For a brief introductory exposure to such cases see J.Neto, M.Ganhão and S.Lopes, CM:25.05.2003 “And now Portugal?”. They refer to various politicians including C.Melancia, M.Cadilhe, B.Macedo, A.Saleiro, M.Nabo, A.Vitorino, A.Coimbra, J.M.Custódio and A.Pedras. Then they explored the following general ethical cases, some of which deal with corruption but not exclusively: L.Beleza (1987), C.Freire (1988), A.Curto (1992), Moderna University (1997-8), J.L.Judas (2000); F.Felgueiras (2002-3), C.Silva (2003), and I.Morais (2003).

<sup>396</sup>See the following articles in PUB:09.01.2001:2-4 “*The example of the filing of the Saleiro case*” by J.Cerejo; “*Testimonies annul PJ’s proof*” by J.A.C.; “*Uma história exemplar*” by J.M.Fernandes (editorial); and “*Cases that the Public Prosecutor ignored*” by J.A.C.

<sup>397</sup>Before he was President of the Municipal Borough of Almodôvar (1982-95) and afterwards a MP - See EXP:08.11.1997 “*Honestidade: Os votos e a palavra de honra*”. Madrinha contrast Saleiro and Judas’ attitudes with Murteira Nabo who stepped down immediately after he was accused of tax evasion. Then the PM Guterres accepted the resignation whereas now (Saleiro and Judas’ case) he apparently failed to take a firm action, according to J.A.Lima’s article in EXP:08.01.1997 “*Saleiro e Judas*”.

<sup>398</sup>See TSF:24.10.2003 “*A.Saleiro sees case filed*”; and CM:25.10.2002 “*Case against Saleiro filed*”. *Público* did not publish this conclusion immediately because some of their journalists were responding before the Court in a criminal process of defamation launched by the deputy prosecutor from Beja. This case was settled outside the court through an agreement between both parts - see PUB:23.12.2003 “*Caso Saleiro*”.

<sup>399</sup>J.A.Cerejo, PUB:25.06.2003 “*Inquérito contra Saleiro indiciou diversos crimes*”; and “*Suspeita de eventual branqueamento’ no Projecto Semblana Golfe*”. According to these reports, the PPS mentioned that Saleiro did evade taxes twice. In the first case, the crime liability elapsed and in the second case, he paid it

demonstrates a judiciary's own failure to act, on time. Why, then, did it take over two years to re-examine the evidence? According to *Público*, the inquiry saw no direct evidence of his external signs of wealth being linked with concrete allegations raised against Saleiro in the first place. Neither did they seem willing to go the extra mile in clarifying the issue. So, this case ended as “*arquivado*” / filed.<sup>400</sup>

### 7.5.2 Abortive Response

This model refers to cases that passed the *Tribunal de Instrução Criminal* (Criminal Instruction Court) with a formal accusation but somehow have not reached the court's verdict. Thus the reason to designate it as abortive.<sup>401</sup> The result is a further step towards impunity particularly when cases get so easily lost in complex dilatory penal procedures, making law in books substantially different from law in action.

In this model, corrupt cases are usually decided not on matters of facts (substantive) but largely on complex penal process issues. According to A.Cluny, in charge of the Magistrates' Trade Union, the system of justice suffers from a great deficit of needed skills and qualifications across magistrates, judges and the police force, so that the defendants have an easy way to explore to the limits all sorts of delaying tactics, including frequent appeals from early on in the criminal investigation.<sup>402</sup>

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extemporaneously. Cf. TSF:24.10.2002 “*Fraude Fiscal*”; Communication report by the PPS on October 25, 2002 by Ana Lima (Press Spokesperson) in [www.pgr.pt](http://www.pgr.pt) “Caso Saleiro”.

<sup>400</sup> For further examples of inconclusive response, such as (1) the case of Sousa Martins and Lisbon Airport (1988-91), see L.MP.Guerra, IND:15.06.2001:20 “Corruption in Lisbon Airport case proscribed in TIC”; and A.P.Azevedo and M.L.Rolim, EXP:12.09.1998 “Cases without justice”; (2) Rui Canas and the Ministry of Finances' tax office, see (Morgado and Vegar 2003, 115–117).; and (3) Pequiro and the Pharmaceutical industry, see brief chronology (1996-2001) in PUB:04.09.2001; F.Camacho, GR:November, 2000:49-60 “The man who knew too much”. But afterwards there have also been charges against Pequiro for alleged forgery - see CM:02.06.2005 “Pequiro accused of lying to the judiciary”

<sup>401</sup> E.Dâmaso, PUB:09.03.2002 “The game of sporadic reforms”. According to *Gabinete de Política Legislativa e Planeamento*, in 1999, out of 353 registered cases only 9 per cent, that is 32 faced trial.

<sup>402</sup> See his comments in EXP:12.09.1998 “Cases without justice” by A.A. Azevedo and M.L. Rolim. See also (Santos, et al. 1996, 387–408).

The evidence seems obvious. In fact, almost all the famous cases related to apparent misuse of European Social Funds<sup>403</sup> aired through the media in the 1980s ended, fifteen years later, without seeing the court's verdict.<sup>404</sup> They included UGT's case (General Trade Union),<sup>405</sup> *Partex*<sup>406</sup>; *Caixa Económica Açoreana* (a bank in the Azores);<sup>407</sup> and Amorim's Cork companies.<sup>408</sup> According to judge Margarida Veloso, some of the reasons for such a massive failure were due to the slow process leading to formal accusation and difficulties in notifying the defendants.<sup>409</sup> Large criminal cases encounter an added difficulty from the penal process code making the country's system of justice appear very vulnerable indeed.

The overall situation of criminal investigation in 1980s to late 1990s went through a very critical stage.<sup>410</sup> It resulted in several thousands of various criminal cases being proscribed or extinguished due to a well known episode of "legislative omission" (1988-95). Looking back, such a complex and man-made situation was due to the lack of harmony between the new 1995 Penal Code and the Penal Process Code following changes from old norms of "*instrução contraditória*"

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<sup>403</sup>See (Gonçalves 1991).

<sup>404</sup>One exception includes the case of "small fish" - two former local government officers of Municipal Borough of Caminha were sentenced to prison in 1996. Upon unsuccessful appeals to Constitutional and Supreme Courts they were sent to jail in June 2002 for 17 and 6 months - see PUB:22.06.2002 "Former Caminha town councillor arrested".

<sup>405</sup>This 1987-9 case included 37 defendants, including five secretariat members, and 13 companies with additional 15 defendants. The trial should have started in May 1999. But ever since, there were eight adjournments. In March 2002 the judges in Lisbon proscribed it although in 2004 the Supreme Court opted to carry the case forward, but just for a while, as the case, fourteen years later, was definitely closed. The criminologist, M.Flores, calls this the biggest profanation of the secrecy of justice in recent Portuguese history - see CM:23.11.2003. For a brief chronology see EXP:14.10.2000:10 "UGT goes to the witnesses' bench"; PUB:22.03.2002 "Proscriptions" (Prescrições) by L.M. Viana; and CM:30.01.2004 "Other cases which made history".

<sup>406</sup>The 1986-8 *Partex* case, formally indicted in 1997, had 73 defendants and 71 associations although in the beginning it included nearly 300 companies. This complex case was proscribed in 2001. But nevertheless, the PPS seems determined to request some financial repayment of 7 thousand million Escudos - IND:19.01.2001 "*Raios os Partex*" by P.Guerra; PUB:16.01.2001:44; and PUB:09.11.2001 "Similar cases proscribed".

<sup>407</sup>Ana P. Azevedo, EXP:06.11.1998 "Judges aim to avoid proscriptions"; S.P.Coelho, PUB:06.09.2001 "The accomplices of the Law"; EXP:10.10.1998 "Supreme Court decrees general amnesty"; and EXP:15.09.2001 "Judgements in the public eye".

<sup>408</sup>A.P.Azevedo, EXP:28.11.1998 "Amorim on the list of proscriptions"; and PUB:04.05.2002 "UGT case".

<sup>409</sup>See C.Gomes, PUB:22.03.2002 "UGT proscribed partially". Cf. R.D.Felner, PUB:09.11.2001 "UGT/FSE case postponed for sixth time"; PUB:05.02.2002 "UGT case postponed for eighth time"; and PUB:20.04.2002 marks the moment when Torres Couto (UGT) changed from being a defendant to witness.

<sup>410</sup>See a list of other cases in EXP:11.11.1999:18 "Justice from the dropper" by A.I.Abrunhosa; and EXP:08.01.2000:12-13 "Justice with no chance of a reply".

into what it is now simply “*instrução*”.<sup>411</sup> The Supreme Court only settled this matter in November 2000 but not without critical voices being heard.<sup>412</sup>

During most of 1990s the situation only marginally improved as the following cases demonstrate. The organised crime case of the “Setúbal Connection” (1984-1997) is a further aborted example. After thirteen years the case was proscribed too. This merited a special study (Gomes, et al. 1998). Despite its complexity, the substantive matters of facts were straightforward (p.171). The same cannot be said with regard to various delaying techniques used and abused throughout the process which lead to it being almost completely proscribed in 1995.<sup>413</sup> According to the authors, this case fits well the concept of “intimate civil society” put forward by B.Santos in which the defendants benefited from their powerful status with “good contacts” within public administration and banks (p.166-7).<sup>414</sup>

Worth noticing is the actual time spent with all the fourteen appeals that existed alongside the Setúbal Connection case which took a total average of 9 months and 2 days to process each of them. However, two of those appeals (*despacho de pronúncia*) had a “suspensive” timing effect attached to it - something that favours potential criminals. For the first one, it took 4 years, 3 months and 4 days; and the second took 6 years, 10 months and 2 days. This explains how some appeals take so long to settle that, in the end, the case turns out to be proscribed.<sup>415</sup>

### 7.5.3 Delayed Response

Fortunately, not all cases are proscribed. Some of them only reach a verdict much later, that is, several years after the judicial case has started. The assumption behind this model is that

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<sup>411</sup>See PUB:18.11.2000:2 “Proscriptions were no accident” by C.Gomes which cites figures from (Santos, et al. 1996) and *Observatório Permanente de Justiça*; and EXP:10.10.1998 “Supreme Court decrees general amnesty”.

<sup>412</sup>See three articles in PUB:18.11.2000:3 “The mistake” by C.G.; “Story of a (fatal) legislative omission” by A.Mesquita, and “Supreme injustice” by L.Francisco. Cf. several authors in (Barreto, A., *Justiça em crise?*, 2000, 19, 74, 110, 217, 350, 405). M.S.Tavares writes: “It is two decades in which crimes perpetrated by the powerful are being washed away by the Judiciary while prison cells are overflowing with those who are deprived of similar defense mechanisms of the rich” - PUB:13.04.2001 “The latest affront of the Law”.

<sup>413</sup>With the exception of just one case of passive corruption, which involved two individuals. They were both acquitted (31.10.1995).

<sup>414</sup>See also A.P.Azevedo, EXP:12.09.1998 “Why are big cases slow?”

<sup>415</sup>See *Quadro II.3* “Duration of appeals” - (Gomes, et al. 1998, 187).

delayed justice is an actual evidence of injustice<sup>416</sup> in addition to being a weak response, often with unpredictable results. The only consolation goes with the popular saying: “Vale mais tarde do que nunca” (it is better late than never).<sup>417</sup>

Much of the delay is often explained against the background of what appears to be a permanent crisis of justice. D.F.Amaral refers to a growing number of new and unfinished legal cases being carried over every year in contrast to what seems to be fewer settled cases. The result, he says, is that normal cases that should take from 6 to 12 months to be settled actually extend for five years; and difficult and complex ones which should take 2 or 3 years actually extend for 15 years.<sup>418</sup> This may certainly not account for every case, including some corrupt ones. However, this current judicial environment seems nevertheless ideal for supporting corrupt incentive and opportunity schemes, particularly when judges find it hard to punish wrongdoers after so many years.

In the case of corruption concerning driving licences issued by the Centro de Exames de Tábua (Examining Centre of Tábua where a criminal investigation started in 1988), the Public Prosecutor magistrate recommended suspended jail sentences for all defendants precisely because he thought the length of delay was so great that it was unfair to punish them after such a long period. However, in 2004, the judges only partially fulfilled the recommendation. Out of 23 defendants, 7 were sentenced to from three to four years in prison, 10 got a suspended prison sentence, and 6 were acquitted.<sup>419</sup> Other well-known examples include the Caixa Económica

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<sup>416</sup>See (Carreira 2001, 35); and F.Madrinha, EXP:24.12.2004 “Marking time”.

<sup>417</sup>V.J.Silva, DE:23.04.2004 “From 25th April to the «Guilded Whistle»”: “Having said this, it is better late than never to lift the corner of the veil which covers one of the most persistent disgraces of the democratic regime: the promiscuity between political feudalism, the wheeling and dealing of the building industry and the football circus.”

<sup>418</sup>See (Amaral 2000, 249; Almeida 1997). Cf. J.Cravinho, DN:16.05.2005 “Corruption: an anaesthetized democracy?”.

<sup>419</sup>This case also involved a lawyer who happens to be a MP and leader of PSD for Lisbon city. As such, his case was taken by a different legal route and process - see TSF:08.06.2005 “Ethics accepts A. Preto’s plea for suspension”; VIS:02.06.2005 “A.Preto suspends MP’s mandate”; and CM:30.06.2005 “Shame yet to be proved” by J.Barradas . For additional information regarding corruption in Tábua see EXP:17.07.2004 “Hot summer in the Judiciary”; EXP:16.10.2004 “Public Prosecutor stops detentions” by A.I.Abrunhosa. An appeal then followed.

Faialense case (a bank in the Azores Islands),<sup>420</sup> the legal cases of the former town councillor Abílio Curto,<sup>421</sup> and the very old and obviously manipulated case of “Viagens Fantasmas” - Ghost Trips.<sup>422</sup>

#### 7.5.4 Venial Response

Finally, venial response consists of court verdicts in which punishments are minimum compared to the maximum legal possibility. That is, the sentences are so venial that some may genuinely argue for the low risk punishment because the benefits acquired are greater than the penalty. In the end, it fails to reduce the system of incentive and opportunities for corrupt behaviour. Somehow the wider population may perceive that corruption results in actual gain.

Consider for instance the following judicial statistics on corruption. In 1997, there were 67 defendants and 46 convictions of which only 6 had prison sentences; in 1998, 50 defendants, 33 convictions and 8 prison sentences; in 1999, 43 defendants, 24 convictions and 5 prison sentences; in 2000, 62 defendants, 43 convictions and no prison sentences; and finally in 2001, 69 defendants, 39 convictions and only 4 prison sentences.<sup>423</sup> Taking into account the fact that there are many suspicious cases of corruption reaching the media, of which only a few are investigated, and fewer proceed to the courts, it seems staggering that such a very small number of people faced prison sentences, that is, in five years, out of 175 convictions only 23 (13.14%) were given prison

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<sup>420</sup> The case started in 1986 and was settled in courts 18 years later, in 2004. This actually dramatic story led J.Bairos Fernandes to write an open letter to the PM, Minister of Justice and Finances, the Governor of Banco de Portugal and to the regional President of Azores - PUB:01.04.2004 “My life a nightmare which has dragged on for 18 years”; and the opinion of his lawyer in DN:08.02.2005 “Off-the-record defence: Justice far from people”. See brief chronology in PUB:02.03.2004 “Chronology of a delay”; and in DN:08.02.2005 “Chronology: Lawsuit wonder 18 years through the courts”

<sup>421</sup> See EXP:05.02.2000 “A dinosaur of local power”; PUB:22.07.2001 “Abílio, «President of the Villages»”; and “Courts upholds accusation against Abílio Curto”; EXP:16.05.1998 “Abílio Curto condemned for 5 years”; and A.Marinho, S.Carvalho and S.Rainho, EXP:05.02.2000 “Autarcas à prova de suspensão”. PUB:06.03.2004 “Abílio Curto imprisoned yesterday afternoon”. Cf. The reactions registered from CDS/PP, CDU and PSD people in the same newspaper.

<sup>422</sup> The case went through various phases of analysis and enquiry over the years. It was widely exploited by the media and certainly added to an already very negative image of politicians. See the comments of J.Amaral, himself a former MP in EXP:21.08.1999 “*Viagem-Fantasma na Justiça*”; A.P.Azevedo, EXP:28.08.1999 “Opinion poll on ghost trips”. There are now new rules but apparently they raised another polemic issue - See N.Simas, DN:12.08.2004 “Parliament to spend 2.2m Euros on visits abroad”.

<sup>423</sup> Source: *Gabinete de Política Legislativa e Planeamento do Ministério da Justiça*, cited in CM:30.08.2002 “Corruption gives low prison sentences” by N.Ivo.

sentences. This statistic does not tell us how many of these 23 actually went to prison and, as experience confirms, it is apparently easy either to escape or to see the penalty substantially reduced.

When the proof of corruption is certain beyond any doubt, a large number of the convicted receive “suspended sentences”. Those who receive prison sentences can then appeal to the Constitutional Court, during which time they escape being jailed. This happened to the former secretary of the Health Ministry, C.Freire, who was initially sentenced to 7 years in prison in 1994. He appealed, firstly to the Supreme Court (settled in 1996), then to the Constitutional Court (1999). The case went back to the Supreme Court in 1999 and finally it was proscribed in 2005.<sup>424</sup>

The Moderna University case captured wide public and political attention which ended with seven defendants being convicted. Upon appeal, the *Tribunal da Relação de Lisboa* acquitted 5 and substantially reduced the penalty for the remaining two. José Braga Gonçalves’ jail sentence was reduced from twelve to seven and half years whereas Pedro Rosado’s was reduced from three effective years to two but suspended. So, in a case that started with 13 defendants, only one remained in jail after the last appeal was concluded, which is a weak result. It truly deserves the title of the *Correio da Manhã* newspaper “*Poderosos Vencem*” (The powerful win).<sup>425</sup>

And finally, two cases of inside trading in Lisbon’s Mercado de Valores - Stock Market. For years there have been rumours of economic crime there. When the court was finally able to convict the first two people, the penalties were minimum too. Miguel Cintra only repaid a fraction of what he gain illegally.<sup>426</sup> So did Magalhães Pinto.<sup>427</sup> These cases demonstrate that “*crime compensa*” - crime actually pays for the wrongdoers.

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<sup>424</sup>See an interesting formula in picture concerning this legal case in EXP:08.01.2000:12 “The formula which leads to filing: the Health case” by A.P.Azevedo.

<sup>425</sup>See CM:24.06.2004 by Jorge Paula.

<sup>426</sup>A..Campos, PUB:26.07.2003 “*Miguel Cintra condenado a pena de prisão suspensa e multa por crime de mercado*”. Cintra was sentenced to 18 months suspended prison for three years on demand pay 499 thousand Euros to four charity institutions and additional penalty equivalent to 35.4 thousand Euros. But he earned something like 3.9 million Euros in the first place. Cf. Cristina Ferreira, PUB:26.07.2003 “*Uma pena moralizadora mas ‘de mão leve’*”; J.Malheiros, and PUB:29.07.2003 “*O crime compensa*”.

<sup>427</sup>In this second case, the Public Prosecutor requested that all profit should be withdrawn - see PUB (Revista):29.12.2003 “*Os protagonistas do Ano*”; and P.F.Esteves, DE:19.12.2003 “*Abuso de informação*”



## **7.6 Concluding Remarks**

These threefold clusters of responses seem to indicate that corruption remains largely beyond accountability. Both administrative and judicial systems appear dysfunctional and, therefore, more supportive of a corrupt environment. The way forward is to reconsider afresh how to tackle corruption by effectively reducing present incentive and opportunity structures that nurture it and its impunity in administrative, judicial and private institutions. The following chapter seeks to address this issue in detail.

**PART THREE**  
**TENTATIVE SOLUTION PATTERN**

## **Chapter 8**

### **Formulating an alternative framework of response**

#### **8.1 Introduction**

This chapter corresponds to the thesis' title: "Turning a blind eye?". In the course of a summative evaluation of Part One, the thesis raises awareness of corruption (Chapter 2) and its impunity (Chapter 3) as serious national problems. These are specifically illustrated through Emaudio case study (Chapter 4). Part Two deals generally with causal evaluation from both historical (Chapter 5) and current perspectives (Chapter 6), and most critically by identifying inadequate contemporary responses (Chapter 7) to corruption. This chapter provides the basis for an alternative anti-corruption moral framework, which aims gradually to reduce both the incentives and the opportunities that nurture and ignore corruption.

#### **8.2 Turning a blind eye?**

For the sake of internal coherence, there seems to be only one sensible response, that is, an unequivocally negative answer. In refusing 'to turn a blind eye', this thesis follows a different route. From mere ignorance, resignation and fatalism it moves towards contextual remedies. Following this path is right because corruption distorts power, wealth and values, thus eroding the most valuable capital, namely trust.

To reverse the situation requires a determination to counteract society-made complexities, relativisms, fears, and confusion that obstruct critical reforms. The task consists of tackling those identified cultural assumptions, patterns of practices, structures of incentives and opportunities that nurture neo-corporatism, monopolistic, and arbitrary corrupt attitudes.

What follows indicates the way forward. First, this chapter clarifies the aims and scope of this specific anti-corruption strategy. Secondly, it further clarifies the methodology to be used. Thirdly, it presents a series of six alternative remedies from which the solution is chosen. Finally, it offers a new moral framework structure and policies.

### **8.3 Aims, definition, and scope**

This chapter has two aims: first, to propose a broad, unified, and comprehensive anti-corruption scheme, and, secondly, to prepare the ground for launching the first part of a multi phase programme to reduce incentive and opportunity structures that nurture and tolerate corruption.

By “broad-unified-comprehensive” we mean: (1) a unique multidisciplinary programme which covers public, private, and civil society sectors alike; (2) a fully equipped team from the start (effective legal basis, power, accountability, personnel, and resources); (3) with a visible, clear, measurable and time-oriented goals in harmony with an agreed mission, vision, core values, code of conduct, and democratic procedures.

The scope of this proposal considers the fact that Portugal has never yet had a fully comprehensive anti-corruption project based on citizens’ consistent support, which makes this proposal the first of its kind. As such, to start well is by far the most important aspect of all. In addition, there are the following specific features and implications to consider.

First, it is concerned with foundations. Good foundations are essential. If an agreed basis exists, that will easily accommodate critical new decisions regarding methodologies, techniques and priorities without disrupting or changing the character of the project. The major single benefit is avoiding further false anti-corruption signals.

Secondly, it only covers the beginning of a multi phase strategy. It is premature at this stage to speculate about future reactions, simply because of the unpredictable and dynamic nature of this process. However, it is certain that opposition will arise and grow against concrete efforts to combat corruption. This also takes seriously current political unwillingness as top leaders may feel there is no alternative but to go on turning a rather guilty blind-eye with obvious demagoguery. If this happens, the key task will be to raise further awareness of the problem.

Thirdly, it concerns broad policies only. The “big picture” view is most likely to set the right pace towards specific action because much still needs to be done in the way of preparation regarding employees, research, resources, and institution building. Preparation alone constitutes a key aspect of this project. This conduct avoids giving a rather false promise of attacking everything and anything at once.

Fourth, it gives high priority to both articulation and integration of all policies envisioning an “holistic anti-corruption system”<sup>428</sup>. Without these elements, this project will not differ from several isolated responses which various governments and institutions have made in the recent past.

And finally, Portugal, unlike Singapore, needs first to reduce corruption from an apparently medium to high level to a medium to low level. This reveals the seriousness of the task, prepares for reactions, and avoids disappointments in the process. Ocampo argues that it is easier to reduce corruption from ninety to fifty per cent than from two to one per cent.<sup>429</sup> Therefore, it is vital to recognise the extent and seriousness of corruption.

## 8.4 Methodology

The process of building a new anti-corruption framework is best explored by considering six alternative solutions. After distinguishing between them, a brief summary of possible effects is advanced. Then, through a process of elimination, the final alternative route is chosen and argued for. We conclude by elaborating a broad policy structure upon which to build critically a new moral framework against corruption.

## 8.5 Choosing from six alternative remedies

The following six alternatives are chosen from perceived comments and attitudes that frequently appear in public discussions in Portugal concerning remedies for corruption. Each has some degree of support, be it popular or political or economic or a mixture.

### 8.5.1 Messianic Like Alternative

This alternative is a revival of long-held expectation that keeps reappearing, as most commentators have noticed, even in recent times. Some expect that one influential politician with charisma might, one day, deliver the country and change the *status quo* altogether. This is widely

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<sup>428</sup> See (Seumas, Roberts and Spence 2005). The preference for an holistic approach seems obvious. Cf. Many individuals (Eigen 1995; Vogl 1998; Strombom 1998; Dudley 2000; Yener 2001; Van Tonder 2001; Irwin 1999; Sangweni 1999; Williams 1987) and corporate bodies such as TI (Pope, J., *TI Source Book*, 2000, vii, xv, xx, 32–7); UK Department for International Development (DFID 2002, 1, 27); WB (World Bank 2000, 4, 42); and US Department State (Department of State 2001) are willing to follow this way.

<sup>429</sup> As cited by (Padilla 1996, 14).

known as *Sebastianismo* which expects the late Dom Sebastião's 'return' to solve critical yet unresolved problems including corruption.

Prime Ministers such as Cavaco and Guterres, have been "given" such a role. And regardless of their refusal to accept it, some sectors of Portuguese society continue to nurture this expectation. When Barroso resigned as PM, Alegre warned him that his party was looking for Dom Sebastião.<sup>430</sup> So the idea still remains alive, or so it seems now.

### 8.5.2 European Union Alternative

Portugal has been part of the EU since 1986. Having lost its colonies in 1975, it turned towards Europe. For some, it was a survival strategy. For others, Europe is the place which historically should never have been "abandoned". There was an assumption that Portugal could become a better country and most of its political and economic structural problems would eventually be solved, corruption included. This rationale partially justifies the very high trust in European institutions then and now.<sup>431</sup>

The EU is concerned with fraud, corruption and waste. Over the years, a number of institutions have been established such as the European Court of Auditors (since 1977, regarded as the "financial conscience" of the EU); OLAF (*Office de Lutte Antifraude*, the European Commission Anti-Fraud agency); Europol (Law Enforcement Organisation accountable to the Council of Ministers for Justice and Home Affairs); and recently Eurojust (Judicial Cooperation Unit, since 2002). These institutions merit national respect, and are somehow believed to have the capacity to shape, modernise, and equip Portugal likewise to fight fraud, corruption and waste.

### 8.5.3 International Alternative

This proposal goes well beyond Europe to include worldwide efforts to combat bribery. There are several legal and organisational efforts to deter corruption, including the United

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<sup>430</sup> M.Alegre, EXP:18.08.2001 "S. Jorge, Eça, D.Sebastião e Camões". Cf. M.Monteiro, EXP:23.05.1998-Rev "O sonho do norte de África"; and (Cardoso 1982).

<sup>431</sup> J.Guerra cites a recent *Eurobarómetro* survey in which out of 100 Portuguese citizens, 80 do not trust political parties, 63 the government, 52 the Parliament, and 66 the judiciary system. But 62 trust the EU (DE:24.02.2006 "*Portugueses e Europeus*").

Nations.<sup>432</sup> Some treaties and conventions press for a bribe-free world such as the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions already signed and ratified by Portugal; the UN Convention Against Transnational Crime, and the Council of Europe's two treaties: Criminal Law Convention (ETS 173/1999, ratified and legally binding in Portugal since 2002, with Additional Protocol, ETS 173/2003) and Civil Law Convention on Corruption (ETS 174/1999).<sup>433</sup>

These responses are often regarded by political leaders as a public reassurance that Portugal is well placed alongside key leading countries to counteract corruption. The media also covered widely recent cooperation between Portugal and the newly formed Greco (Group of States Against Corruption) initiated by the Council of Europe in 1999.<sup>434</sup>

#### 8.5.4 New Regime Alternative

This views the need to break into the current democratic regime that is allegedly responsible for the ongoing political and economic crisis. Not long ago, former President Soares drew attention to the growing dissatisfaction with institutions and their leaders who are perceived as responsible for the spread of corruption in the "State, political parties and local governments". He concluded that if Portugal were not an EU member, a military coup would have taken place already.<sup>435</sup>

Alegre, once exiled for ten years in Algeria, also alerts us to the fact that people, without any form of constraint, are now affirming, even on television, that they would prefer a new Salazar to take over the government than continue with this kind of democracy.<sup>436</sup> Although this comment was set in the context of people's fear for their own safety and security in most cities, one

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<sup>432</sup> The UN Office of Drugs and Crime prevention introduced the International Day Against Corruption (December, 9th) first observed in 2005. It is best known for its anti-corruption toolkit GPAC (Global Programme Against Corruption) (United Nations 2004). UNICRI (UN Interregional Crime and Justice Research Institute) is a legal resource and a recognised forum too. Its research projects include the International Crime Victim Survey, and the International Crime against Businesses Survey.

<sup>433</sup> For other relevant treaties see a useful compendium in (UNODC 2003).

<sup>434</sup> See both reports (GRECO 2003) and (GRECO 2005).

<sup>435</sup> See TSF:19.11.2004; and CM:19.11.2004.

<sup>436</sup> See DN:2001-02-16, Interview with M.Alegre entitled "*Um partido sem rumo*".

nevertheless senses this tendency towards a new authoritarian style of leadership as a solution to the problem.

### **8.5.5 Monetary Alternative**

Some believe that current institutional mechanisms are sufficient in numbers but they lack, above all, financial resources to perform a supervisory role in a more efficient way. The solution therefore lies in adding more funds which in turn will train more qualified personnel and better equip existing institutions.

Over the years, it has not been uncommon to see key leaders seeking more financial resources for their own institutions. In fact, various government programmes ratified in Parliament in recent years have stated the need to add more funds in fighting corruption and tax evasion. Some governments, such as the first one headed by Guterres has indeed allocated more funds to institutions including the PJ.

### **8.5.6 New Agency Alternative**

This last alternative views a solution via the creation of a new national and independent anti-corruption agency. Its main idea is to set a unified strategy capable of coordinating and monitoring the struggle against corruption. Several political commentators agree that Portugal has not yet truly addressed the phenomenon in a rational manner.

Some even recall the former AACC agency and regret its abolition in 1992. The replacement with a special unit (later changed to be DCICCEF) operating within the PJ has yet to prove itself why does it not work. Therefore, a new agency is seen as a solution.

### **8.5.7 Analysis of alternatives**

Four out of the six alternatives represent a national solution whereas two are distinctively international. Two of the national, namely the Messianic and the New Regime, have some similarities. Both reveal some degree of disillusionment with politics. One blames politicians whereas the other blames the system. Both transfer the solution onto others rather than being part of it. The Messianic looks for a change in leadership, whereas the other seeks structural changes.



With regard to leadership in the last twenty years, there were well regarded Presidents, Soares (1986-1996) and Sampaio (1996-2006), and PMs Cavaco (1985-1995), Guterres (1995-2002), and Barroso (2002-2004). They won elections and earned great popular support. All PMs eventually fall under severe criticism<sup>437</sup> and in the end abandon their position rather than lose an election. To their credit, none of them has been associated with corruption.<sup>438</sup> All PMs have embraced prominent new roles,<sup>439</sup> a clear indication that there never been a shortage of leaders with integrity. Guterres<sup>440</sup> and Barroso<sup>441</sup> promised to combat corruption. Cavaco largely ignored it.<sup>442</sup> As far as anti-corruption results, none can legitimately claim any victory whatsoever.

Arguably, it is not their fault because corruption has for long permeated the entire political and economic system. But the system did overcome them. Dâmaso is right in affirming that both Cavaco and Guterres were defeated “by the barony of respective parties” dominated by “contractors, real estate promoters, financial speculators and commission agents of all kinds.”<sup>443</sup> Cavaco did not hide his anger against political parties. So much so that, ten years later, “The

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<sup>437</sup> Cf (Júdice 2000)..

<sup>438</sup> Soares, however, had a difficult moment in the context of Emaudio’s case. See P.Pereira’s comments “*O momento mais difícil de Soares depois do 25 de Abril foi todo o processo chamado ‘Emaudio’.... A história nunca foi verdadeiramente esclarecida, nem o envolvimento pessoal de Soares, que gozou sempre de uma impunidade ímpar na vida política portuguesa, por boas e más razões.*” in PUB:09.12.2004 “*Uma Vida- As Decisões de Mário Soares*”. Cf. L.R.Pinheiro, CM:24.11.2004; J.M.Martins, CM:18.09.2005; and Soares’ former party colleague, Rui Mateus in his well publicised book “*Forbidden stories: Memories of unknown PS*” (Mateus 1996).

<sup>439</sup> Barroso became President of European Commission in July 2004; Guterres, the UN High Commissioner for Refugees in June 2005; and Cavaco, the President of Portugal in March 2006.

<sup>440</sup> See (Corkill 1999, 55)

<sup>441</sup> Barroso, as PM candidate told in RTP1 Television debate that Portugal has not a case of corruption been condemned in court (cited by P.Guerra, IND:15.03.2002:34); and in an interview expressed that Socialist government cohabits with corruption (VIS:21.02.2002). See F.S.Cabral, PUB:08.08.2004 “*Corruption*”; and Barroso’s own article in DN:20.02.1999 “*Clientelismo do Estado*”.

<sup>442</sup> See Cavaco’s response to following question: “Dr Borges, whom you have cited said that corruption is number one problem. Do you think the same?” “I don’t like to talk when I am not in condition to substantiate it” (EXP:08.12.2001:Revista). It is remarkable that someone who was PM for ten years feels not qualified to talk or substantiate about corruption. Cf. S.Sanches’ attempt to understand Cavaco’s position in EXP:25.09.2004 “*A economia do bolso furado*”, or is it J.Ferreira’s view more accurate?: “*É de supor que a sua (Borges) passagem pelo Banco de Portugal no auge do cavaquismo lhe tenha dado uma visão deste problema português, precisamente numa altura em que também Cavaco Silva dizia que Portugal não era um país de corruptos*” in SEM:27.07.2001:8 “*A.Borges e o combate à corrupção*”.

<sup>443</sup> PUB:28.12.2001, “*Notícias do Pântano-P*”. E.Dâmaso has, over the years, consistently conveyed his thoughts concerning corruption in Portugal. His concept of *pântano* (marsh) was further applied when Guterres resigned as PM on a similar basis - DN:01.10.2005 “*Corrupções*”; DN:27.11.2005 “*A Arte do Aplauso*”; DN:31.10.2005 *Editorial*; DN:07.10.2005 “*Autárquica*”.

Master of Silence” according to Barreto,<sup>444</sup> won the presidential election by denying even to his own PSD party the possibility of taking an active role in the electoral campaign. The country still favours and nurtures faith in individual characters.<sup>445</sup>

However, experience tells us that corruption is a complex phenomenon unlikely to change as a result of one man’s good will only. To insist on that is to go on sacrificing citizens of high quality. Though leadership is important in itself, it is not enough and needs further actions which can not be entirely tied up with one PM or President. Therefore looking for a messianic figure is not the solution needed.

With regard to changing the regime, it is not new for Portugal either. In the twentieth century alone, there was a succession of changes from monarchy to democracy (1910) to dictatorship (1926) and democracy again (1974). All these changes occurred after wider allegations of corruption.<sup>446</sup> None brought any significant solution. This in itself does not yet justify the elimination of this alternative. However, seeking to replace democracy once again with a new dictatorial regime is unacceptable. Infringement of basic human rights is never a justified means to counteract corruption. Dictatorship is a false escape.<sup>447</sup> Portugal knows that too well.

Any monopolistic power tends to exacerbate corruption rather than deter it. For a long time democracy has been seen as an antidote to corruption. Recent studies by Treisman specify that democratic longevity matters significantly. He even indicates that “Had Portugal experienced uninterrupted democracy from 1950, the estimates imply, it would have been slightly less corrupt by 1998 than Germany.” (Treisman 2000, 433). However imperfect the Portuguese democratic regime might be, the way forward is not replacement but an improvement. So this alternative needs to be rejected also.

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<sup>444</sup> See how a well-known sociologist analyzed Cavaco’s (a)political trajectory of the last ten years (1995-2004) in PUB:05.12.2004.

<sup>445</sup> N.Sampaio, DE:10.01.2006.

<sup>446</sup> See (Valente 1999, 34–39). Elsewhere he writes: “I do not remember a single regime, since the end of 18th century, in which corruption... had not been seen as a “normal factor” (V.P.Valente, DN:23.04.2004).

<sup>447</sup> The contrary is true - corruption flourishes in dictatorship regimes, kleptocratic states, and Marxist countries as several scholars pointed out. See (Hope and Chikulo 2000, 19–23; Charap and Harm 1999; Grossman and Noh 1990; Kwong 1997; Olowu 1992) (Hope, et al. 2000, 19–23; Hope, et al. 2000, 19–23)

The remaining two national options stand alongside two transnational alternatives. These are largely confined to legal initiatives, and aim at mutual cooperation among nations in minimising corrupt transactions around the world. This is particularly so in the case of OECD, COE and UN anti-corruption regional or global initiatives. Slightly different is the EU case which will be examined subsequently at length.

The relatively new international initiatives<sup>448</sup> deserve support but they cannot substitute a national ownership in fighting corruption (Commonwealth Secretariat 2000, 17). The intention of treaties, as has often been reiterated, is not to interfere with internal cases of corruption. They function as additional tools, particularly in areas of prevention, policy advice and institution building without which there would be no meaningful cooperation in a globalised world. So, the following are key factors to consider.

In the first place, transnational cooperation is not conceived as a national programme to combat corruption. Secondly, it has clear limitations on how much it can improve anti-corruption mechanisms within a national context, not least because it is largely based on universal principles rather than on concrete national specific examples of corruption. Thirdly, a transnational initiative is largely legal in nature and content, whereas a national anti-corruption policy demands a multidisciplinary effort. And finally, corruption remains a sensitive issue, so much so that national pride would fiercely resist against too much outside participation. Charges of double-standards against foreigners are all too common (Savona and Mezzanotte 1997). To sum up, corruption is primarily a national problem depending on internal political will and monitoring mechanisms to address the complexities of corruption. Therefore, this option cannot be adopted either.

The EU has galvanized Portuguese minds to a point of providing “a major psychological boost which lifted economic confidence” (Corkill 1999, 213; Barreto, A., Portugal, a Europa, 1994; Franco 1994, 258) with “spillover effects on the political structures” (Magone 1997, 161; Morlino 1998; Pinto and Núñez 1997, 183), almost as a “life insurance” for its democratisation process

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<sup>448</sup> For an overview of several international efforts see (Csonka 1997; Bishop 1997; Chaikin 1997; Pieth 1999; Pieth 2000; Shihata 1997; Rose-Ackerman 1997).

(Moreira 1998, 84). This almost functioned as a panacea for the country's old problems, and therefore needs substantial analysis.

The EU is a relatively new organization born after two devastating world wars. Committed to avoiding further wars and successful thus far, it has grown and changed substantially (EEC-EC-EU; European Economic Community - European Community - and European Union) to become, in the words of Delors a "Non-Identified Political Organization".<sup>449</sup> These have background implications in evaluating the EU's anti-corruption attitudes and beliefs.

The EU's history of response to corruption prevents Portugal from seeing it as an alternative route for the following reasons. From its origins, the EU included countries where corruption was perceived as an unresolved problem. Italy was the most obvious example.<sup>450</sup> This, in itself, did not endanger the EU entirely.<sup>451</sup> As a matter of principle, and most validly for supranational organisations, the EU correctly opted not to interfere with internal national affairs. However, as an emerging democratic organisation, it was totally legitimate to set up a core of values upon which to operate. Here corruption becomes a relevant issue, so much so because economic matters were the EU's original concern.

From the outset, and for several reasons which the scope of this thesis regrettably cannot accommodate, EU officials did not perceive corruption as a serious issue to a point of mobilising top-level attention. Therefore, there was no genuine political will to develop anti-corruption beliefs (in theory, conceptual analysis) nor attitudes (in practice, comprehensive anti-corruption programmes).

Only subsequent EU enlargements<sup>452</sup> made corruption appear gradually worse. The evidence, which became much clearer in the eighties, dealt with a dense cloud of suspicion of

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<sup>449</sup> Cited by P.Gonçalves, EXP:11.06.2003 "*Guerra e Paz: intuições febris*".

<sup>450</sup> Italy is a classic case, reasonably well documented (Della Porta and Vannuci 1999, 13–16; Della Porta and Mény 1997; Gundle and Parker 1996; Hess 1998; Galasso 1984, 300–322). For other countries such as France see (Girling 1997, 86–114; Médard 1997; Pujas 2000; Moodie 1988; Marengo 1988).

<sup>451</sup> In realistic terms, supra national bodies need maturity to cooperate with countries that inevitably wrestle with corruption because optimum zero level is an impossibility (Klitgaard 1988; Becker and Stigler 1974).

<sup>452</sup> Firstly, Denmark, Ireland and the United Kingdom joined in 1973; secondly, Greece in 1981; thirdly, Spain and Portugal in 1986; fourthly, Austria, Finland and Sweden in 1995; and finally, Cyprus, the Czech

corruption hanging over the EU's own image, affecting its internal affairs and most particularly its relationship with Member States (hereafter M-S) (Oustrive 1992; Peterson 1997; Warner 2003; Passas and Nelken 1993).

Of course, the EU has addressed the problem of fraud on many occasions (Leigh and Smith 1991; Levy 1991; Delmas-Marty 1996; Salisch 1995; White 1998; Salisch 1995; Del Frate and Pasqua 2000). Documents of various internal institutions have also raised the issue.<sup>453</sup> But the EU also invites criticism. It has largely reacted to on-and-off scandals. In between, despite eloquent discourses and random initiatives, the EU response has remained impotent.

On the conceptual front, in the early nineties, EU officials were reluctant to use the word "corruption", thus giving the false impression that it exists only in some distant lands. Its literature and discourse are mainly centred around a rather generic category of "fraud" instead (Oustrive 1992, 125)<sup>454</sup>. For a long time, M-S were even unable to reach a common definition of fraud (Passas and Nelken 1991, 238). Pieth recalls that the EU approached corruption through the "backdoor" (Pieth 2000, 25), correctly in our view, because it did so firstly under the umbrella of its budget which is truly an outdated excuse, and later on under threats from organised crime which is clearly a superfluous excuse too.

On general practical matters, in the second half of the nineties, TI's two memoranda about the EU's role further reveal its ambivalent conduct (TI-Brussels 1995; TI-Brussels 1999). In the first, TI felt that the EU was not doing enough and criticised - partially wrong in our view - its unreasonable relegation of the matter to M-S. TI requested more direct intervention in criminal law, tax deductibility of bribes, procurement rules, accounting standards, and foreign aid. In the second

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Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia in 2004, making a total of 25 countries.

<sup>453</sup> The author is grateful for documents received from Centro Europeu Jean Monnet in Lisbon. See concerns raised with regard to cooperation with M-S in (European Commission 1995, 2, 6; European Commission 1994, 3; European Commission 1995, 32-35; European Commission 1996, 9-13), and particularly the COA repeated criticism concerning accounting procedures in (European Union 1996, 5-6). For other key EU institutions such as The Parliament, European Council, Court of Auditors, and Court of Justice see (European Commission 1995, 29-32).

<sup>454</sup> For a conceptual discussion concerning the relationship between fraud and corruption see (Hodgkinson 1997, 17).

one, TI urged the EU to complete the procedures for making anti-corruption instruments operational and raised concerns regarding the political credibility of M-S in general.

Meanwhile, unresolved corruption negatively affected the EU's internal image (van Buitenen 2000; Committee of Independent Experts 1999). With regard to M-S, there was no shortage of scandals either (Della Porta, et al. 1997). So much so that, after forty years of the EU's existence, there are still original and late comer corrupt countries. Heidenheimer uses the TI-CPI to perceive some M-S as "somewhat" (Germany, Austria, France, Belgium and Portugal) and "very" (Spain, Greece and Italy) corrupt countries (Heidenheimer 1996).<sup>455</sup>

At the start of a new millenium, the EU has not yet got its act together. Between scandals, EU reactions and weak responses can be summarised in four ways. Firstly, it keeps adding anti-fraud rules<sup>456</sup>, as if dispersed rules, and above all, general recommendations, could significantly alter the ingrained habits that nurture fraud in M-S where up to 80% of the EU budget is spent without on site and timely monitoring. Secondly, it goes on replacing short-lived institutions,<sup>457</sup> without prior evaluation and responsibility for actions or omissions exercised as expected in an ideal democratic setting. Thirdly, it creates new organisations with little articulation or connection with existing ones<sup>458</sup>, which raises additional stewardship concerns. And finally, it only gradually

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<sup>455</sup> For further adaptation of Heidenheimer's classification see (Mény and Rhodes 1997).

<sup>456</sup> London's Institute of Advanced Legal Studies report says that "EU criminal law...suffers from a dual plague: fragmentation and ambiguity." (Stefanou and Xanthaki 2005). Mény expands by saying that "The production of tens of thousands of regulations... have created a system that is easy to infiltrate and exploit but very difficult to monitor." (Mény, et al. 1997, 111). On this basis, Van Ouirve concludes that "the complexity and unclarity of EC regulations and directives is one of the most criminogenic factors" (Ouirve 1992, 127). Cf (Levy 1991). and (Leigh, et al. 1991).

<sup>457</sup> Looking backwards, this rather reveals a degree of uneasiness and instability. For example, the Task Force for the Coordination of Fraud Prevention was replaced by UCLAF in 1987. UCLAF, born with visible limited independence and resources, was replaced by OLAF in 1999. For instance, this last change occurred when the EU faced serious ethical accusations analysed by a special Expert Committee whose Report led to the unprecedented dismissal of the entire Santer Commission. UCLAF performed poorly, having been "notoriously disorganised" according to COA Special Report (Court of Auditors 2005, # 5). So much so that it was merely replaced.

<sup>458</sup> If mere replacement is questionable, it is equally critical the way the EU is creating new organisations: OLAF, Europol and Eurojust. Their relationships are regarded as "complex institutional framework" by the COA's Report: "It is not always clear how responsibilities are divided among these bodies, which results in risks of both duplication of effort and omissions." (Court of Auditors 2005, 4). Even more critical is the following statement: "As Mr Kendall noted, OLAF, Europol and Eurojust have been created in a piecemeal way. There appeared, in his view, to be an absence of coordination in the policy establishing these bodies (Q 224). We agree. There has been no overall plan as to how they should work or fit together." (House of Lords 2004, # 89).

up-grades the available resources rather than equipping at once its key anti-fraud institutions namely COA, OLAF, Europol and Eurojust.

In conclusion, the EU has not satisfactorily resolved its major external and internal anti-corruption hurdles: how to monitor its interests within M-S where cooperation remains difficult;<sup>459</sup> and how to equip OLAF with criminal investigative power and resolve its independent status, which remains a contested issue.<sup>460</sup> Meanwhile, the EU attempts to create a Public Prosecutor type of office, something which is tied up with the European Constitution which awaits approval.<sup>461</sup> If it succeeds, it will be OLAF's turn to be replaced, so it seems.

Therefore, the EU needs help or determination to win its battle against corruption. The latter is recommended, whereas the former tends to lead to unnecessary, deprecatory-style comments<sup>462</sup> most likely responded to through equally unnecessary self-protective language.<sup>463</sup> Overall, the EU depends on a management that combines political economy vision with good governance through motivating ways that mobilize nations across Europe.

Portugal should be more critically informed about EU policies and agendas in general. For instance, painful recent experiences with the Stability Growth Pact should trigger serious warnings about the EU as policy maker and the conduct of the so-called leading nations. Regarding anti-

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<sup>459</sup> See (Court of Auditors 2005, # 4); OLAF's Supervisory Committee, Opinion No 2/03 (Luxembourg, 18/06/2003) which reads: "Ultimately, OLAF's external investigation work as such remains very limited, tied up in other activities, and seems not to be well received by some national courts, which want the proof submitted to them to be collected in accordance with their national procedures" and then cites an example (footnote 15) of the Portuguese Court of Setúbal on 10 January 2001 (Case 1/97.4 ABLSB). See also Valérie Rampi, OLAF's Spokesperson Administration comments (12.07.2005) in [http://europa.eu.int/comm/anti\\_fraud/press\\_room/pr/2005/10\\_en.html](http://europa.eu.int/comm/anti_fraud/press_room/pr/2005/10_en.html).

<sup>460</sup> In general, OLAF remains vulnerable - "Despite the damage fraud and fraud allegations do to the EU, its response has been largely ineffective. The EU only has an underresourced antifraud coordination and investigation unit in Brussels. Most fraud control is left to the uneven and irregular supervision of the M-S." (A.Riley, "Is the EU missing a very effective U.S. trick in dealing with fraud?" *Wall Street Journal*, 03.06.2004). With regard to OLAF independent status see positive comments in (Stefanou, et al. 2005), and negative comments in (House of Lords 2004, 17-18).

<sup>461</sup> Two countries voted "No" namely France (May 29, 2005) and Holland (June 1, 2005); thirteen ratified and ten called off their votes for the time being.

<sup>462</sup> Such as Marquette's comment: "This brings into question the EU's mandate in consulting on institutional capacity when it clearly lacks it as an institution itself. Perhaps the EU would be better advised to re-build its own reputation and to ensure the integrity of its own funds, rather than trying to advise recipients on how to avoid corruption." (Marquette 2001, 30).

<sup>463</sup> This is largely observed when EU officials insisted more on fraud rather than corruption without clarifying the concepts as stated above.

corruption, Portugal should concentrate more on its own unresolved situation by doing the opposite of what the EU has done as outlined above. Firstly, it should unequivocally recognise the seriousness of corruption and its effects. Secondly, it should formulate a comprehensive and multidisciplinary plan to tackle corruption.

There are two remaining alternatives. Both, the Monetary and New Agency alternatives, have a common desire to improve democracy. Unlike the other two national alternatives, they refrain from blaming unilaterally the State or the politicians. But there are differences too. The Monetary demonstrates good faith in existing anti-corruption institutions whereas the New Agency option seeks to create a new one.

With regard to the Monetary alternative, there are several factors which lead us to believe that the essential problem is not a financial one. It is certainly one of many important issues. Although fighting corruption is bound to be expensive, as organised crime often uses sophisticated technological means which in turn require even more resources. In this context, finances remain a scarce resource. This wisely demands good governance and stewardship which may also imply not going on adding funds. Rather it relies on accountable organisations which operate according to a visible, transparent, and measurable plan. This seems to be lacking, judging by the growing dissatisfaction against the State administration where public expenditure is generally high for the results obtained. For example, this is the case with the national health system. Existing anti-corruption institutions have clearly not projected themselves in this way either. So, in principle, adding funds in such organisations might well imply further losses.

Before accepting this alternative it would be advisable to find out what anti-corruption results were obtained with the current budget, rightly assuming the financial increase over the years, covering personnel and institutions like the PPS, three Police institutions, and the Courts - each of these with special supporting branches or units, and various others operating within public administration. If the balance turns out to be negative, which is most likely, then the way forward is to look for reasons first rather than adding more (lost) funds.

Current economic hardships exist for several reasons. One of them is waste. Another is diverting funds from meeting priority needs. Therefore, there is no guarantee, perhaps not even a



minimum one, that, under current circumstances, adding funds would mean more results. Common sense leads the opposite way. Therefore it seems rational to abandon this alternative. The only one left turns out to be the New Agency.

### **8.5.8 The preferred alternative**

Portugal needs a new anti-corruption agency with full legal, police and comprehensive powers and advanced mechanisms of checks and balances. Although this appears to be a generally recognised alternative route (Pope 1999b),<sup>464</sup> one needs stronger reasons to move in this direction. On what basis and why? Several counter-arguments need to be discussed first, followed by direct reasons, some critical warnings and two brief case-studies on the ancient moral-theological framework and the contemporary anti-corruption success story of Singapore. As for counter-arguments, consider the following.

**1) Facts already reveal an excessive number of institutions including duplicated ones. Another one will add even more expenses - Barroso's administration closed some institutions and possibly more need to follow.**

Massive waste of resources is already an acknowledged public concern. But it does not address the problem of corruption at all. This, in our view, represents one of the root causes needing special, even radical, attention. Most certainly the new agency will contribute towards the closure of duplicated institutions (DCIAP, DCICCEF for example) when corruption is properly detected and dealt with to a point of introducing new administrative and business culture.

**2) Democracy is based on the rule of law. It also serves as antidote to corruption with several anti-crime mechanisms, so to create a separate one is to doubt the system.**

Unfortunately, current democratic institutions control corruption only loosely. Two options remain, namely, the reverse occurs or democracy will suffer as discussed already in the New Regime alternative above. Portugal is widely perceived as a low law-abiding country which is the opposite of what democracy, based on law, is all about.

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<sup>464</sup> Not so much in Europe yet, as the existing ones are relatively young, as former ICAC Commissioner mentioned in an interesting paper for a conference organised by COE (Speville 2003).

**3) Corruption in advanced Western society is not seen as more serious than other crimes to a point of requiring a special unit.**

According to the Greco Report, in Finland, transparency is “a key reason why corruption seems to be a rather exceptional event” and next comes “the high moral standard of Finnish Civil Servants” (Greco 2000, 4). In such an environment, a special agency is needless. Portuguese experience reverses the order: moralistic discourses, then transparency which rarely exist. Instead the culture of secrecy associated with a man-made confusion which Cravinho sees as “deliberate and facilitated within public administration” that attracts and protects corruption to a point of making detection difficult and rare.<sup>465</sup>

**4) The previous anti-corruption agency achieved little result, so why think of reintroducing it.**

In fact, the former AACC was still-born. It did not have comprehensive legal status, lacked independence, and acted in administrative rather than criminal investigation. It was a lion without teeth. The central-bloc government just opened the door for anti-corruption rhetoric. That model was rather a false signal which should not have existed like that in the first place. When AACC asked either for wider powers or its extinction, the Parliament which had established it opted for its closure (Barreto, Abel., 2005; Sousa 2004a:130).

**5) Criminal prosecution is reserved to Public Prosecutor Services (PPS) only.**

Rightly, and it must remain so. But this does not exclude the legitimacy for a new agency to act as a criminal investigator as long as it has legal basis and assures legal rights for all involved parties. As recently as 1999, and after a long battle undertaken personally by the Attorney General Cunha Rodrigues, the PPS created the Central Department of Investigation and Penal Action (DCIAP).<sup>466</sup> But it is not solely an anti-economic crime unit, and therefore seems diffuse, under resourced, short-coming in results, and distant from citizens, who therefore do not support it. And above all, it depends on the quality and willingness to cooperate of another separate, if not “rival”

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<sup>465</sup> J.Cravinho, TSF:14.01.2005. Cf. J.Vasconcelos, VIS:09.01.2003:34 “*Para defender as instituições*”: “corruption is a cancer of democracy...needing a radical treatment”.

<sup>466</sup> Created since September 15, 1999 - Portaria n.º 386-B/99, de 25 de Maio.

entity namely the PJ to undertake effective criminal investigation. In summary, its mandate and means of operation is not yet as fully comprehensive as it should be to achieve timely results. It will most likely replicate the PPS which has always had a poor record in tackling corruption.

**6) DCICCEF is a special PJ branch which replaced AACC and needs time to do its work.**

It is “hidden” behind a complex PJ organisation and thus remains largely unknown and weak because of its several scales of hierarchy. Its Deputy Director can be nominated every three years by the National Director, with the prior approval of the Minister of Justice, which arguably allows extraneous political influence to occur, which has not been unheard of in recent times. Therefore, it remains vulnerable to political interference under Ministry of Justice as became obvious when former deputy director Morgado resigned in “mysterious” surroundings.<sup>467</sup> The endless dispute about the quality of cooperation between two distinct organisations (namely PJ and PPS) is another perceived and unresolved obstacle.<sup>468</sup> There are other weaknesses too. For instance, it does not have a web page of its own. Its unreadable initials do not help it to attract much attention. It remains distant from the people. Its programme of action does not have a public face. It lacks both research made publicly available, and preventive initiatives among business and civil society alike. No less uncomfortable is the President of Municipal Borough of Porto’s public accusation that PJ-Porto did nothing to help with corrupt cases raised during his first four-year term in office (R.Rio, DN:30.09.2005). The public has never seen a response from PJ sources contradicting such a serious accusation. Sousa goes further in highlighting critical procedural limitations:

“It [DCICCEF] does not, for example, have access to individual and company fiscal records and bank accounts, which remain a special prerogative of the Directorate-General for Taxation (Direcção-Geral das Contribuições e Impostos) and the Customs and Excise (Direcção

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<sup>467</sup> A clear evidence is undoubtedly the political turmoil that followed the arbitrary dismissal of two Deputy Directors of PJ in August 2002.

<sup>468</sup> Cf. DCIAP’s Director, C.Almeida, wishing that PJ were under PPS thus eliminating intermediary layers that so often disrupt sensitive investigations. (VIS:20.05.2004, “*Há um crescendo de policialização*”). None of the most successful anti-corruption units such as the Singapore or Hong Kong had such a divided framework. Those units have full police investigative powers, as most agents are themselves police officers.

Geral das Alfândegas e dos Impostos Especiais sobre o Consumo). Nor will it develop similar pedagogical, informative and legislative (input) functions due to its judicial and law enforcement nature.” (Sousa 2004b).

**7) The main unresolved problem lies in the Courts, with its slow and contradictory outcomes, which pervert the system of law, and not with any anti-corruption agency.**

The crisis of justice is a serious one and extends beyond corruption. Governments obviously need to settle this ongoing crisis. But a functioning anti-corruption agency, with professionalism and wide people’s support will add significant pressure on the courts to perform its duties. The case of Vale e Azevedo is a good example how investigation and courts can deal with complex cases on time and in full compliance with law.

In conclusion, the new agency likely to replace DCICCEF and DCIAP will need, from its conception, a far better and comprehensive status and legal basis; otherwise it should not be established at all. If this happens, Portugal simply remains unprepared to combat corruption.

As far as direct supporting reasons go, the following historical and contemporary ones are jointly included. For long Portugal has despised opportunities to recover from its perceived backward administrative and economic conditions. And yet, corruption corrodes from within the values needed to change the negative course of events via critical equally needed reforms. This jeopardises future generations in their legitimate striving towards better and safer human conditions and environment.

Unethical social, economic and political patterns of practices, structures of incentives and additional opportunities already identified prevented progress far too often. Key institutions like Governments, the business community, political parties and the Catholic Church did not help significantly in their respective fields, namely administration, economics, politics and theology, or otherwise. The people of Portugal have never been asked or properly motivated by leading figures and institutions to support the anti-corruption cause. Continuing to disregard the seriousness of corruption perpetuates instability even if it briefly leads to some progress. But progress without integrity falls short of the high moral standard needed for an anti-corruption scheme.

Ethics pay. Ethics make the way forward possible because tackling corruption is an ethical imperative. It is not simply a matter of theoretical analysis but above all it requires practical determination. Before moving in this direction, some warnings are appropriate as we substantiate this claim and hopefully move towards this new anti-corruption approach.

There is nothing miraculous in creating a new and special agency. This agency itself is not the solution. There are more examples of failures than success even in countries which have created special agencies (Andvig, Fjeldstad, Amundsen, et al. 2000; Langseth 2002, 8). This thesis has already criticised several weak approaches offered by institutions respected worldwide including WB, IMF, and TI. The first impact of a recent anti-corruption movement of the nineties only touches the important awareness aspect of the campaign. Cases of anti-corruption success still remain rare.

Secondly, nothing substitutes for hard, fair and competent work. Experience elsewhere warns that the anti-corruption struggle is extremely difficult and painful, largely because of the long established practice of corruption. Portugal has its own peculiar environment which needs to be gradually demolished. And lastly, a warning concerning the opposition that will commence as soon as the new agency begins its work. It will come from multiple, sometimes surprising sources including manipulated sectors of the population who have been primed to support dubious causes. The easiest option is to give up, thus perpetuating a false anti-corruption signal for further public discredit. And finally, there is a problem which is obvious but rarely avoided in Portugal. Mere imitation of foreign laws and examples will not work because it fails to contextualise critical issues by ignoring elements that remain typically Portuguese. The task is to consider paradigm models with critical cultural awareness. With these warnings in perspective, the following contemporary and classical case-studies are intended to motivate the process towards establishing a new anti-corruption agency.

## **8.6 Contemporary Case-study**

The first case is a contemporary anti-corruption example of success within the Asia-Pacific region undertaken by the Corrupt Practices Investigation Bureau (CPIB, working since 1952) in

Singapore (Klitgaard 1988; Gillespie and Okruhlik 1991, 91; Quah 1995; Wei 1999; Leak 1999; Keong 2003).<sup>469</sup> Unlike the UK where it took more than a century to bring corruption under control, Singapore shifted reasonably fast in less than thirty years - “jumped from a stable, high-corruption *status quo* to a new, low-corruption equilibrium” (UNDP 1997, 67) which Girling describes as “‘social engineering’ in a big way” (Girling 1997, 170). It is a relatively small island, known as a “city-state” with an “entrepôt” economy and highly conservative government with a population of 4.4 Million of which 76.8 per cent are ethnic Chinese, 13.9 Malay and the remainder Indian and minority groups, speaking several languages including English, and practising Buddhism (42.5), Islam (14.9), Christianity (14.6 of which 4.8 are Catholics), Taoism (8.5) and no religion (14.8).

Statistics compiled during the 1950s indicate that corruption was a way of life, facilitated by inadequate legislation, an inefficient anti-corruption unit placed within Police Force, and people’s indifference due to scepticism and fear of reprisals. It is worth noticing that, after 8 years of the CPIB’s creation, corruption was still rampant. But, when the People’s Action Party came to power in 1959, a new anti-corruption phase began by introducing effective unified legislation (Prevention of Corrupt Act) with a few updates, covering both the public and private sectors.

After independence in 1965, the top political leaders committed themselves to setting a good example and, largely due to the CPIB’s consistent basis (mission and vision statements supported by adequate core values and code of conduct), skills and determination (the “Swift and Sure” slogan) combined with exceptional organisational conduct (24 hours -7 days a week) exemplified by today’s figures which aim at: 90% attendance of public visitors calling at the Bureau within five minutes but none exceeding 10 minutes; answering the telephone by the 3rd ring at the latest; making a decision whether to act on complaints received by e-mail within a week, or immediately for reports received from walk-in complainants; and completing most

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<sup>469</sup> Many with minimum exposure to international literature would identify Singapore’s exceptional performance. However, it is largely unknown in Portugal. Reference is mainly confined to TI-CPI annual reports - CM:28.02.2002 “*Portugal é dos mais corruptos*”; L.S.Matos, PUB:02.09.2002 “*Abaixo do Botsuana*”; and sometimes in the context of the politician’s salary - PUB:19.08.2002 “*O salário: Dirigentes asiáticos são os mais bem pagos do mundo*”; J.Rendeiro, EXP:31.12.2004-Economia, “*Crónica de uma sociedade bloqueada*”. The author is grateful to the thesis Supervisor, Dr B.Winter who lived several years in Singapore and for advice to include this brief case-study.

investigations within 2 months or less, with the exception of cases demanding an extended period; while assuming the absolute confidence of whistleblowers' identity, even in court proceedings, if so requested.<sup>470</sup>

Alone, that is without external monitoring or donations, it achieved within a relatively short period a remarkably (a) clean internal political (President, PM, Unicameral Parliament of 84 seats),<sup>471</sup> (b) judicial (reliable), and (c) economic (highly developed free-market, but still largely dependent on exports) environments. Its per capita GDP is equal to that of the big four Western European countries, making it the first option of international business companies operating in the region.

This is indeed an outstanding achievement despite the fact that Singapore has no significant natural resources; and against the stream, it took a unilateral bold decision to publish a blacklist of unclean corporations;<sup>472</sup> and is currently surrounded by countries with abundant cheap labour. So much so that today, Singaporeans benefit from high standards of living and salaries,<sup>473</sup> and its top civil servants are among the best paid in the world (Eskeland and Thiele 1999, 30).

According to WB's data, Kenya and Singapore shared similar economic indicators in 1971. Both countries had experienced one-party rule under the same leader for an extended time. When President Moi stepped down in 2002 after 24 years, Kenya's per capita income did not exceed 350 US Dollars (almost the same as when it became independent in 1963) whereas Singapore achieved 24,800 US Dollars.<sup>474</sup>

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<sup>470</sup> See these and additional information in <http://www.cpi.gov.sg/aboutus.htm>.

<sup>471</sup> There are complaints against apparently excessive governmental powers and absent political opposition which touch sensitive areas of human rights as advanced by civil society groups such as Think Centre, the Roundtable and the Socratic Circle (Global Corruption, 27/1172002:151 - find source; seen as "enlightened despotism" (Girling 1997, 170)) (A. Gonçalves, CN:13.01.2003, "*A utopia do governo dos técnicos*").

<sup>472</sup> Cf. "But there can be no doubt that the international corporations blacklisted by Singapore in the 1990s received a considerable shock, and that in the future others will think twice before attempting to bribe Singaporean officials. The World Bank subsequently went down the same path." (United Nations 2004, 268).

<sup>473</sup> In this regard, Quah notices that Singapore has gone a step further than Hong Kong by also reducing incentives to corruption in addition to opportunities thus raising Singaporeans' salaries as another preventive measure (Quah 1995).

<sup>474</sup> J.Heitor, PUB:27.12.2002 "*Quénia despede-se de 24 anos de poder de Arap Moi*".

This rather succinct case-study is just one paradigm model to stimulate reflection and drive in a similar direction. Whether Portugal considers it or not is another issue altogether. So far one can allude to a mixed reaction. It is interesting that J.Salgueiro has included Singapore's example as something which Portugal should follow.<sup>475</sup> Jardim, in power since 1975, recently announced his determination to "transform Madeira into the Singapore" model of success.<sup>476</sup> The current government's emphasis on "Technological Shock"<sup>477</sup> is apparently based on the research of Castells who also highlights Singapore's case as exceptional.<sup>478</sup> One knows that a member of the current government, Campos, has spent time thinking about Singapore's performance in comparison with Southern Europe.<sup>479</sup> If nothing else, this case ensures that corruption has a practical solution.

## 8.7 Classical case-study

The inclusion of a classical case-study, from a moral and theological perspective, is intended to help us reflect on the need to adopt broad foundational anti-corruption principles. The following is all about "Great Words" (GWs), which appear twice in the Bible with minor variations in Exodus 20:2-17; Deuteronomy 5:6-21,<sup>480</sup> universally known as the Ten Commandments or Decalogue. We have no intention of undertaking a detailed exegesis nor of promoting those values, knowing in advance that some items (adultery for instance) receive little support in contemporary society. Rather, we seek to reflect on the value of handling cohesively as well as coherently a core set of principles that need to be selected and adopted in undertaking the anti-corruption task.

This brief presentation adopts the *Heilsgeschichte* (salvation-history) approach with two intertwined Covenantal Pacts based on Abraham-Moses in the first instance and then followed by a

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<sup>475</sup> See interview in VIS:16.11.2000.

<sup>476</sup> T.Nóbrega, PUB:10.05.2004 "*Barrosos agradece solidariedade do 'Grande Patriota' Jardim*".

<sup>477</sup> See PS 2005 electoral programmed (21.01.2005), Chapter 2 "Um Plano Tecnológico" in <http://www.ps.parlamento.pt/>.

<sup>478</sup> See M.Castells interview in PUB:10.03.2005.

<sup>479</sup> C.Campos, PUB:05.12.2003 "*Assim não vamos lá*".

<sup>480</sup> According to Wright, most of the pentateuchal laws (first five books in OT) are contained in three major collections, in addition to the Great Words itself: The Book of the Covenant: Ex 20:22-23:33, ratified at Sinai itself (Ex 24) ; the book of Leviticus; and the Deuteronomic collection (Wright 2004, 284-8).



new covenant in Jesus Christ. Apart from the Jewish-Christian heritage, other religious groups also share some of the GWs concepts, such as Islam, Buddhism, and Jainism. Beyond religion, business corporations, book and film producers alike have all done their part in spreading GWs either direct or indirectly, including in newly adopted versions. A quick search on the Internet gives a glimpse of different sets of 10 commandments applied to a variety of cases. Here, and for brevity's sake, key elements for practical contemporary application are highlighted only. Readers should look into the footnotes if interested in additional references.

Three aspects are worth explaining: context, format, and contents. With regard to context, GWs belong to early Jewish literature inserted in a much wider, rich, and often neglected cultural background of the Ancient Near Eastern (ANE) traditions,<sup>481</sup> in which certain common practices were observed, such as the signing of political treaties. Most scholars agree that the Jewish covenant formula shared similar formats with the other ANE's peoples.

Table 10 below gives the overall co-relation between the Hittite Treaty and the biblical articulation of covenantal formulae and language, which consists of seven elements: preamble; historical prologue; stipulations; deposit and public reading; a list of witnesses; blessings and curses; and the oath (Weaver 1965, 32–3). Note for instance that the earthly King figure in the Hittite case is replaced by the heavenly God in the Jewish framework.

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<sup>481</sup> For a general, non specialist historical introduction of Sumer, Akkad, and Neo-Sumerian civilizations (2000-1600 BC) in which Abraham and his descendants lived in Mesopotamia, see (Weaver 1965, 14–23).

**Table 10** Hittite Treaty and Covenantal Biblical formulae and language

<i>The Hittite Suzerainty Treaty</i>	<i>Covenant Biblical Literature</i>
<b>1. The Preamble:</b> “The acts of the sovereign’s benevolent Great King...”	“Thus says the Lord, the God of Israel” (Josh. 24:2) “I am the Lord your God” (Ex. 20:2a)
<b>2. The Historical Prologue:</b> The acts of the sovereign’s benevolences are listed	“I... brought you out of Egypt, out of the land of slavery” (Ex. 20.2b). Josh. 24:2-13
<b>3. The Stipulations:</b> “The sovereign agrees to provide for and to protect his subjects, while the subjects agree not to seek security in relations with any other foreign powers.”	“You shall have no other gods before me” (Ex. 20:3) “Put away the gods which your fathers served beyond the River (that is, at Haran on the Euphrates River) and in Egypt, and serve the Lord” (Josh. 24:14).
<b>4. The Deposit and Public Reading:</b> “The sovereign requires the treaty to be deposited in the sanctuary of the vassal, and to be read in public at regular intervals.”	(Josh. 24:26 and Deut. 31:9-12) require that the covenant be placed in the charge of the priests, who carried the Ark of the Covenant. They are instructed to read the agreement (covenant) at the end of every seventh year.
<b>5. List of Witnesses:</b> “The gods and other witnesses are to keep an eye on the covenant makers in order to punish any breach of contract.”	“You are witnesses” (Josh. 24:22). If they break the covenant; they will witness against themselves. (Note that witnesses of earth and sky, mountains and rivers were still used by Israel as seen in Isa. 1:2 and Mic. 6:1-2.
<b>6. The Blessings and Curses:</b> “These are to be disbursed by the divine witnesses.”	“If you forsake the Lord and serve foreign gods, then he will turn and do you harm, and consume you, after having done you good” (Josh 24:20)
<b>7. The Oath:</b> A solemn ritual	“And the people said to Joshua, ‘The Lord our God we will serve...So Joshua made a covenant with the people that day” (Josh. 24:24-5)

Source: Adapted from Weaver, 1965: 32-3.

Table 10 indicates to a certain degree how GWs had also been moulded on existing knowledge. Moses' key task was to move towards a new monotheistic approach to God. The thesis' key point is to highlight the usefulness of the internal assimilation of a core set of principles likely to sustain steadily any course of action in history.<sup>482</sup> GWs had a particular original function of laying the foundation on which Israel, then an emerging nation, should live as a community of citizens and believers in the one and only God. Contemporary citizens, we argue, in different walks of life, and most particularly in an agreed programme against immoral corruption, need a basis; whether it is GWs or not is irrelevant at this stage of the argument. Still on the context, GWs as a literary genre fits within Sinai Covenant texts (Ex 19-34 and Deut 4-11) as a general preamble or, as Wright puts it, as a "boundary fence" around the kind of behaviour expected to be consistent with covenant membership.<sup>483</sup>

With regard to format, GWs are simply stated one after another as a continuous piece of text. Its internal subdivisions lack uniformity now. For example, what is the 7th commandment (against theft) for Catholics and Lutherans is the 8th for Josephus, Philo and both the Jewish and Reformed traditions.<sup>484</sup> However, GWs remain always associated with 10 sayings (Decalogue) with two widely perceived internal sections covering one's conduct before God (1-4) and among fellow citizens (5-10). Flexibility is also seen in the way they are applied.

With regard to contents, GWs are not strictly laws because they lack the concreteness needed for either civil or criminal enforcements. For example, "You shall not steal" says nothing about the object. Rightly so, because it concerns primarily with principles to be applied in wider forms. Thus Calvin alone applied it to ten situations including "denunciation of bribery and corruption".<sup>485</sup> Pallister, in a recent book published in Portugal, interprets it in the light of both

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<sup>482</sup> See for example *The Seven Principles of Public Life in practice in UK: Selflessness; Integrity; Objectivity; Accountability; Openness; Honesty; and Leadership* (Lord Neill 2000, ii).

<sup>483</sup> See (Wright 2004, 284)

<sup>484</sup> See this and related issues in (Nielsen 1968, 10-13).

<sup>485</sup> Based on Ex. 23:8; Lev. 19:15; and Deut. 16:19-20. The remaining list, according to Calvin's commentary on "Four Last Books of Moses" are: prompt payment of wages; care and impartiality for aliens; honesty in weights and measures; no removal of boundary markers; duties in respect of pledges for loans; laws against

property rights and labour policies but not without firstly amplifying it to illicit appropriation of “anything that belongs to another person”.<sup>486</sup> Only subsequent covenantal texts, such as Ex 23:1-9, covering specific matters regarding justice as in “you shall not take bribe”,<sup>487</sup> could legitimately be integrated within the spirit of “you shall not steal”. Rather GWs convey general principles entirely related and relevant to a single topic of relationships (the vertical dimension includes God but could well be King, State, Government, for example, and the horizontal dimension includes fellow citizens) set within a rather complex theological concept of covenant (pact, agreement).<sup>488</sup> They could be comparable (certainly not in its breath but in its significance) to a contemporary Constitution with which all remaining laws need to comply. Tertullian even argued that GWs always existed in human hearts before they were engraved on stone.<sup>489</sup>

As a set of foundational principles, its best function is to intersect critically with wider subjects, in an exercise fully open to the imagination and to correlations of which religion, family, work, crime, property rights are just a few themes.<sup>490</sup> The Jewish community always valued the GW. It was certainly remembered by subsequent prophets at various challenging political and economic times.<sup>491</sup> When Jesus began preaching in Palestine, he did so in continuity with these major principles. At one point Jesus answered an expert in the law by summarising all the Law and

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taking interest; recovery of lost possessions; restitution for theft; prohibition of partiality, for or against the poor. As cited in (Wright 2004, 394–5)

<sup>486</sup> See (Pallister 2002, 147).

<sup>487</sup> This and several other biblical references, including prophetic texts on bribery see an interesting analysis in (Noonan Jr 1987, 14–30). Cf (Wiens 1996, 8–10; Samuel 1995, 24–5).

<sup>488</sup> For a useful survey of different opinions of such rich insights regarding covenant as a theological idea and institution see (McCarthy 1972).

<sup>489</sup> As referred by D.H. Field in *New Dictionary of Christian Ethics and Pastoral Theology*, 1995:287, under “Decalogue”.

<sup>490</sup> The following serves as an example of correlated issues worth noticing: “...although all death penalty offences can be linked to the Decalogue, the reverse is not true: not all of the Ten Commandments were sanctioned by the death penalty. The tenth (prohibiting coveting) was by its very nature not open to *any* judicial penalty, least of all death. But that in itself is ethically important, since it shows that a person could be thought of as morally guilty before God without having committed an external, judicially punishable, offence. Jesus applied the same principle to other commandments (Matt. 5:21-24, 27-28).” (Wright 2004, 291).

<sup>491</sup> Isaiah 1 is a powerful message against rulers who seek after gifts and bribes; Cf. Isaiah 5:23; Amos 5:12; and Micah 3:11. Minor Prophets in particular were very critical of moral political and economic conditions on behalf of the oppressed people.

the Prophets under “Love the Lord... and your neighbour” (Mat 23:5).<sup>492</sup> Again, Jesus conveys two broad and important principles, which his followers need to articulate correctly in all circumstances. The point to retain here is that Christians must operate on the basis of these fundamental principles, made shorter in the case of Jesus’ summary.

Jesus’ freedom and application of the texts did not despise the remaining GWs at all. His New Covenant built on ancient principles of caring for one another and for the community at large. The new Catholic Catechism that Pope John Paul II presented in 1992 explains GWs under Jesus’ twofold summary;<sup>493</sup> something that Calvin has also done in his well-known *Institutes*.

How Portugal is likely to use, adapt or reconstruct a new foundation upon which to build such a demanding anti-corruption task remains to be seen. The current 1976 Portuguese Constitution consists of nearly 300 articles, far too long to gain popular support. Once, President Sampaio regretted that the Constitution, as a *magna carta*, has never been explained to students in general. It is certainly not the Bible that Portuguese people know well enough to be able to articulate with coherence.

For example, Singapore once adopted its own version and called it the Ten Commandments for the Judiciary, and it was included in the UN Anti-corruption Tool Kit of an earlier edition (United Nations 2002) as a case-study. Table 11 below includes on the left-hand side the Singapore version of the 10 Commandments (Yak 2003, 235-236), and on the right, William’s and Doig’s suggestion for African Anti-Corruption Commissions (ACC) in (Williams and Doig 2004, 14).

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<sup>492</sup> Mahatma Gandhi is known to share similar moral beliefs: “Remember that all through history the ways of truth and love have always won. There have been tyrants, and murderers, and for a time they can seem invincible, but in the end they always fall. Think of it ... always.” (As cited in Western Catholic Reporter, Canada, April 26, 2004 by Fr. Ron Rolheiser).

<sup>493</sup> See (Igreja Católica 1993, 443–534).

**Table 11** Examples of Commandments and Principles

<i>Singapore's 10 Commandments (Judiciary)</i>	<i>Williams and Doig's 10 Principles for ACC in Africa</i>
1: Transparency in the selection of judges	1: Political will and broad political support
2: Adequate remuneration for judges and court staff	2: Medium rather than very high levels of corruption. Where corruption is endemic and pervasive, ACCs' function in form but not in substance
3: An independent yet accountable judiciary	3: ACC is situated in a comprehensive anti-corruption strategy supported by effective and complementary public bodies
4: A coherent system of case management	4: Economic stability and a focus on reducing incentives & opportunities for corruption
5: Performance indicators for the judiciary and the judges	5: Adequate financial resources and skilled staff
6: Consistent and objective criteria in the justice	6: A clear and relevant mission focusing less on punishment and more on administration of prevention, supported by planning, budgeting and performance measurement regime
7: Clear ethical markers and guidelines for the judges	7: Appropriate legal frameworks, including the rule of law, and sufficient legal powers for investigative and preventive work
8: A common vision for the judiciary and leading	8: Operational independence and freedom from political interference by example
9: Full transparency in the justice process at all times	9: High standards of integrity in ACC leaders and staff
10: Learning from lessons of forward-looking institutions.	10: Public awareness of, and confidence in, the ACCs mission

*Source:* Yak 2003, 235-236, and Williams and Doig 2004, 14

In short, the high standards of morality needed to affect public and private administration demand a solid moral basis, which will be discussed in the context of building a new agency starting in the next section.

## **8.8 Anti-Corruption Agency, Structure and Strategy**

This final section sketched the establishment of an Anti-Corruption Agency (hereafter, ACA) by proposing a fourfold integrated structure, and a critical strategic plan of action covering the first of a multi phase approach. The entire process envisages an holistic approach which is comprised of key indicators likely to address the root causes of corruption as argued thus far. This framework will be tested afterwards.

### **8.8.1 Foundational Structure**

Corruption is fundamentally a moral problem. Its dynamic characteristics stream from multifaceted causes with manifold consequences demanding equally diverse but coordinated responses. These must be grounded, from beginning to end, on a clear and solid moral basis fueled

both by moral courage defined as a ‘determination to face disapproval rather than abandon the right course of action’, and moral certainty as ‘a probability so great as to leave no reasonable doubt’.<sup>494</sup> These are critical features needed for resisting pressures from opposing individuals and groups long adjusted to corrupt environments and fearful of losing their “owned” grounds.

The classical case-study highlights this need in a special way. The GWs and Jesus’ twofold summary provide examples of how critical principles need to be internally assimilated and articulated by individuals. The contemporary Singaporean case-study gives an additional example of unshaken moral commitment by top political leaders, followed by essential legal framework tools to be used by anti-corruption bureaux to counteract corruption, with highly visible positive results.

Likewise, in England, Wilberforce grounded his anti-slavery campaign under a moral conviction which he expressed by saying that ‘God Almighty has set before me two great objects, the suppression of the slave trade and the reformation of manners’. For forty long years he stood firm, always believing that the slave trade was immoral and must be completely abolished. Ghandi’s moral fibre was based on the principles of courage, non-violence and truth. Luther King had a dream which sustained him towards racial equality among all Americans. Mandela’s outstanding lack of bitterness after 27 years in a prison cell paved the way towards freedom and reconciliation in South Africa. All these great men had inward convictions and mobilised their fellow citizens. In some ways their objectives were not entirely fulfilled, which clearly indicates that each generation must refill its moral capacity, courage and certainty before facing new challenges ahead.

The following Table 12 below is one possible set of eight core principles. If adopted, adapted or replaced, it must nevertheless be internalised (incarnated, to use a rich theological concept). If properly assimilated and articulated by individuals in the remaining three anti-corruption structures, that will probably boost the confidence of all the agents. However, this moral

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<sup>494</sup> See The Oxford Reference Dictionary, 1987 edition, 543 (moral).

framework seems to fit well this thesis's theoretical findings and therefore it may not be useful in contexts other than Portugal at this exact moment and time.



**Table 12** Author's Tentative Principles for Anti-corruption Basis in Portugal

<b>Moral Foundational Principles For Anti-Corruption Response</b>
<p><b>1. Corruption affects every one.</b> For centuries, albeit unknowingly and unintentionally, we ignored corruption as one of the most serious problems that robbed us of integrity, stability, wealth, and prosperity. But there is nothing fatalistic or irreversible about it.</p>
<p><b>2. Only an holistic anti-corruption response works.</b> We move beyond isolated individual cases. We aim to address historical and contemporary root causes by reducing both incentives and opportunities that nurture and tolerate corruption in public and private sectors.</p>
<p><b>3. Citizens are our greatest partners</b> We most value people. So we want to be world-class listeners, irrespective of one's power, status, or creed. We definitely are not after programmes or diagnoses. The aim is to 'help not harm' citizens and institutions by primarily seeking to motivate, protect and encourage individuals, anonymous or otherwise, to conscientiously but fairly denounce alleged signs of corruption.</p>
<p><b>4. We value politics and politicians</b> Without benefactors' men and women, democratically elected or delegated, upholding values in key decision-making places, this cause remains completely lost. Therefore we unreservedly support their noble mission and unashamedly break away from a centuries long defamation attitude and demagogic criticism against the State as if it were an abstract entity.</p>
<p><b>5. We long to have more rich entrepreneurs</b> We abhor the idea that prosperity is associated with corrupt practices. This is often rooted in envy and distorted knowledge of economics. Wealth is essential and lasts longer in the midst of integrity. So we count on all entrepreneurs to provide peer support for a free and fair market and competitive environments.</p>
<p><b>6. Any form of corruption is a betrayal of trust</b> Mistrust often corrodes partnerships. In politics, it makes a new government undo the acts of a previous one. In economics, it prevents quality mergers. In society, it destroys its very fibre by aborting vital experiments and critical reforms. So we profoundly reject this rather ingrained distinction of 'venial sin' for petty corruption and 'mortal sin' for grand corruption by combatting both with equal determination.</p>
<p><b>7. If it is morally right, we will embrace it</b> Corruption is fundamentally a moral issue. It should not obstruct rational decisions. However, the absence of an overarching moral ethos leads to ethical "vacuums" while exaggeration of morality makes it false. Both create confusion where the emphasis on some items in moral regulations excuses the violation of others. And yet neither politics nor economics is morally neutral. We uphold moral integrity while carefully rejecting both religious zealots and republican ethical rhetoric approaches.</p>
<p><b>8. We seek to make corruption a "high risk" and "low return" undertaking</b> Prevention is better than cure. Enforcement is better than impunity. We seriously commit to prevent, detect, and prosecute all cases swiftly, fairly, and transparently. We rely on adjudication alone to reverse the widely perceived notion that economic crime compensates. Independent of the court outcome, we endeavour to inform complainants of the developments of their case.</p>

### 8.8.2 Top-Down Structure

Having laid the foundation, the starting initiative for a comprehensive anti-corruption response is the sole responsibility of top political leaders. This sets the direction designated as “top-down” simply because top political action and example are the *sine qua non* of a trustworthy programme. PM and PR, in a traditional spirit of sound relationship and mutual cooperation, should reach a common understanding - in critical principle matters only, regarding the need to launch a nationwide effort. But the PM alone is unambiguously responsible for the creation of ACA.

The representatives of the two remaining bodies of sovereignty (Parliament and Courts) should be fully aware of and participate in sharing the core values and critical reasons underpinning the initiative. Under the PM’s direct action, the following critical recommendations are highlighted.

- 1) Launch an official statement to the nation recognizing corruption as a serious problem needing a special coordinated and comprehensive response.
- 2) Legally (Parliamentary Law) establish a fully independent and yet accountable<sup>495</sup> anti-corruption agency (ACA) under the PM’s office only, with:
  - 2.1) Exclusive competence to design, implement and evaluate an holistic anti-corruption program covering public and private sectors to include prevention, public participation, law enforcement, institution building; and monitoring performance
  - 2.2) A comprehensive legal basis to include full and exclusive responsibility to undertake inquiries, including criminal investigation and prosecution related to public and private corruption and correlated economic crimes as they appear in current rather dispersed laws.
  - 2.3) A comprehensive administrative basis to ensure that functioning and decision-making processes in public sectors reduce incentives and opportunities for corruption, and that appropriate auditing procedures (under the International Accounting Standards framework) operate effectively in both public and private sectors.

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<sup>495</sup> See the following definition in U4 - <http://www.u4.no/document/glossary.cfm> : “Accountability denotes a relationship between a bearer of a right or a legitimate claim and the agents or agencies responsible for fulfilling or respecting that right.” It then explains that all accountability mechanisms operate according to three principles, namely transparency, answerability, and controllability.

2.4) Unifying, as well as extending where appropriate, under a single legislative code, a comprehensive legal framework for the effective protection of witnesses, preventing, investigating, prosecuting, adjudicating, compensation (for victims) and confiscation of the proceeds of corruption.

3) Define clear accountability features within which ACA will operate to include:

3.1) A biannual report of activities to PM to include clear development indicators of cases such as the full number of complainants and respective follow up in several categories; updated surveys of public opinion and participation.

3.2) An annual report to Parliament with a copy to the PM, and the PR, made accessible to the public, with clear development indicators.

3.3) An Advisory External Committee of seven elements independently nominated by the PM, PR, Parliament, Courts, and three public figures (one from Portugal, Madeira and Azores). Its task would consist of issuing statements safeguarding the ACA's independent status, democratic operational procedures, and transparent relationship with the public. This Committee would operate under transparent procedures and a code of conduct open to public scrutiny with full knowledge of the ACA and other sovereign bodies.

3.4) Open access to the public through friendly-approach offices and a webpage to include concrete internal information, operational results, indicators of progress, and ways for the public to participate.

4) Define clear goals, parameters, and competences within which the ACA will operate, to include:

4.1) A wide open approach to public scrutiny (objectives, means, and procedures), reserving confidentiality only for necessary procedures but removing it as soon as the situation allows.

4.2) Securing public support through open dialogue and accountability with the public, feeding continuous development indicators regarding prosecution, legal cases, and public awareness and reaction to corruption.

4.3) A civilian police body with powers to search, seize, arrest and prosecute only cases in which corruption is involved without any external interference, so as to be well regarded, protected and accountable.

5) Appoint upon PR's consent the Director of ACA, as a senior civil servant, with a clear and accountable job description to include:

5.1) Conditions for nomination, resignation and dismissal under strict and previously agreed principles of rights and obligations and a code of conduct.

5.2) Ultimate responsibility for the direction, administration, and budget of the ACA according to a transparent organizational organogram.

5.3) Recruiting, rotating and dismissing ACA officials, as civilian police or administrative officers, without necessarily assigning any public reason, under strictly disciplined conditions of the entry requirement.

5.4) Giving top priority to public relations in order to gain popular support for the ACA's mission and vision.

6) Equip the ACA, at once, with effective means to include:

6.1) An initial over generous, realistic budget to cover high set up costs followed by a reasonable annual budget thereafter.

6.2) Buildings for modest but efficient central and regional offices with easy public access.

6.3) Officials, initially up to 80, with exclusive dedication, well motivated and integrated within teams, well paid, to fulfill specific accountable functions, under a clear hierarchical but transparent structure.

6.4) Resources to enable training and research, public relations, operational activities.

7) If these six specified actions are taken in a genuine spirit and with unambiguous political determination, then the following two structures must be put into place.

### **8.8.3 Bottom-Up Structure**

This structure seeks to include people's cooperation to address the major identified problem of tolerance to corruption. Without people's willingness to denounce alleged evidences of corruption the entire programme will fail. The following concrete efforts are highlighted.

1) To win people's confidence by adopting a friendly and transparent approach with open information and access regarding the ACA's operation and performance, to include the following concrete measures:

1.1) The ACA will have a permanent friendly team trained to receive individuals and groups of visitors from all ages and sectors of civil society, and supply to all interested people and institutions relevant updated information likely to gain their support.

1.2) The ACA, in conjunction with other national and foreign institutions will promote debates, expositions, conferences and symposiums to inform about consequences of, and possible solutions for, corruption.

1.3) The ACA will make accessible, via a webpage, the results of its specialized research in the field of corruption, including an external contribution from various sources such as Greco and U4.

2) The entire ownership of the anti-corruption effort must belong to the Portuguese people among whom the ACA must be seen and projected as a simple facilitator only.

3) There will be the assurance that every complaint, as it comes, irrespective of size and the people involved, will be followed up. This is one of the most important ways of gaining people's support and securing a winning result against corruption. Therefore, the following procedures are important:

3.1) Each complainant will be properly informed, within a week, of the decision taken.

3.2) If the case turns out to be worth pursuing, the complainant will also be kept informed of the development if he or she so wishes.

3.3) Assuming that adjudication is an autonomous judiciary responsibility, all judicial developments and results will be followed up continuously so that the public may be fully aware of the judiciary's responses.

- 3.4) Information will be made available of all cases that have been passed on to other institutions because they did not fall within the ACA's specialized field of concern.
- 4) Surveys of people's opinions and level of tolerance and intolerance towards corruption will be kept up-to-date. In this area, whenever possible, active cooperation from universities and other research institutions will be sought.
- 5) Similar civil society, business and media initiatives will be valued and encouraged in awareness-raising and preventive activities, particularly in connection with children's school activities.

#### **8.8.4 Middle-Way Convergence**

This is the point where top-down and bottom-up structures meet to find the ACA performing its critical function. The ACA's main task is to monitor the effective reduction of both incentives and opportunities for corruption. Its critical organisation and function include the following:

- 1) A clear but full description of its:
  - 1.1) Mission statement, consisting of a single phrase that informs as well as limits the nature and function of its existence in the eyes of the public.
  - 1.2) Core Values, consisting of a critical selection of major historical, cultural and organizational principles shared nationally by which all members of ACA will abide in the course of its activities. A model is suggested in the first structure above.
  - 1.3) Vision statement, consisting of a few and easy memorable words to include a measurable indicator and a time limit.
  - 1.4) Organizational Chart, consisting of all internal administrative and operational teams under a clear hierarchical chain of command.
  - 1.5) Principles of Team Work, consisting of key norms by which every member of staff will operate and remain accountable to each other in concrete ways.
  - 1.6) Code of Conduct; consisting of clear guidelines to be observed in preserving human rights and consistently tackling corruption.

1.7) Concrete mechanism for internal check and balance procedures to assure everyone of the proper use of authority and accountability.

1.8) Concrete mechanism to evaluate the degree of integration and coherence of the entire activities of ACA.

1.9) Mechanism to register and evaluate critical errors and how to avoid them in future.

2) Provision of a measurable list of initial preparatory activities to include

2.1) Mapping critical known areas where corruption occurs and defining resources needed; how to approach them; and listing critical potential errors to avoid.

2.2) Stipulating realistic goals expected for each area of activity in the first phase.

2.3) A list of institutional national and international partners likely to assist the ACA in accomplishing its mission, including signing specific working agreements.

2.4) A plan for the recruiting and training of personnel to include budget, time specifications and the monitoring of results.

2.5) A plan for resources and equipment needed for different aspects of the work to include budget, time specifications, and maintenance.

2.6) A specific annual plan of action for each team within ACA to include periodic evaluation reports and assessment.

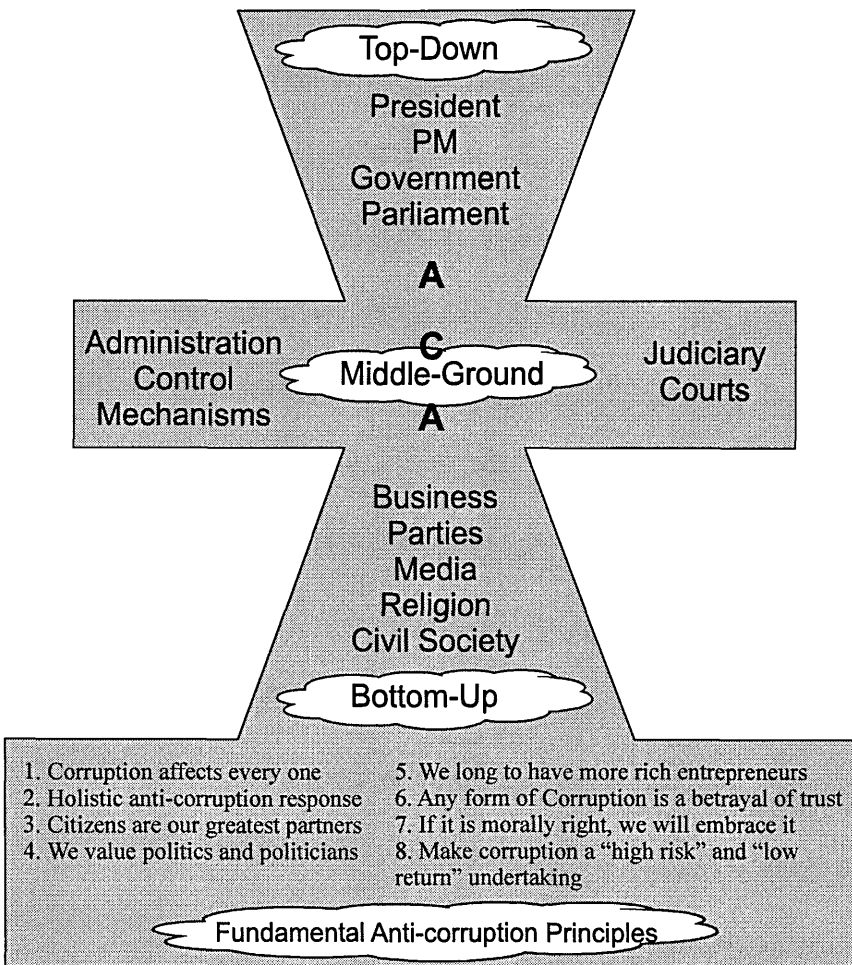
3) Organizing a database of available surveys, studies and specialized research already available and using them as an initial set of reference indicators of development for internal and external purposes. This should include international studies such as TI corruption perception and bribery perception indexes, the Freedom House index on freedom of expression, and the Human Rights Watch Report.

4) Improvement of the database with an additional set of initial key indicators, and preparation for undertaking ongoing studies and surveys to monitor public trust and cooperation.

### 8.9 Conclusion

This final section assumes an ideal scenario of cooperation involving top political leaders, popular support, and advanced technical and practical expertise under the single command of the ACA, and vital control mechanisms in both administrative and judicial sectors. As such, this fourfold structure, illustrated in Figure 9 below, addresses critical contextual factors that this thesis has raised regarding the dual problem of incentives and opportunities that nurture corruption and several inadequate contemporary responses.

**Figure 9** Fourfold Anti-corruption Structure.



Source: Author's compilation



The foundational structure provides the basis but certainly not the means, and key principles.<sup>496</sup> Morality is not to be seen nor used as a weapon against individuals or institutions. It is not something that should occupy the main discourse either. But it is nevertheless essential that agents have a common basis for undertaking a demanding task, and above all, to follow it through till the end.

If there is an equally solid top-down structure of good will and determination, something which has never been seen yet, the people at large will not fail to support this initiative either, particularly if they see both consistency and fairness. The vast majority of the population is not directly involved in corruption and still less in its “benefits”. Instead, it is losing its opportunity to recover from a backward inherited society. Therefore, there is every reason to believe that a bottom-up structure will function in providing much needed support, following the good example that comes from the top as well as from ACA and administrative and judicial control mechanisms. Of paramount significance is the need to pass on critical values among children of all ages through their education periods. Ten years later or so, they will most likely live up to the challenges too.

The middle-convergence structure is exactly the level of field operation largely under a competent agency specially built to coordinate the overall effort. Working under concrete and well defined objectives and duly given legal authority and effective powers to use updated resources, it is then simply a matter of time before a concrete increase of results will be seen. Reducing incentives and opportunities for corruption will boost the nation, particularly when resources begin to be properly used leaving better opportunities to improve the living and pay conditions of the people. Of course, this is all done with adequate checks-and-balances and in full respect for all human and collective rights.

There are also less positive aspects to consider seriously. Chief among them is the need to secure the support of the top leaders. Thirty years of democratic experience are still working against this expectation. Too many political discourses, compounded with some isolated and dispersed anti-corruption laws and initiatives, have given too many false starts which have resulted

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<sup>496</sup> For a full description see Table 12, p.234.

in a high degree of scepticism among the people. The low ethical standards of party politics, most particularly regarding their finances, have reduced even more the already low level of expectation.

Apart from politics, the inefficient court system poses serious threats also. Its transformation can only come from within. Its independent status must always be preserved. The old attitude of blaming one another within a complex judiciary system continues to favour corrupt practices right across Portuguese society. In summary, it is unfortunate that the only four constitutionally protected sovereign bodies, each with rather complex inbuilt structures, have not yet been able to establish a national coordinated effort to combat corruption. This may well account for the fact that educational policies remain so precarious and that civil society remains largely indifferent to corruption.

Without popular participation, there will be no civic pressure upon politicians and civil servants and, in the end, a climate of corruption will continue to exist and flourish until a new cycle appears again. With these warnings in perspective, alongside a concrete alternative response model suggested, this thesis now approaches its conclusion, but not without one last apparently positive sign.

On December 20, 1999, the same day that Portugal returned Macao to China, a completely new anti-corruption agency CCAC (Commission Against Corruption - *Comissariado Contra a Corrupção*) came into existence. It replaced the one set up by the Portuguese officials that was badly designed anyway. According to its first report, the leader Cheong U, used the first pioneering year for “foundation-laying” (CCAC 2000, 6). Six years later, a press release (February 28, 2006) informed us that the Political and Economic Risk Consultancy ranked Macao fourth among 13 Asian countries/regions, following Singapore, Japan and Hong Kong.<sup>497</sup> Contemporary Macao illustrates that there is no culture which cannot defeat corruption, and this seems right.

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<sup>497</sup> The report, which included Macao for the first time in its Annual “Trend of corruption in Asia” (<http://asiarisk.com/subscribe/dataindx.html>). See also CCAC website ([www.ccac.org.mo](http://www.ccac.org.mo)). Cf. F.C.Ferreira, PUB:11.03.2004 “Macao: o sorriso chinês”; and J.P.Coutinho, EXP:24.12.2004 “Roleta russa”.

## Chapter 9

### Conclusion

Corruption is a powerful indicator of the quality of democracy. It discloses the tensions within an ever-increasing mix of public and private relationships. This paradox particularly reveals critical exchange mechanisms behind a complex mixture of socio-religious, political and economic ideas that politicians insist on covering up with periodic legislation. In the case of Portugal, far more than a matter of personal misconduct, corruption is a serious social phenomenon with pervasive institutional consequences that ultimately erode trust and disrupt the people's legitimate progress. Since the corruptly acquired benefits of the very few jeopardise the country's image and its convergence with the developing EU countries, the transforming way forward rests solely with the country's greatest asset - its people.

This theoretical study raises people's awareness of the seriousness of both the occurrences of corruption and the ignorance of it, which are here perceived as one inseparable problem.<sup>498</sup> The Emaudio case study not only illustrates this dual problem but also unequivocally confirms the inadequate contemporary responses from the anachronistic anti-corruption agencies and systems.<sup>499</sup> But people must be aware of the factors which cause corruption which are never isolated. They originate in the present unresolved legacy of historical issues,<sup>500</sup> as well as in contemporary individual and institutional incentive and opportunity structures that remain unchallenged in the Portuguese context.<sup>501</sup> Not all the elements identified were analysed beyond the initial perception, and some of them require further research. Not that they were strictly necessary for establishing the main arguments for a new approach that has never been implemented before, but they were only mildly and hesitantly tried in rather ambiguous ways (former AACC, DCICCEF and DCIAP).

The Portuguese context encounters an ingrained tendency to bypass written rules and unwritten norms by neglecting to pay due attention to common welfare. Instead, a variety of

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<sup>498</sup> See Chapter 2, The problem of corruption and Chapter 3, The problem of ignoring corruption.

<sup>499</sup> See Chapter 4, Emaudio case study.

<sup>500</sup> See Chapter 5, Historical determinants of corruption.

<sup>501</sup> See Chapter 6, Contemporary Factors of Corruption.

transactions permeate public and private sectors, most of which encounter no opposition from fellow citizens or administrative control mechanisms, and find the judiciary lacking determination.<sup>502</sup> With little tradition of civic participation, weak religion, short-sighted political plans and commitment, and an unprepared business sector, the country continues its rather dynamic routine without perceiving well the effects of corruption, something which additional research should bring to light in more explicit ways, which we have not envisaged and thus have mentioned only in passing. Future researchers will have new grounds to explore in each of three main fields: politics (Parliament and the Judiciary attitudes and beliefs regarding economic crimes), economics (measuring the waste and possible savings under both corruption and corruption-free scenarios), and socio-religious factors (analysis of key values and counter-values that shape the nation).

The availability of this research is no more, but also perhaps no less, than a useful starting point, leading to vital areas of concern and strategy that have not been written about before from multidisciplinary and holistic viewpoints. However there should be no illusion, as the turning point inevitably rests with those who hold top-level political power. They certainly need adequate civic pressure, including that from the elite itself. If this happens, recovery is highly possible, perhaps in the not too distant future.

If the alternative solution patterns,<sup>503</sup> based on the adoption of the core eight principles, receive due reception and assimilation, then it will be possible to motivate many for the cause of anti-corruption because it has a well-thought-out plan of action. The suggestion of a tripartite, and multi-directed initiative of top-down (sovereign bodies), bottom-up (people and media) and middle ground (controlling agencies in mutual cooperation) has the potential to motivate key agents to undertake a serious anti-corruption move for reducing the current high levels of informality. As only ethics pays, it is better to act now than later. Therefore the resolve to face up to one's own reality cannot be taken for granted. But the choices we make today will largely determine future outcomes. *Turning a blind eye?* This is the key national question awaiting response.

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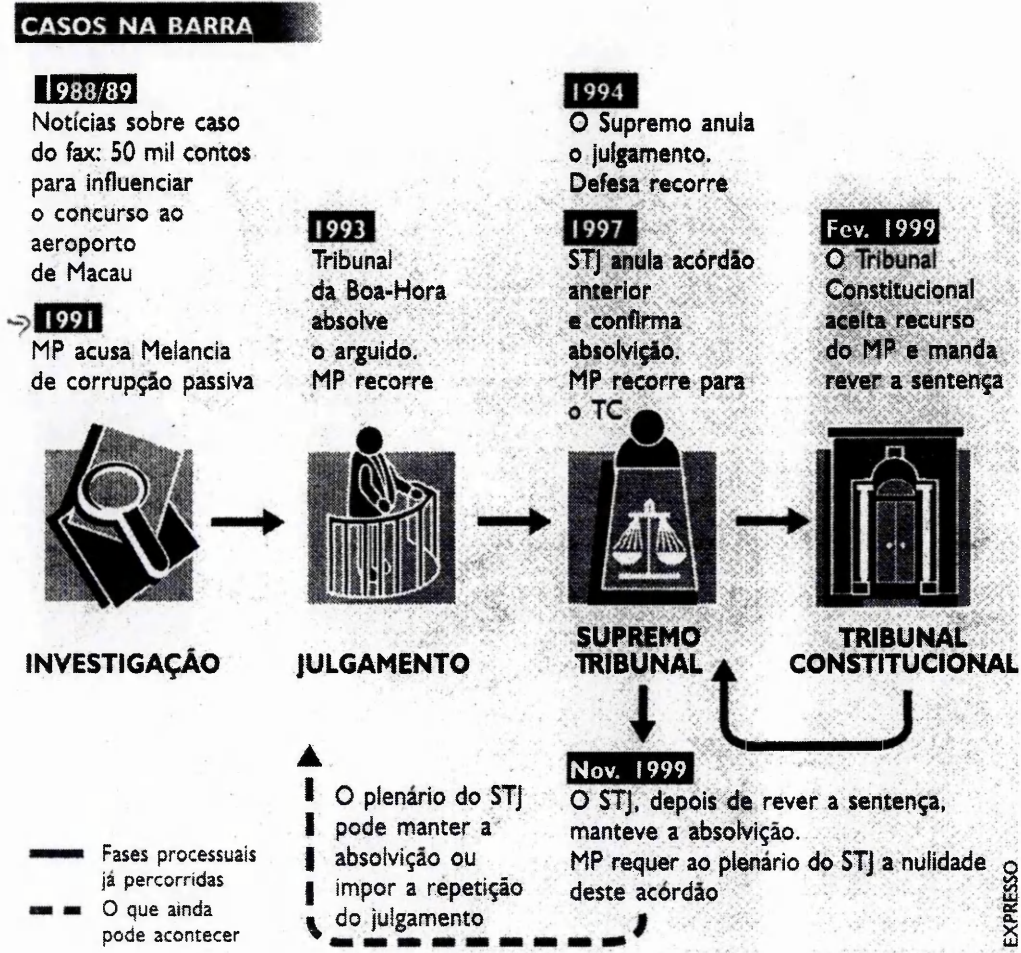
<sup>502</sup> See Chapter 7, Types of existing responses to corruption.

<sup>503</sup> See Chapter 8, Formulating an alternative framework of response.

# Appendix A

## Court Appeals - Melancia's Case

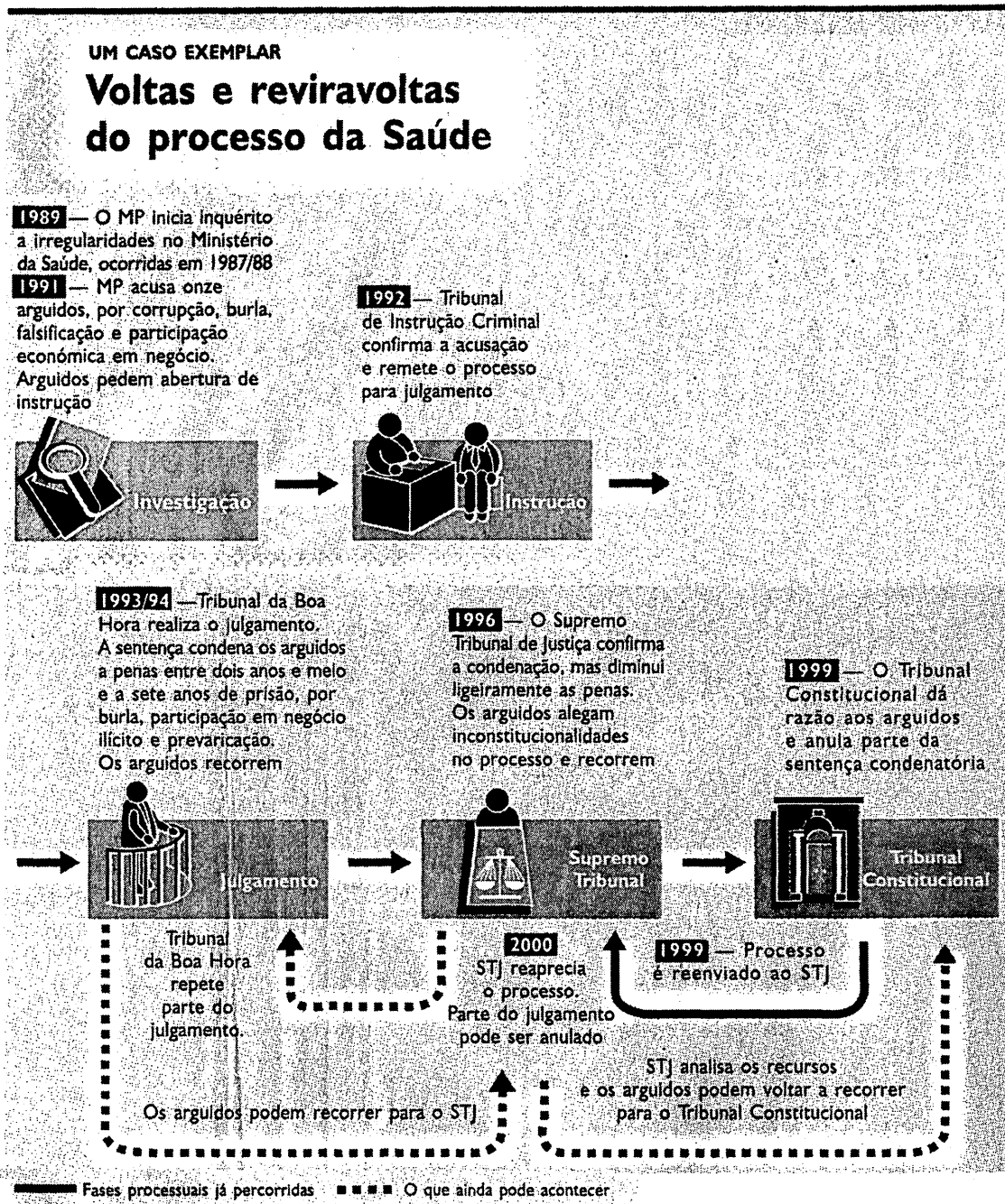
Figure 10 Melancia's Court Case Procedure, Expresso 28.01.2000, p.4



## Appendix B

### Court Appeals - Freire's Case

Figure 11 Costa Freire's Court Case, Expresso, 08.01.2000, p.12



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