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Corruption in Latin American Legislatures: setbacks, advances and prospects

Khemvirg Puente¹

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1. Introduction

Corruption is a problem that is not exclusive to the executive or to its employers. Corruption scandals affect the credibility of legislatures as it combines with the low levels of trust in institutions and politics. Corruption puts democracies at risk because it weakens its institutions and the authorities lose legitimacy. In an context of authoritarian antecedents like Latin America, corruption represents a serious risk of setbacks and restrictions of freedoms.

This paper seeks to understand how, in presidential systems of unconsolidated democracies, the national parliament adopts different types of measures to punish acts of corruption committed by its members. Why in presidential regimes do some legislatures sanction their members when they commit acts of corruption and other parliaments protect them? It has been thought that legislatures that do not have a system of parliamentary ethics with mechanisms, committees or rules fail to sanction their members, but there are institutional designs and mechanisms that could be decisive for the effectiveness of internal sanctions as the external control of parliamentary activities and the low level of legislative institutionalization.

¹ Professor of Political Science and Head of Department of Political Science at the National Autonomous University of Mexico. Email: khemvirg@unam.mx

Three Latin American countries were analyzed as a first approach to test the assumption that there are two types of factors that determine that a legislature punishes or protects members of Congress who commit acts of corruption: external factors, mainly related to the justice system, the professional profile of the Prosecutor and his legal capacities; and internal factors, mainly the institutional design that allows the permanent scrutiny of parliamentary activity and the ethics and conduct regime.

2. Legislatures and corruption

The word “corruptly” is here used to identify as “the offer, payment, promise, or gift, must be intended to induce the recipient to misuse his official position in order to wrongfully to direct business to the payor or his client, to obtain preferential legislation or regulations” (U.S. Department of Justice, 2012: 14), or as simple as Nye states corruption is “behaviour that deviates from the formal duties of a public role (elective or appointive) because of private regarding (personal, close family, private clique) wealth or status gains” (Nye, 1967:416).

Corruption in government and in public life has probably existed since the beginning of political history. In recent surveys, corruption is one of the topics most frequently discussed globally, among poverty, climate change or terrorism. In a 2013 survey in sixty-nine countries identified corruption as the world’s number one problem (Holmes, 2015: xiii). In the same year, according to Gallup International, people in countries worldwide perceive government corruption as a widespread problem (this includes countries with free press – an indicator of good governance and development- and those where media freedom is limited (Freedom House, 2013 media freedom index)².

² “Among countries with a free press, the “bottom 10” that are least likely to view government corruption as widespread are mostly European. In fact, Danes and Swedes are among the least likely worldwide to see corruption as a problem in their governments. Scandinavians traditionally see their governments as being relatively free of corruption. At the same time, other European countries such as the Czech Republic and Lithuania lead the “top 10,” with adults in each country nearly universally seeing government corruption as a problem. Extremely high levels of perceived government corruption are nothing new in Lithuania. Anti-corruption watchdog Transparency International has repeatedly criticized the country’s lack of progress in reining in corruption in the healthcare sector, police, and municipal government ... In South Korea and Ghana,

It should be noted that perceptions on corruption have not changed in the last decade. There do not even seem to be changes despite the fact that new international agreements have been approved for their fight. Gallup describes it as: “Gallup's data do not show any tangible improvements in perceptions of government corruption on a global level over the past several years. At first sight, these findings appear disappointing in the light of growing global anti-corruption efforts such as the G20 Anti-Corruption Action Plan” (Gallup, 2013).

One of the core functions of Parliaments is oversight. It is assumed that one of the main institutions responsible for spending the budget correctly is Parliament itself through its oversight function. Legislatures hold governments to account on behalf of the people, “ensuring that government policy and action are both efficient and commensurate with the needs of the public” (Yamamoto, 2007). Furthermore, Pelizzo and Staphenurts have shown that “the average number of oversight tools is almost linearly related to the level of democracy: the more democratic a country, the more oversight tools are at the disposal of that country’s legislature” (2008: 21).

Parliaments have developed their capacities to control governments. In some cases, through committees or audits they have been able to document deviations of resources and eventually punish government officials. Thus, they fulfill a crucial function for democracies that is to keep governments under scrutiny so that there is no abuse of power from the executive. However, few analysis exist to evaluate the control of parliamentary power from the same parliament or its leaders. That is, the control can be external and internal. The first is that which is recognized as part of the division and balance of powers (checks and balances) where the executive and the legislative or semiautonomous agencies

perceptions of government corruption have reached new heights in 2012 after the revelation of major corruption scandals involving some of the countries' top officials. Although the U.S. does not make the "top 10" list, it is not far from the top. Seventy-three percent of Americans say corruption is pervasive in their government”. Results are based on face-to-face and telephone interviews with approximately 1,000 adults per country, aged 15 and older, conducted in 2012 in 129 countries. For results based on the total samples, one can say with 95% confidence that the maximum margin of sampling error ranges from ± 1.7 percentage points to ± 5.6 percentage points. (Gallup, 2017).

oversee the actions of the Parliament itself. Internal control refers to internal mechanisms to prevent and sanction abuse of power from Parliament itself.

It is often said that legislatures have little policy-making power and, therefore, it would be irrelevant to assess whether they abuse parliamentary power if they do not have it. However, this must be re-evaluated in the face of the experiences of the last decade in which there has been more frequent abuse of power during the exercise of various functions by legislatures (not only lawmaking, but also budgeting and oversight).

Controls of the executive over the legislature tend to be minor and many of them are delimited to the legislative function. These external controls over the legislature are scarcely studied. As has been stated in a IPU report "There can be no democratic system of government without transparency and accountability. Through its core oversight function, parliament holds the government to account for the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public. Parliamentary oversight is also crucial in checking excesses on the part of the government. Nowadays, parliamentary oversight extends to every field of endeavor. The security sector, for instance, is no longer a taboo area for parliament. Governance, both nationally and in international decision-making, can only stand to gain from the growing prominence and scope of parliamentary oversight" but the system of governance must include the legislature.

Legislatures with greater capacity can influence political decisions and play a greater role in the polity. However, that same power when it is not subject to control can cause deviations from the purpose of the country and become a drag on democracy. Thus, a legislature where its members are not subject to accountability or legally responsible for their actions represent a risk to democracies and the rule of law. It is not only that there is institutional disaffection or discredit for politicians as it is almost everywhere in the world but also irresponsible politicians become agents who put at risk the democratic stability.

Stapenhurst, et al, have noted, that legislatures have constitutional mandate to control and oversee government. However, it is not clear how they manage business when a member of Congress is accused of a corrupt behaviour. In this paper we analyse three explanations on why higher levels of corruption are found in presidential countries: 1) cultural, “countries with greater cultural propensity to tolerate corruption also have a cultural appreciation for a more charismatic type of leadership and a greater propensity to have a presidential form of government... it is not presidentialism *per se* that causes corruption but rather it is a culture that is predisposed to both strong men in politics as well as to presidentialism and toleration of the misallocation of public resources, patrimonialism, and corruption and other forms of unethical behaviour” (84); 2) functional “the relationship between presidentialism and corruption is that since the existence of a presidential form of government may endanger the survival of democracy, corruption can be viewed as the price that has to be paid for democracy to survive in adverse circumstances” (84); and the institutional explanation that “holds that since legislatures in presidential systems have fewer tools of oversight at their disposal, they are not able to oversee the actions of the executive as well as those countries which have parliamentary forms of government. In this case, presidentialism does not induce corruption itself, but it allows corruption to remain unchecked, since legislatures in these systems do not have tools to keep it under control” (Pelizzo y Stapenhurst, 2012: 84). However, presidential design does not seem to be conclusive as an explanatory variable of corrupt behavior.

The bicameral design element should be incorporated into the analysis for two reasons: first, it is considered a model that promotes internal balances, and second, it is important to know what is the role of chambers in the designation of anticorruption prosecutors or general prosecutors. A second legislative chamber may have different functions in a political system but the function that gives it a prime place in the system is the capacity to review and sometimes modify or even block the legislation approved by the government and the other chamber of the legislature. However, it is not its sole function and in many cases that

is determined by elements of institutional design as its election design because in some presidential systems it is by designation of the local legislatures or by direct election as in Mexico, Australia, Brazil, Chile, Argentina or the United States. There are also few countries where they are not chosen by any of these two mechanisms, as in Germany or Canada, where the executive appoints their members. The legislative function is not the only one in which they intervene and here it is analysed if, when Congress appoints or participates in the appointment of prosecutors, the Senate has some participation or if only the lower house.

The following table shows a selection of countries with different institutional designs organized by the percentage of the population surveyed that perceives Corruption is widespread in government, its degree of freedom of the press, type of government and type of bicameralism / unicameralism.

Country	Media (Freedom House)	Corruption is widespread in government*	Type of government**	Bicameral/Unicameral***
Czech Republic	Free press	94	Parliamentary	Bicameral
Greece	Partly free	92	Parliamentary	Unicameral
Lithuania	Free press	90	Semipresidential	Unicameral
Ghana	Free press	89	Presidential	Unicameral
Portugal	Free press	88	Semiparliamentary	Unicameral
South Africa	Free press	88	Presidential	Bicameral
Thailand	Partly free	87	Parliamentary	Unicameral
Honduras	Not free	87	Presidential	Unicameral
Italy	Free press	86	Parliamentary	Bicameral
Costa Rica	Free press	82	Presidential	Unicameral
South Korea	Free press	80	Presidential	Unicameral
Paraguay	Not free	77	Presidential	Unicameral
Afghanistan	Not free	77	Presidential	Bicameral
Yemen	Not free	76	Presidential	Bicameral
Chile	Free press	67	Presidential	Bicameral
Haiti	Partly free	64	Semipresidential	Bicameral
Brazil	Free press	63	Presidential	Bicameral
Mexico	Partly free	63	Presidential	Bicameral
Venezuela	Partly free	63	Presidential	Unicameral
Ecuador	Not free	62	Presidential	Unicameral
Nicaragua	Partly free	56	Presidential	Unicameral
Uruguay	Partly free	50	Presidential	Bicameral
Vietnam	Not free	47	Presidential	Unicameral
UK	Free press	43	Parliamentary	Bicameral

Netherlands	Free press	33	Parliamentary	Bicameral
Australia	Free press	33	Parliamentary	Bicameral
Finland	Free press	30	Parliamentary	Unicameral
Hong Kong	Partly free	30	Presidential	Unicameral
Georgia	Partly free	25	Semipresidential	Unicameral
Norway	Free press	25	Parliamentary	Unicameral
New Zealand	Free press	24	Parliamentary	Unicameral
Switzerland	Free press	23	Parliamentary	Bicameral
Denmark	Free press	15	Parliamentary	Unicameral
Sweden	Free press	14	Parliamentary	Unicameral

* "Is corruption widespread throughout the government in [country], or not?" (see Gallup International, 2013); ** Mezey (2013) Presidentialism: Power in comparative perspective; *** InterParliamentary Union, PARLINE Data Base <http://www.ipu.org/parline-e/parlinesearch.asp>

As the table shows, there does not seem to be a very clear pattern between the presidential/parliamentary system and the perception of corruption, nor between bicameral/unicameral design (fewer bicameral countries appear because there are less countries with a second chamber) and perception of corruption. It is striking that there also does not seem to be a visible relationship between free press and corruption, at least in the year studied (2014).

Once these preliminary results are observed, it is necessary to explore new features that help to explain why some countries are more likely to tolerate acts of corruption in Parliament. It seems insufficient to explain this behaviour with the political culture or the historical context variables. We might consider as well the quality of internal regulations to explain why it is sometimes sanctioned and sometimes not. This paper will try to compare from different types of variables that not only include internal elements but the role played by the executive and the institutional fragility of unconsolidated democracies.

In this project, I will analyse three cases different legislative institutional designs and parliamentary rules that determine the way Members are sanctioned (when they are). Brazilian Congress during the Petrobras investigation, the tax fraud accusations to Chilean members of Congress during Bachelets's presidency, and the Mexican legislators that diverted resources from the federal budget for local governments to hire construction companies of their own. Now just the Mexican case is reported in extend

This paper analyzes three cases of corruption within the national congresses and the different ways in which they addressed the problem. On the one hand, it was observed the full protection of those accused of corruption, on the other hand those who only appeared to address the problem and simulated a process of sanction, while at the end is the legislature that effectively sanctioned those responsible. What determines that a legislature decides to sanction one of its members? What role do internal regulations and parliamentary tradition play?

Factors that could determine whether corruption is sanctioned in legislatures are external and internal. External factors are mainly those related to the political autonomy of the Office of the Prosecutor in charge of prosecuting corruption, the role legislators have in influencing the designation of the prosecutor and the political career of the prosecutor. The internal factors are: the degree of accessibility or openness of a Parliament to public scrutiny and the participation of society in its legislative processes, these are characteristics that could be called "Open Parliament", while the second internal factor is the existence of An Ethics and Conduct Regime in Parliament that includes a) Culture of responsiveness; b) rules for ethics; c) regulatory framework; d) parliamentary immunity.

Table 2. Factors related to the effectiveness of punishment for acts of parliamentary corruption	
External	Internal
1. Prosecutor’s autonomy 2. Role of Legislature in the appointment of National Prosecutor 3. Prosecutor’s career	1. Open Parliament a) Transparency b) Citizen Participation c) ITC (information and Communication Technology) 2. An Ethics and Conduct Regime in Parliament that includes ³ a) Culture of responsiveness; b) rules for ethics; c) regulatory framework;

³ Based on Greg Power’s Guide for Handbook on Parliamentary Ethics and Conduct

	d) parliamentary immunity
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Three cases in Latin America: democratic setbacks and advances

Latin America was one of the first regions to experience the global political transformation known as the third wave of democratization. By the eighties, Brazil and Argentina transitioned to civilian rule. In 1989 the Pinochet dictatorship in Chile gave way after suffering defeat in a national referendum and in 1997 in Mexico the then seventy year ruling party lost its majority at the lower chamber and in 2000 was defeated as well in the presidential election⁴.

Many of these newer democracies are not fully “consolidated” however, meaning that while they have electoral institutions in place, political democracy remains fragile. Latinobarometer 2017 shows that confidence in all institutions falls in just one year between 2016 and 2017, even in those like the church (which fell from 69 to 66%) or the elections that fell from 44 to 32%, the government fell from 33 to 28%, Congress from 27 to 25%, and political parties from 20 to 17%. Politics in general went from 36 to 33% confidence. The only institution that increased points was the Army that went from 66 to 69%, which is also a threat to democracy in the region where the tiredness and

⁴ The number of countries with Free designations had nearly doubled, and the number of Not Free countries had declined to exactly one: Cuba. Equally impressive is the fact that most of the gains registered during the 1980s have held firm and even improved since then, despite challenges such as the leftist populism exemplified by Hugo Chávez’s Venezuela, a surge in criminal violence in many areas, and erratic economic performance. For the first time in Latin America’s history, Free countries now predominate, and democracy is the rule, not the exception (Root, “Challenges of democracy in LA”, unpublished paper). http://www.usma.edu/scusa/SiteAssets/SitePages/Round%20Tables/FINAL_GO_Latin%20America.pdf

disenchantment with democratic governments has caused the military that are linked to dictatorships , Today are seen as an alternative to the failure of democratic governments.

Democracy has difficulties in obtaining a majority support from the population in Latin America, among other reasons, by the perception that it is not governed for the majority. On the contrary, the population has the feeling that it is governed for the benefit of a few. Between 2004 and 2011, the perception that governs the whole people has increased from 24% to 36%, but since then the indicator has fallen to only 22% in 2016, the lowest percentage measured for 12 years.

In Brazil, Paraguay and Chile, only 9% and 10% believe that it is governed for the entire people, while in Nicaragua, Bolivia and Ecuador, the three countries where it is believed that most people are governed by the people, To 46%, 40% and 35%, respectively. In 2016, a maximum of 73% of citizens in the region who believe that they are governed for the benefit of a few powerful groups. This amounts to 88% in Paraguay, 87% in Brazil and Chile, 86% in Costa Rica, 84% in Peru, 82% in Colombia and 80% in Panama. In 7 countries in the region 80% or more of the population believes that. That is, they are societies that feel deeply disappointed with the results of democracy and its performance. In fact, in 14 Latin American countries this indicator is more than 60%, and in Nicaragua alone it reaches percentages below 50%, with 48%. This phenomenon is described by Root as follows:

“Though Latin America is the most democratic region of the developing world, the public in these countries view their governments as corrupt at nearly the same rates as the public in most African and Asian countries, according to Transparency International’s Corruption Perceptions Index (2015). This has contributed to low levels of public trust in political parties, individual political leaders, and the political establishment as a whole, as *Latino Barometro* polls show year after year. This can create conditions threatening to democracy (Root, 2007).

A quality democracy is that regime where not only competitive elections are held regularly under certain conditions of freedom and justice, but also where a democratic state of law is guaranteed, political and civil liberties are exercised and there are institutional mechanisms for accountability. There is no democracy where there is no accountability;

There is no accountability where there is no access to information and transparency and where officials and authorities are not conducted under standards of integrity acceptable to society itself.

About ethics, “a legislative code of conduct is a formal document which regulates the behaviour of legislators by establishing what is to be considered to be an acceptable behaviour and what is not. In other words, it is intended to promote a political culture which places considerable emphasis on the propriety, correctness, transparency, honesty of parliamentarians’ behaviour” (Stanpenhurst and Pellizo, 2004: 9). However, it is not enough for a parliament to have a regulation or code for the conduct of legislators to be exemplary. To do this, it is necessary to build a system of ethics and conduct that should include a code, regulation or some kind of rule to regulate behaviour so that legislators adhere to certain basic desirable standards.

To observe the behaviour of legislators in terms of ethics or integrity, it is essential to know if there are any acceptable criteria or standards that have been regulated through some code of conduct and an ethics code or if the society that elected those legislators has certain expectations about the behaviour desirable of its representatives. Sometimes an Ethics Code and a Code of Conduct are two parts of the same document but they are different because

A code of ethics is usually a more general document with desirable principles about expected behaviour or values to be protected in the exercise of public or governmental activity, while the code of conduct usually includes dispositions and sanctions (see Stanpenhurst and Pellizo, 2004).

In Brazil, the Ethics and Parliamentary Decorum Council has two functions: to ensure the prosecution of those legislators who incur on ethical misconduct (and possibly remove some legislator from their functions) and to resolve queries by other members of

parliament and for this purpose, they grant hearings to those involved. In recent years this council has acquired a centrality in the public scene following the impeachment of former Brazilian President Dilma Rousseff and the role played by several legislators including former President of the Chamber of Deputies Eduardo Cunha. The council has 21 members who can be renewed after a period of two years. On the other hand, in Chile, the Ethics and Transparency Commission is responsible for knowing and sanctioning the lack of parliamentary ethics, issuing instructions of its competence, resolving queries of other members of Congress and may summon any legislator. It is composed of nine members elected by the plenary on the proposal of the parliamentary committees and their designation must be approved by three fifths of the deputies.

In May 2016, a Code of Ethics was approved in Mexico for the Chamber of Deputies and the creation of an Ethics Committee in the same Chamber. This code establishes the five principles to be observed: legality, honesty, loyalty, impartiality and efficiency. Some powers are granted for the committee, among which are: promote compliance with the code, establish the mechanisms for the presentation of complaints in conduct of members of the lower chamber and issue recommendations of sanction that will be in the hands of the Board. The sanctions may be public or private reprimand, the removal of any commission or committee that forms part or suspension of diet. The committee is made up of members of the Committee of Senior Members and one member of each parliamentary parties. The presidency and secretariats are annual and rotating.

The creation of an ethics committee reflects the interest of political elites to establish a framework of action that restrains behaviors considered inappropriate. However, the bodies responsible for implementing or applying this type of regulatory constraint are often limited in their institutional capacities, their attributions are scarce, and their relevance is often minor. In recent months, Chile and Brazil have shown that their ethics committees can serve as a gateway to society's demands and to institutional crises stemming from corruption scandals in those countries. In these cases, the congresses were the institutional

space to give an outlet to the problems of legitimacy and even governability. This has not been sufficiently warned by some countries like Mexico where corruption scandals have not ceased and, on the contrary, are perceived as a growing problem in recent years.

Three cases of parliamentary corruption in Latin America: Brazil, México y Chile

a) Mexico: “Moches” case

The “moches” is a type of embezzlement, it is a percentage (between ten and thirty percent) of a budget line assigned directly by members of the lower chamber in Mexico to a local government or a public agency to paving works, infrastructure or other public works, but that money is returned to the deputy as a condition to grant the resources to the local authorities. The money returns to the hands of the legislators through companies of their property that are contracted to make the public work authorized by the Congress through the public budget or directly as a contribution of money to its electoral campaigns.

In other words, the popularly called "moche" is a mechanism of diversion of resources. The procedure to divert the money is as follows: in the budget, an amount of resources to perform public works in exchange for a percentage of the cost of the work is directly assigned to some local authority. Right wing legislator and former governor of Baja California Ernesto Ruffo described the mechanism: “In the Chamber of Deputies, during the budgeting process there is an amount of money that any legislator can allocate directly to any local authority he or she chooses. There is an understanding with the Mayor and that Mayor should give them a percentage of that money back... the ‘distribution’ of the percentage could reach up to 25 percent of the budget amount. What do I mean by ‘distribution’? That some percentage goes to the member of Congress, something else to the Mayor and, obviously something to the contractor. It is clearly illegal ...” (Ayala and Guerrero, 2013: 1).

When the press made public this mechanism of diverting resources from the budget directly by the members of Congress, a political scandal was made public but there was no sanction

to the legislators and no serious investigation was initiated by the authority. One of the suspects involved in this scandal was the leader of the main opposition party who not only remained in office but also was exonerated by the Attorney General who argued that after he testified, it was proved that he was not involved in the embezzlement.

Table 3. Factors related to the effectiveness of punishment of parliamentary corruption in Mexico	
External	Internal
<p>1. Prosecutor’s autonomy The Office of the Mexican Attorney-General (hereinafter PGR) is the body of the Federal Executive Branch, which is mainly in charge of investigating and prosecuting the crimes in federal matters and whose Chief Law Enforcement Officer is Mexican Attorney General, who heads the Federal Public Prosecutor and its auxiliary bodies which are the investigative police agents and the experts.</p> <p>2. Role of Legislature The General Attorney who is the chief of any federal prosecutor is appointed by the President of the Republic and ratified by two thirds of the Senate. Must meet a number of formal requirements such as age (35 years at least), experience (10 years as a law professional), have a good reputation and have not been convicted of crimes.</p> <p>3. Prosecutor’s career</p>	<p>1. Open Parliament</p> <p>a) Transparency (Latin American Index of Legislative Transparency)⁵ The dimension in which Mexico obtained the worst evaluation is “Budget and Administration” due to the lack of transparency in the information on the structure of parliamentary support in committees, parliamentary and administrative services and parliamentary groups.</p> <p>The best qualified dimension is “Norms or Regulation” because it concludes that the Mexican Congress counts on publicity of the internal normative framework, although it lacks of regulation on offices of citizen participation. However, Mexico ranked first in this dimension among the 13 countries assessed in the region.</p>

⁵ The Latin American Index of Legislative Transparency aims to systematize and analyze relevant information about the Legislative Powers and to monitor the tasks that they carry out from the perspective of the transparency and the access that the citizenship has to those organs. The instrument compares the levels of transparency and access to information of the Congresses or Parliaments of Argentina, Bolivia, Chile, Colombia, Ecuador, Guatemala, Mexico, Peru, Uruguay and Venezuela, in order to establish a minimum standard of transparency in the political, administrative and proper work Legislative measures of these institutions, in order to obtain a measurement that - systematically practiced - eventually becomes a benchmark for the progress in the levels of transparency in these countries, and can even be a tool for sharing information with other countries in the region that today Participate in the construction of this instrument. See: <http://www.transparencialegislativa.org> [Access: July 2017].

<p>In 2014, the prosecutor was a prominent member of the ruling party and General Secretary of the Party (the second most important post in the party). Former governor of Hidalgo State. He was member of the House and its Speaker (speakership in partisan) and member of the Senate (and Chair of one of the most important committees).</p>	<p>b) Citizen Participation It was identified that some social organizations participated in various legislative processes but this opening is neither regulated nor guaranteed⁶.</p> <p>c) ITC (information and Communication Technology) The web site contains: Materials (forms) online, online services (transactions, paperwork), internet search, News page and Site Map and other languages. However, there are no platforms to promote interaction with citizens or that they can participate remotely in the ordinary activities of Parliament. That is, the main purpose of the internet web page is only to publicise not to interact.</p>
	<p>2. An Ethics and Conduct Regime in Parliament that includes</p> <p>a) Culture of responsiveness: There was no Ethics Code that clearly defined the principles to be protected by Parliament. (In 2016, an Ethics Code was approved one for the lower chamber).</p> <p>b) Rules for ethics: There was no Ethics Code that clearly defined the principles to be protected by Parliament. (In 2016, an Ethics Code was approved one for the lower chamber).</p> <p>c) regulatory framework; There is a federal law that regulates all public officials to prevent conflict of interest but there is no authority that can sanction legislators⁷.</p>

⁶ Organisations: Fundar, Transparencia Mexicana, Alianza Cívica, Hágalo Usted Mismo, México Abierto and México contra la corrupción.

⁷ The new Ethics Code approved in 2016 for the lower chamber states that Deputies are prohibited: a) Use for their own benefit, relatives or third parties, the reserved or privileged information to which they have access because of the function they perform. B) Participate in the dictation of rules for their own benefit. C) To misuse the official title, emblems, or prestige of the Corporation for personal or private matters. D) Direct, administer, sponsor or provide services, remunerated or unpaid, to natural or legal persons who manage or exploit

	<p>d) parliamentary immunity Deputies and senators have immunity. Only an impeachment process would allow a prosecutor to judge a legislator.</p>
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In November and December 2014 and January 2015 I conducted three different focus groups with Mexican national legislators from all parties. The focus group consisted of collective self-evaluation tables on their performance in different subjects. The exercise took place in the Chamber of Deputies where each group of five legislators evaluated the performance of the legislature itself. The qualification obtained by the legislature in each of the dimensions should be the result of the deliberation and consensus of the members of the group. That is to say, the qualification is not individual but collective, by consensus and in which the members of parties of majority and of opposition participated. In three cases, the party representative had to be replaced by a political party adviser to have all parties represented.

The activity was based on the Interparliamentary Union’s “Evaluating parliament: A self-assessment toolkit for parliaments” formulated by David Beetham in 2008 “to assist parliaments and their members in assessing how their parliament performs against widely accepted criteria for democratic parliaments”. The toolkit provides a framework for discussion among members of parliament. And it involves answering questions about the nature and work of the parliament concerned. These questions are grouped under six topics: 1) the representativeness of parliament; 2) parliamentary oversight over the executive; 3) parliament’s legislative capacity; 4) the transparency and accessibility of parliament; 4) the accountability of parliament; 6) parliament’s involvement in international policy. As recommended, the self-assessment was conducted by a diverse group of

concessions or privileges of the State Administration, or who are its suppliers or contractors. E) To receive, in exclusive personal terms, benefits arising from contracts, concessions or franchises that are celebrated or granted by the State Administration. F) Request resources for the Corporation, when said contribution compromises or conditions to some extent the decision making. G) Use the public goods received by reason of the position, in commercial matters or other personal gain.

members of Congress⁸. They had two hours to answer the questions, but one group needed more than this to finish. They responded in a five-point scale performance: 5 (very high/very good), 4 (high/good), 3 (medium), 2 (low/poor) and 1 (very low/very poor)⁹.

The results are very interesting because legislators acknowledge that the two functions where they perform poorly are: Transparency and accessibility of parliament and Parliament's accountability.

Topic	Group 1	Group 2	Group 3	Average
Representativeness of parliament	3	4	4	3.7 (medium)
Parliamentary oversight over the executive	2	4	3	3 (medium)
Parliament's legislative capacity	3	3	4	3.3 (medium)
Transparency and accessibility of parliament	3	2	3	2.7 (low/poor)
Accountability of parliament	2	2	2	2 (low/poor)
Parliament's involvement in international policy	3	4	4	3.7 (medium)

They were asked "How can they improve their performance in those functions?", the answer had to be a consensus reply. Group 1 said that only a new Transparency Code would incentive members to behave better; Group 2 alleged that only civic engagement would

⁸ Beetham suggests: "The diversity of that group is the best guarantee of the legitimacy of the self-assessment process and that the plurality of views is considered. A variety of views from within parliament is essential to achieving a constructive outcome."

⁹ The questions were grouped into six sections. The toolkit is designed so that each area of a parliament's responsibility can be assessed separately or in turn. A parliament may wish to focus on only one or two of the six sets of questions, depending on the agreed purpose of the self-assessment. Each section contains up to 10 questions. The questions are not yes/no questions; rather, they are framed in language that asks "how far," "how much," etc. They invite respondents to make judgements on a five-point scale.

make them perform in the interest of the people and be interested in to be accountable; group 3 as well argued that only when citizens take part of the parliamentary activities, they perform different. They were asked to write in one line how the Chamber of Deputies would perform better in Accountability. Group 1 wrote “We need a new Legislative Transparency Regulation and a political agreement between all political parties to enact and enforce it”; group 2 wrote “If parties want to hide how they use the (internal budget) resources, we need to open spaces for citizen engagement and wen sanctions for members, and a new parliamentary accountability policy”; group 3 concluded that “we must acknowledge that there is no communication or interaction with society, we should broader space for them in Congress activities and be responsive”.

b) Brazil: car wash case (Odebrecht/Lava Jato)

Operation Car Wash (*Operação Lava Jato*) is an ongoing criminal investigation being carried out by the Federal Police of Brazil since March, 2014. The operation has included more than a hundred “warrants” for search, temporary and preventive detention and coercive measures, with the aim of ascertaining a money laundering scheme suspected of moving more than 9.5 US billion dollars. Because of the exceptionality of their actions, lawyers accuse the operation of “selectivity” and “partiality” in their case, being “a criminal case that violated minimum rules of defense for a large number of defendants”.

The Speaker of the House Eduardo Cunha was expelled from the Brazilian Congress in September 2016 accused of corruption, money laundering and tax evasion related to an oilfield purchase that Petrobras made in 2011 in Africa, among a series of other charges. In 2017 he got charges of obstructing a corruption investigation. Cunha was accused of taking \$5 US million dls. in bribes from a company that won contracts with the state oil company, Petrobras.

Renan Calheiros, Speaker of the Senate is also being investigated by the supreme court for seven alleged crimes relating to the \$17 billion dls. Petrobras scandal, including bribery and obstruction of justice. In december of 2016 Brazil's Supreme Court removed Senator Renan Calheiros as president of the Senate after the top court indicted him on charges of embezzlement.

Table 4. Factors related to the effectiveness of punishment for acts of parliamentary corruption (Brazil)	
External	Internal
<p>1. Prosecutor’s autonomy In Brazil, the Prosecution Service is not part of the Executive, Legislative or Judicial branches, being totally independent. It cannot be terminated and its duties cannot be transferred to other government</p>	<p>1. Open Parliament a) Transparency Brazil was not assessed in the 2012, 2014 nor 2016 edition of the Latin American Index of Legislative Transparency.</p>

<p>agencies. Prosecutors have their independence guaranteed by the Brazilian Constitution. Therefore, they are subordinated to an authority for administrative purposes only, but each member of the Prosecution Service is free to act according to their conscience and convictions under the law.</p>	<p>b) Citizen Participation and c) ITC (information and Communication Technology)</p> <p>The e-Democracy initiative of the Chamber of Deputies aims to broaden social participation in the legislative process and bring citizens and their representatives closer together through digital interaction.</p>
<p>2. Role of Legislature</p> <p>The head of the Public Prosecution of the Union is the Attorney General of the Republic. He or she is appointed by the President of the Republic from among career members over thirty-five years of age, after his name has been approved by the absolute majority of the members of the Federal Senate for a term of office of two years, reappointment being allowed.</p>	<p>It promotes participation in the Chamber, programs for citizenship, dissemination of information about the role of the Legislative.</p> <p>The popular initiative (people’s bills) can be introduced to the legislative process if it is signed by at least one percent of the national electorate list, distributed by at least five states, with not less than three tenths percent of the voters¹⁰.</p>
<p>3. Prosecutor’s career</p> <p>The serving prosecutor is an expert on financial crime and money laundering. He has more than 15 years as a member of the team of prosecutors dedicated to the fight against corruption in Brazil.</p>	<p>2. An Ethics and Conduct Regime in Parliament that includes</p> <p>a) Culture of responsiveness: There is an Ethics Code.</p> <p>b) Rules for ethics: The Ethics Code is also applied as Conduct Code (Related to probity: values are integrity and equality; related to behavior: values are dignity, respect, good faith).</p> <p>c) Regulatory framework;</p> <p>Ethics Council can sanction members as follows: I. Warning (verbal or written); II. Suspension of some privileges for up to 6 months; III. Suspension of the service or mandate for up to six months; IV. Loss of mandate.</p> <p>d) parliamentary immunity</p> <p>Immunities for members of Congress shall be maintained and may only be suspended</p>

¹⁰ Some organisations that have taken part of the legislative activities are: Projeto Excelências Transparencia Brasil, Movimento de Combate à Corrupção Eleitoral (MCCE) and Políticaética

	by the vote of two-thirds of the members of the respective House.
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NOTE: BRAZILIAN CASE ANALYSIS STILL IN PROGRESS.

NOTE: CHILE (work in progress, see appendix 1).

Preliminary conclusions

Not everyone understands the same thing for corruption. Even some of those who commit acts of corruption publicly justify it as a necessity to effectively carry out their work. The deviation of Parliament's resources for personal purposes (even if they are political ends) is an act of corruption. It's different from what Mayhew was referring to. Mayhew noted that "the organisation of Congress meets remarkably well the electoral needs of its members. To put it another way, if a group of planners sat down and tried to design a pair of American national assemblies with the goal of serving members' electoral needs year in and year out, they would be hard pressed to improve on what exists" (1974: 82).

There is an extensive repertoire of corrupt practices in legislatures. Bribery, conflict of interest, are the most common, but in unconsolidated democracies, clientelism has encouraged diversion of resources "to make politics". It seems that part of the money that is diverted from legislatures is not necessarily to enrich some corrupt politician who will escape with the money, but from the point of view of the legislator that diverts resources, that money returns to the citizens through gifts that will allow him to compete for more important positions in the future. Thus, offices of the Congress are also seen by incumbents as platforms to promote their political careers and to use the money they have access in small gifts for voters and one of the resources at their disposal are the possible benefits that the legislator can offer to funders of their election campaigns.

It is very difficult to conclude that it is enough with certain regulations or committees to prevent this type of behavior from happening but the data seem to indicate that there is a

greater probability of punishment when there is an ethics regime and it is accompanied by an open parliamentary model with the participation of society In parliamentary activities.

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Appendix 1

Table 5. Factors related to the effectiveness of punishment for acts of parliamentary corruption (Chile)	
External	Internal
<p>1. Prosecutor’s autonomy The Chilean Public Prosecutor's Office and the Public Ministry are the same institution. It is an autonomous institution, whose function is to direct the investigation of crimes, bring the accused to the courts, and provide protection to victims .</p>	<p>1. Open Parliament a) Transparency With respect to the normative dimension, Chile is the only evaluated country that has a regulation of the lobby. In terms of Access to Information, has a normativity, , but there is no independent institution that disputes the</p>

<p>The Public Ministry is not part of any of the three powers of the state. It is not part of the Government or Executive Power, of the Judicial Power or of the Legislative Power (National Congress).</p> <p>2. Role of Legislature The National Prosecutor shall be appointed by the President of the Republic, on a proposal in the Supreme Court and with the consent of the Senate, adopted by two-thirds of its members in office, in a specially convened session. If the Senate does not approve the proposal of the President of the Republic, the Supreme Court must complete the quina by proposing a new name to replace the rejected one, repeating the procedure until an appointment is approved. The National Prosecutor must have at least ten years of legal title, have reached the age of forty and possess the other qualities necessary to be a citizen with the right to vote; Shall serve for eight years in the exercise of his functions and may not be appointed for the following period. The provisions of the second paragraph of Article 80 concerning the age limit shall apply to the National Prosecutor.</p> <p>3. Prosecutor's career criminal lawyer for the State Defense Council for 9 years. From 2003 until December 2007, he was the first Metropolitan Regional Prosecutor of the Public Prosecutor's Office. Was National Public Prosecutor of the Public Ministry from November 2007 to November 2015.</p>	<p>controversies between citizens and Congress on the subject.</p> <p>In relation of the information about the work of the Congress, the index shows that good practices of transparency and dissemination of parliamentary activity have been developed, both at the level of committees and chambers.</p> <p>With regard to information on budget and administrative management, there is set of good practices, such as public tenders and procurement through tendering systems.</p> <p>With respect to the mechanisms of citizen participation and accountability, Chile's performance is medium.</p> <p>b) Citizen Participation Civil asosiations: Fundación Pro Acceso, Área de Transparencia, Accountability, Lucha contra la corrupción de la Universidad de Chile, Chile Transparente and Corporación participa.</p> <p>c) ITC (information and Communication Technology) The web site contains: Materials (forms) online, Online services (transactions, paperwork), internet search, News page and Site Map.</p> <p>2. An Ethics and Conduct Regime in Parliament that includes</p> <p>a) Culture of responsiveness; Lawmakers carry out: Proposed bills, questions and inquiries, roll-call votes, Assistance, Statements of Interest and Patrimonial declarations.</p> <p>b) rules for ethics; Without information</p> <p>c) regulatory framework; Article 37 Omission of observation and compliance with the principles of the public service of legislators, contained in Title I; Chapter II of this Code, constitute conduct that violates the parliamentary ethics, attributable to the</p>
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	<p>Deputies and Deputies, without prejudice to those that correspond by provision of other applicable regulations.</p> <p>Article 38. The Committee may issue the relevant recommendation to the Board of Directors for the conduction of the conduct indicated in the previous article, or for non-compliance with the provisions contained in this Code. Under this recommendation, legislators may:</p> <ul style="list-style-type: none">I. Receive public or private warning;II. Be removed from the committee or commission to which the offending legislator belongs, at the proposal of the Political Coordination Board and in terms of what the Regulations and applicable provisions indicate, andIII. To receive suspension of the diet, in the terms that marks the Constitution.
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