

What does really changes in corruption fighting after re-democratization processes?

An analysis of Spanish and Brazilian cases

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ABSTRACT

Spain and Brazil have a relatively common history of problems related to government corruption and consequently a tendency to political mistrust. Nonetheless both nations also share a recent process of change in their controlling and anti-corruption institutions provoked, among other factors, by its re-democratization process as well as macroeconomic substantial changes. Despite the recognition of some improvements, public corruption continues to be considered a very problematic subject for both nations up until now. So why, despite brand new democratic institutions, economic development and controlling public resources' reforms, does corruption persists? After all, the supposed benefit of the democratic regime on the corruption fight is that it promotes more incentives for the public agents to be probe than to act illegally. In that sense, all the democratic control mechanisms should raise the cost of corruption acts and consequently inhibit its practice. This article cogitates that an explanation for the controlling and anti-corruption policy effectiveness depend on its institutional change process. Then, using an explanation framework based on Paul Kathleen Thelen, James Mahoney, Peter Hall and Wolfgang Streeck, it analysis the anti-corruption changes in Spain and Brazil after re-democratization transitions. That involves the analysis of political, institutional context and actors roles, intent and motivation in all relevant moments. The idea is that against what is commonly assumed, there are not only positive effects of democracy reforms on the corruption phenomenon, but contradictory ones as political agents (products of the democratic system) have simultaneously incentives to curb and to maintain corruption. In Brazil and Spain the democratic transition represented incremental layering changing process in the control policy. The improvements were slow and usually taken after social or political opposition pressure that demanded government response.

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1. INTRODUCTION

Spain and Brazil have a relatively common history of problems related to government corruptionⁱ and consequently a tendency to political mistrust. Nonetheless both nations also share a recent process of change in their controlling and anti-corruption institutionsⁱⁱ provoked, among other factors, by its re-democratization process as well as macroeconomic substantial changes.

The 1988 Brazilian Constitution Law enlarged attributions of Brazil's internal and external central controlling agencies. Moreover it assigned public finances' control functions to other departments as Federal Prosecutors' Office (*Ministério Público Federal*), Public Attorney's Office (*Advocacia-Geral da União*) and Federal Police Department (*Polícia Federal*). These rise on attributions were slowly transformed into real anti-corruption actions during the following years, better noticed since the end of 90s. Some of them are internationally awarded.

Spain showed signs of transformation in its public expenditure's controlling policies too. In the mid-90s, Spain created its Anti-corruption Prosecutors' Office (nowadays called *Fiscalía Contra la Corrupción y la Criminalidad Organizada*) which has been considered a model for some East European countries (Machado, 2010). In 2007 there were important changes in the Land Law as an attempt to improve controls under the troubled urban land legislation.

Despite the recognition of some improvements, public corruption continues to be considered a very problematic subject for both nations up until now. The perception of corruption in Spain increased dramatically from 2005 to 2009, rising by at least 15 percentage points, the double than countries like France and Italy (WBI, 2010). There have been pointed cases of corruption in almost 40% of its most important municipalities (with more than 90% of the population) (Villoria, 2011).

Brazilian local governments also present uncountable corruption matters. In 2010, according to the central auditing agency, almost 95% of audited municipalities presented at least

one irregularity (CGU, 2010). This fact helps explaining why Brazil is still considered more corrupt than countries with equal or worse economic index such as Uruguay, Colombia, Cuba, Costa Rica and South Africa, not even to mention Spain itself.

So what happened? Why, despite brand new democratic institutions, economic development and controlling public resources' reforms, does corruption persists? After all, the supposed benefit of the democratic regime on the corruption fight is that it promotes more incentives for the public agents to be probe than to act illegally. In that sense, all the democratic control mechanisms should raise the cost of corruption acts and consequently inhibit its practice.

Many other nations passed through similar processes of re-democratization and reforms, but continue to be referred as corrupted and not trustful by their population and abroad, as some Latin America and East European countries (Lizal and Kocenda, 2001; Santiso, 2006).

Despite the increase in the studies of corruption since the 90sⁱⁱⁱ (Tanzi, 1998; Heywood, 2007) and all the aid programs and manuals of good practices released by multilateral organisms and non-government organizations, some questions are still raised. One of the questions not solved yet is the reasons why anti-corruptions policies works in some democratic countries and does not in others or, in other words, why corruption curbs in some nations after democratization process but not in others.

Is it possible then to design an explanation for the corruption fight policy' results and effectiveness^{iv}? Other scholars have started this journey, especially invoking an evaluation of multilateral organisms' anti-corruption aid programs and a search for best practices (i e. Haarhuis, 2005).

This article, nonetheless, proposes a different perspective. It cogitates that an explanation for the controlling and anti-corruption policy effectiveness depend on its institutional change process^v. That involves the analysis of political, institutional context and actors roles, intent and motivation in all relevant moments. It also rejects the idea of convergence of policies and the utility of best practices and benchmarking as it ponders that the policy best results depends on the local institutional context.

The idea is that against what is commonly assumed, there are not only positive effects of democracy reforms on the corruption phenomenon, but contradictory ones as political agents (products of the democratic system) have simultaneously incentives to curb and to maintain

corruption. Then, some of the democratic effects tend to decrease corruption cases, as the participation of media, but others to raise it (or, at least, not fight it), as the coalition party practice.

The objective of this paper is to contribute to this debate through an empirical analysis of Spanish and Brazilian cases of controlling policies changes after the re-democratization process until nowadays. Both countries are very important economies to their respective continents and emblematic cases of long term corruption governments that passed through recent reforms after re-democratization reforms including new anti-corruption policies.

The comparative study between both nations enables the confrontation of occasionally similar and sometimes very different experiences and permits more reflection on the changing process and its effects, expanding research findings.

The paper begins with the relation between re-democratization process, its consequently public reforms, public expenditures' controlling and fight against corruption. Then, it presents an explanation framework of institutional change process based on works of Paul Pierson, Peter Hall, Wolfgang Streeck, Kathleen Thelen and James Mahoney and also presents a proposition of integration of the original framework with the corruption's parameters.

The third section investigates for each country how was the process of change in anti-corruption institutions and why it changed that way. The differences on the anti-corruption policies changing process in both countries are highlighted and briefly explored according to the different lenses of institutional changing theory. The next section debates which are the results or effects provoked by the measures. Finally, the fifth section brings some conclusions and limitations of the study.

2. THEORIES ON RE-DEMOCRATIZATION, REFORMS AND CORRUPTION FIGHT

In dictatorial and authoritative regimes it is not easy to distinguish corruption events or practices. The lack of liberty of expression, independence of control agencies and the absence of a parliament or other political control damage the possibility of effective external controls. Even the judiciary power is usually deeply influenced by the government.

That is why it is commonly accepted that “in dictatorships there is no corruption: the

regime is itself an institutionalized corruption^{vi}” (Lamo de Espinosa, 1997, p. 274, author’s translation). As Levy (2007) describes the organization of illegal economic activities in Georgia controlled by the communist government during the 60s: “the system, the police, and the government official, all were corrupt” (p. 444).

That can explain at least two important facts. The general political mistrust on dictatorships or authoritative regimes, even without concrete information about corruption facts related to the government actions. And, what it is more important for our purpose here, the genuine expectations deposited on re-democratization process regarding to corruption fight.

There is a sense on it. Democracy presupposes a government chosen by the citizens on free elections, so that they can compare and chose the best candidates. A regime where the checks and balances between powers exist to curb exorbitant influence or improper actions, including possible corruption cases. It is a synonym of free press what also means more control through disclosure of corruption facts. And it also means an independent judiciary power that can guarantee empowerment to anti-corruption measures and fair trials.

O’Donnell (2003) explains that representative democratic governments assume not only the control of the citizens and media but an intra-government control through agencies legally enabled and empowered to supervisor all relevant areas, what he called horizontal control.

Zamboni Filho e Litschig (2006) presented a strong evidence related to the importance of the judicial control presence to empowerment of anti-corruptions measures. In a research with Brazilian municipalities, the authors found a negative correlation between the presence of judiciary instances in the communities and local corruption.

But that is not everything. Re-democratization processes usually come together with macroeconomic and administrative reforms which can have many different forms. In the late 80s and 90s, period that concern to our study purpose, the reforms in general were related to liberalization of markets, economic deregulation and smoothly changes on public sector related to more efficiency, and performance. These changes are usually associate, at least theoretically, with positive effects on curbing corruption.

Ades and Di Tella (1999) expose the effects of market structure on corruption. According to the authors’ empirical studies, liberalization of markets with the reduction on the direct participation of the government it is particularly important to diminish corruption. Treisman

(2000) and Johnston (2002), as many other researchers, agree on the economic openness of economies to foreign competition as having positive effects on curbing corruption nonetheless composed with other factors.

Regarding public administration, Power (2003) arguments that new ideologies of reforms carried a strong rhetoric of necessity of control or accountability together with new concepts of public policies' quality and performance. That fostered a growth of audit and related monitoring practices in many countries in what he called an "audit explosion". Rose-Ackerman (2002) specifically pointed it out criminalizing bribery for politicians and officials as well as other measures to spread efficiency and honesty on the civil service as relevant points for administrative reforms in order to curb corruption, initiatives that were fostered also by multilateral organisms.

That all stated could mean that recent modern democracies and its reforms are finally successfully curbing corruption and pleasant their society with more honesty and transparent public administrations. Nonetheless in practice, the theory is different, as a suggestive Brazilian saying recites.

Manzetti and Blake (1996) and Elliot (1997) found out that liberalization of markets, depending on how they are conducted, can produce more corruption. It was the case on privatization programs studied by the authors respectively in Argentina and Russia. On both cases, it favored those with government inside connections and information.

Creating or expanding controlling agencies, responsible for monitoring, denouncing or prosecuting offenders, is not enough if they work precariously or not coordinately, which is often the case. The causes varies from lack of means to do their job and political interference to lack of empowerment of other instances, as legislative or judiciary powers, for the audits reports' results to be fully accomplished (Johnston, 2002; Melo, 2007).

Santiso (2007) comparing control agencies in Latin America suggested that their effectiveness doesn't depend on the organizational model or other usually discussed issues as independence (at least pure legal aspects) or credibility. More importantly are socio-politics aspects of the nation and other components of the public control system. He discusses three essential links for the public controlling policy: legislative power, judiciary power and civil society (Santiso, 2006).

The legislative power, according to Santiso (2007) is responsible not only for political control or checks and balances between powers, but also legitimates the control performed by control agencies, as audit courts. In this case the incentives created by the party structure is determinant. It is essential that the institutions administrative actions have enforcement, so they can be effective by themselves, even if questioned later on the judicial courts.

Political alliances, in many different configurations, tend to reduce incentives for accountability. If the same party or alliance has the control of executive and legislative power the incentives for mutual control is decisively diminished. That has been the case, for example, in some recent Latin America governments where the same party won in both spheres of power or in Brazil where the post-election coalition preponderates (Santiso, 2006).

The political accountability seems also to be curiously damaged by the administrative new models. All the technical apparatus to supposedly manage and control public policies' actions can be occasionally misused to create a false distance between decision-makers (and their responsibility for illegal decisions) and the consequences of their acts (Machado, 2010).

Another important link for the controlling policy is the judiciary power that guaranties enforcement to the controlling rules and agencies administrative decisions, as all of them can be questioned on judicial court (Santiso, 2006). Countries with a low judiciary system efficiency, or a political controlled one, badly structured or mistrusted tend to have a lower effective corruption-fighting policy (Melo, 2007).

The society control works through vote or social mobilization. The publicity has an essential role on it. However, the political structure can makes the political accountability more difficult. Non institutionalized parties and fragmented representative systems, for example, just contribute to isolate episodes of complaints, frequently with a party intention (Santiso, 2006; Melo, 2007).

A fragmented control policy with different specialized controlling agencies but without a proper coordination strategy is also a serious problem to the effectiveness of the corruption fight because it can create confused rules and simultaneous over-controlled and gaps of controlled areas, for example (Peters, 1998). That creates inefficiency for the control agencies and for the public management (Mainwaring, 2003).

Behn (2001) includes another public control current dilemma. It is the incongruence

between the audit and monitoring instruments and the pursue of efficiency on public administrative service. According to the author, “there is a trade-off between accountability for finances and fairness and accountability for performance” (p. 11). That happens mainly because legal standards of control are relatively easy to track, but informal ones that not but they are subject to political vagaries.

It ironically means that besides new management measures in public administration helped to bring a rhetoric of importance for controlling and monitoring (“audit explosion” as called by Peters (2003)), the auditing procedures apparently can not deal with the performance new rules on public administration.

That can be add to the general non solved discussions about the public controlling procedures as the responsible organization and timing. The first one discuss the effectiveness of the internal, effected by the executive power, or the external control, effected by an agency linked to the legislative power. The second discussion is related to the appropriated time of the audit process: a priori, during or a posteriori the contract setting (Santiso, 2006, 2007).

In all situations of potential precarious controlling system described above, even if publicity contributes to accountability, without systematic monitoring, auditing and prosecution practices, in most of the cases it remains as allegations or suppositions. It is useful to undermines confidence in the democratic system, but not enough for political or legal sanctions nor to prevention of new episodes of corruption. It remains in isolated cases known as fire alarms, usually used with political intentions (Melo, 2007).

The corruption change process framework

This paper analyzed the change process public expenditures’ policies and corruption fight started on the democratic transition in Spain and Brazil through a theory of incremental change. That perspective of analysis opens the possibility for the study of slow or small but significant or transformative modifications. And these changes are not restricted to a determined period of time and usually are not associated to a specific triggering event but to many motivations combined (Streeck and Thelen, 2005).

Mahoney and Thelen (2010) suggest an interesting framework for explaining institutional change based in three factors. The first one is the characteristics of the political context. The

possibility of veto or enforcement of some actors and their ability of reinterpretation of rules change the decision-making process. Then, political coalitions, conflicts, power distribution and actors' coordination transformations take part on the transition analysis (Mahoney and Thelen, 2010).

The second factor in the change analysis is the institution characteristics. The internal structure of the public policy and its internal consistency are decisive to the changing process. The bigger the gaps between formal and informal rules or previous practices and possibilities of reinterpretation of functions the bigger the possibilities of change (Mahoney and Thelen, 2010).

The third factor, that links the other both, is the dominant change agent. Changes require conflicts, redefinition of ideas and reallocation of power. Depending on the structure of the institution it may be facilitated or not. But to become real the transformations depend on opportunities and constraints of each moment. Besides political and institutional characteristics, the maintenance of status quo depend on the resilient power of the leaders versus the conviction and comprehensiveness of the change agents^{vii}. (Deeg, 2005; Hacker, 2005; Thelen and Mahoney, 2010).

Depending on the disposition of agents to preserve or not the institutions and to do it by following or breaking institutions' rules, the changing process mode can be completely different. Thelen and Mahoney (2010) suggest a classification of agents actions including insurrectionaries, opportunists, symbionts, and subversives. The first group does not want any change and the second one are interest in any change that can benefit them, without any ideological compromise. Subversives seek to change the institutions, but keep the rules, just the opposite that symbionts.

The conjugation of political and institutional context and actors behavior for changing or preserving institutions' status quo shape the mode of transformation that can varies from layering to displacement. The layering change is the introduction of new rules on top of the existent ones. The displacement also introduce new rules, but it removes the old institutions. It is the most drastic mode of change (Streeck and Thelen, 2005, Van der Heijden, 2011).

Institutional changes also can be done without introduction of new rules, but with through changed impacts of the old rules. Drift means changes due to transformation in the environment and conversion means strategic redeployment of the existing rules (Streeck and Thelen, 2005).

As suggested by Hall and Thelen (2008), "Institutional change is a process of continuous

mutual adjustment inflected by distributive concerns” (p. 21). The authors complete: “The principal challenge facing analysts, therefore, is to identify the coalitions of social or political actors that provide the support for a change in regulations or policy regimes and the factors motivating their support” (p. 20).

In order to investigate the Spanish and Brazilian anti-corruption policies changes, this paper uses the three factor’s framework for explaining institutional changing presented by Mahoney and Thelen (2010). The framework is then combined with the cardinal points for the anti-corruption policy discussed in the previous section as following:

Figure 1 – Corruption change process framework

Source: Author, based on Mahoney and Thelen (2010, p. 15).

The enforcement guaranteed by the legislative and judiciary power to control agencies and the respect to their political independence, as appointed by Santiso (2006, 2007), are essential factors to the anti-corruption policy. The bigger the enforcement and independence of the control policy, the bigger the veto power of the status quo. The existence of active checks and balances and social accountability also contribute in the same direction. Political alliances and the absence of horizontal control tend to diminish the veto possibility of maintenance of control institutions.

On the other hand, incongruences in audit and monitoring procedures related, for instance, to the pursue of efficiency on public administrative service (Behn, 2001), the responsible organization or the timing of the control procedure (Santiso, 2006), the absence of an appropriate regulation and the lack of coordination between control agencies can be considered institutional factors. They are gaps and openings in the anti-corruption policy that enable a level of discretion and (re)interpretation.

The change agents able to directly pursue modifications on the control policy are many and depend on the country and political system. In general terms, there are the chiefs of the respective control agencies and their servants, the chief of the executive power advised by assessors and the legislative political agents, as deputies and senators. They can also make

alliances according an confluence of power distribution and preferences. Their aim to modify the institution and its rules are given by the other factors of the framework so it has to be analyzed in each case.

3. EVOLUTION OF THE CONTROL POLICY IN BRAZIL AND SPAIN

The next two subsection studies the anti-corruption change process in Brazil and Spain in their democratic transition period. Due to space restrictions, this subsection focus specifically in the central (federal) control policy. The policy and socio-economics and political aspects of the period were compared with the previous moments for changing signals and were distinguished between core stable and important variations (Capano, 2009, Olsen, 2009).

3.1. ANTI-CORRUPTION IN BRAZIL - CHANGES IN THE DEMOCRATIC TRANSITION

The history of control policy in Brazil is longer than its recent democracy regime. The public expenditure control has been treated since the Constitution Law of 1824 in as many different possible ways as the different political contexts could express. The Brazilian Court of Audit was installed in 1893. Its attributions and power were increased and diminished depending essentially on the legislative empowerment and the government's public management ideas and laws.

The first big change in the control policy after the creation of the Court of Audit came with the military government and their administrative reform in the end of the 60s. It remodeled the bureaucratic structure of the central government, standardized the public expenses and decentralized policies. In the government instance responsible for the administrative reform process there was a general agreement on controlling as an important instrument of public management. It was equally understanding that this kind of control was not satisfactory executed until that moment by the external court, which was excessively formal, bureaucratic and tardy, according to them (Cotias e Silva, 1998).

In addition to this management discourse there was an important political aim to arbitrarily reduce the legislative power. Therefore, the initial idea of controlling changes was to

eliminate the Court of Audit, substituting it by an internal control under the executive power supervision. Nonetheless, this movement seemed to risk at the moment as the external control was enough consolidated and empowered to fight for its maintenance. The solution of the administrative reform of the 60s were to reduced the Court of Audit attributions and to create an internal control department in each Ministry (named *Inspetorias Gerais de Finanças*). The internal departments were then responsible for assisting the Ministry and also assisting the external control in expenditure and contracts audit and monitoring (Piscitelli, 1988).

As pointed out by Piscitelli: “The creation of the Internal Control System hid, at least in large part, the Executive’s convenience: a) to neutralize the action of political power in TCU still strongly influenced by the presence of representatives of governments before 1964 (...); b) to centralize and control virtually all decisions on financial matters (in respect of which the Constitution practically annulled the action of the Legislative power); c) act quickly without consultation nor barriers” (1988, p. 25, author’s translation).

The control policy reform of 60s benefited the public administration in terms of better control’s agility, but created another complication. There was an abrupt transition from an exaggerated bureaucratic control to a very precarious one. Despite the discourse in favor of internal control, it was not so empowered by the executive power in reality terms. Then the internal control departments proved themselves unable to prevent abuses because of lack of autonomy, status in the ministry and enforcement (Piscitelli, 1988).

This change can be seem as an example of layering designed by subversive actors, the executive power. New control rules “were attached to the previous one, involving amendments and addictions”. It was done respecting the previous rules so it did not cause a high political cost and resistance (at least from the beginning). The dominant group, the executive power, acted encouraging institutional changes using the common point of view (the lack of control policy’s effectiveness and necessity of changes) to modify the controlling policy according to their desire.

The fragilities in all aspects of the political context of the control polity at that time almost precluded the veto possibilities for the defenders of the status quo, including the servants from the Audit Court and legislative power. Actually, the main objective of the military government was to silent the last one and diminish the most the action of the first. The incongruence in some control instruments and its acclaimed inefficiency also contributed to a

discourse for change.

These disfigured control changes happened in a period when the decentralization of public programs and resources increased as never before. It can be considered as an emblematic episode. Despite the administrative reform of the 60s is taken as a very important episode of the public sphere's modernization (including the necessary public finances standardization) public expenditure control's fragilities were clearly aggravated.

The new Brazilian constitutional law, in 1988, introduced new social guaranties, popular participation possibilities and public finances decentralization. The controlling and anti-corruption policies were enlarged as a sign of importance of the accountability and checks and balances for the democracy regime (Pessanha, 2004).

The new legislation answered the desires of both internal and external control agencies wondering for more attributions. Specially the last one, better organized at the moment (Pessanha, 2004). The anti corruption functions inserted however were not unanimous ideas. Some of them were not even completely understood inside the organizations and were just put in practice many years later (Alves, 2008).

That was due to the leadership for changes assumed by a small group of insider actors or control agencies' servants (specially the main chiefs and, in the case of Court of Audit, the ministers). They took advantage of the propitious time of the brand new constitution and the democratic atmosphere and introduced ideas of a strong but modern control supposed to advise public managers and curb corruption. It enabled the introduction of new control rules that even if the agencies were not prepared to play at that moment, meant a great step to the sector^{viii} (Alves, 2008).

The new Brazilian constitution law also answered the expectations of lawyers and prosecutors asking for the enlargement of democratic citizens' guaranties and new judicial functions and structure. The Federal Prosecutors' Office (*Ministério Público Federal*) became independent from the executive power and its functions were changed from State defense to law and society defense and public patrimony's defense. That last function is directly related to anti-corruption functions assigned to the Federal Prosecutors' Office by the new law as penal public action, civil action for damages and action of improper conduct (Arantes, 2004).

The Public Attorney's Office (*Advocacia-Geral da União*) was then assigned by the new

constitution law to the Federal State defense, which also included some public finances control functions like action for recovery of public funds due to damage. Also the Federal Police Department (*Polícia Federal*) had anti-corruption attributions assigned to it. They included investigation of federal corruption scheme all over the country (Valente, 2002).

Alike the internal and external control agencies, nonetheless, the control actions of Federal Prosecutors' Office, Public Attorney's Office and Federal Police Department did not started just after the law promulgation. Some time were required for the internal (re)organization and preparation for new attributions (Barboza, 2004; Alves, 2008).

The beginning of 90s was very agitated in Brazil politically speaking. A series of corruption scandals, including one evolving the congressmen responsible for the budgeting law (known as *anões do orçamento*) and the impeachment of the Brazilian president (Collor de Melo), in 1992, called public opinions attention to the corruption problem and the necessity for an improvement in the controlling policy.

The public pressure contributed for the congressional regulation of the control agencies' internal (re)organization and new procedures. The Court of Audit, for example, had its mayor internal law (Lei Orgânica do Tribunal) approved in 1992. The provisional law of the internal structure of the internal control was also approved at that moment, in 1994^{ix} (Castro, 2008). The Federal Prosecutors' Office's re-structural law was approved in 1993. Also, the creation of the Public Attorney's Office was also in 1993.

After all the normative conquests for the control agencies in 1988 and beginning of 90s, the decade of 90 were dedicated to structure the organizations and training themselves in order to start practicing their brand new attributions. That did not come without problems and discussions inside the organizations as the practices were new and there were different positions about the best possible. (Arantes, 2004; Alves, 2008).

This moment of controlling reforms can be understood as incremental changes through layering incentivated mainly by the control agencies' servants (specially chiefs or ministers). They made lobby on the new constitution legislators in order to improve the controlling functions and expand their organizations attributions. After, they took part in their agencies reorganization, taking advantage of government corruption scandals to pass important internal legislation.

The political context were propitious to changes in the beginning, as internal force of the control organizations were not strong. In addition, the institutional context of legal changes were very appropriate to reinterpretations on control and anti-corruption policy roles and agencies procedures.

As the changes began to happen the control agencies became stronger and their veto possibilities were improved. The democratic constitution improved the checks and balances and the social accountability (specially by vote and free media, at this moment). The controlling enforcement guaranteed by the legislative and judiciary powers and the independence (specially the Court of Audit and Federal Prosecutors' Office ones) were also improved.

At that moment it seemed clear that the organizations were involved with their on issues, working in their on improvement. There were not a high acknowledgement about the others anti-corruption agencies and activities and there were not an developed idea of cooperation (Barboza, 2004; Alves, 2008).

In the end of 90s there were some changes in the Brazilian public administration, in special due to the Plan to Reform the State Management (*Plano Diretor para a Reforma do Aparelho do Estado*), in 1995. The plan aimed to transform the bureaucratic public management in a modern one. Combined to these ideas was the increase of the accountability as an important democratic instrument which gave a new impulse on the ideas of a mode

These modifications were direct consequences of the macroeconomic reforms started in the country in 1994 with the change of currency to real and intensified from 1998 on. Public fiscal restrictions, privatizations and public administration reorganizations started specially in the end of 90s. n and empowered control policy.

The increase on decentralization of public federal resources to municipalities and local non-government organizations was a factor of attention that also claimed for more control in the central government. To complete, the Fiscal Responsibility Law (*Lei de Responsabilidade Fiscal*), from 2000, that innovated in terms of public officials accountability, also created new attributions to the external and internal control agencies.

In the beginning of 2000s the control agencies slightly improved their activities in the anti-corruption affairs. The organizations were better structured and new public servants contests were organized for the increase on qualified workforce. However, it seemed that a

decisive step in their roles' definition in the corruption's fight came only after another series of corruption scandals and social request for more government action against the illegal actions.

For instance, in 2000, the internal control was centralized in one agency with more specialized attributions, as desired by their servants and the Court of Audit. However, old requests for more status and independence from the finance ministry were still pending (Castro, 2008).

More incisive position from the executive power had been take in 2001. Responding to more corruption scandals, the government created the Federal Inspector General Office (*Corregedoria-Geral da União*), giving its chief status of ministry. It had the mission to assist the president in matters related to public patrimony, in the federal executive sphere.

Magalhães Ribeiro (2004) and Coimbra (2006) emphasized the political content of this decision. At the time, there were many scandals involving the accessors of the president and there was a legislative movement to create an parliamentary commission of inquiry to investigate the facts. The government negotiated to avoid the creation of the parliamentary commission and minimized the political impact of the decision by creating the agency.

The creation of the Federal Inspector General Office was a signal to society that the occasional corruption scandals were going to be investigated. The precariousness of its inauguration is demonstrated by the various settings in the structure and attributions of the agency just months after^x (Coimbra, 2006).

From the mid of 2000s on the Brazilian Court of Audit expanded even more its control activities. Its empowerment enabled halting of construction and government procurement suspect of fraud. It also permits administrative punishment to public agents involved in illicit practices. Despite the independence the constitution law gave it (from the exclusive executive nomination of ministries), the still political character (probably party) present on indication of its ministries and, by consequence, the political aspects of its main decisions figure as one of the big complains against the agency (Speck, 2002; Alves, 2008).

The Federal Inspector General Office, responsible for all the federal government internal control after 2002, also expanded its activities from the mid of 2000s. It is responsible for all audit process in the federal instance and also process administratively corrupt federal civil servants. Their expertise have been required by African and Latin American countries and some

of their activities are internationally awarded^{xi}. Nonetheless it has some relative functional autonomy nowadays, the agency continued to be part of the executive power (Coimbra, 2006; Alves, 2008).

The Federal Police Department expanded its anti-corruption operations along the country producing many criminal reports and temporary prisoners. The Federal Prosecutors' Office's also improved its anti-corruption missions with specialized prosecutors all over the country. And the Public Attorney's Office created a department to increase the recover of public funds through judicial civil actions against illegal public agents (Valente, 2002; Arantes, 2004).

The number of joint operations increased significantly as a signal of the recognition of the necessity of expertises' combination. The level of coordination is increasing but it is still pithy. The differences in cultural aspects and excess of bureaucracy seems to difficult the dialogue between control agencies which slower the operations and decrease their efficiency (Barboza, 2004; Alves, 2008).

In general terms, from the end of 90s on, it is clear the continuing in incremental changes on controlling policy promoted by the control agencies' servants and facilitated by the executive and legislative powers in moments of corruption scandals.

The control organizations gained in terms of empowerment guaranteed by the legislative and judicial power. They also had some degree of independence, varying between them. Their activities were improved as a natural result of the combination of more organizational maturity and democratic environment.

The free press (and the publication of many corruption scandals) and the consequently mobilization of society seemed to have had an important impact on control policy. Even if considering the political use of the scandals and the alleged not sufficient Brazilian civic mobilization, these democratic instruments were points of pressure to improve or, at least, accelerate the controls agencies anti-corruption activities.

The spare power of the executive in the Brazilian modern democracy and the systematic practices of post-elections coalitions sacrifices the political control (checks and balances) and consequentially it damages control policy's reputation. Usual agreements between National Congress and executive power do not set the example in terms of corruption political punishment.

But these practices also create difficulties for the other control agencies. For instance, the party agreements sets indications for Court of Audit's ministries. The extra power of executive can be a source of instability if it reduces the functional autonomy of the agencies under its supervision. From time to time there are some initiatives in this sense (Speck, 2002; Alves, 2008).

One of them were the tentative to limit the disclosure of process in judicial transit by the Federal Prosecutors' Office. The agencies servants and other lawyers organisms protests were so that the legislative and the government itself had to retreat. The last measure to limit control agencies activities, taken in 2011, was the limitation on the power of the Brazilian Court of Audit to halt construction and government procurement that are suspect of fraud (Carvalho and Neves, 2005).

The lack of accordance on control legal rules and its procedures maintain a high level of discretion which permits different kinds of interpretations and changes. The loose coordination between agencies also corroborates on changes process as there is no many ties and procedures established already. Then it is possible to state that the institutional context of the control policy is still of instability which permits more changes in the next years.

It seems more likely however that the changes to come are related to control procedures, not to main agencies re-structuring (or displacement of organizations), as the main agencies seems to be institutionalized and with a high veto possibility to maintenance the status quo (of the agency, but not necessarily the procedures).

3.2. ANTI-CORRUPTION IN SPAIN - CHANGES IN THE DEMOCRATIC TRANSITION

The history of control policy in Spain is also much longer than its recent democracy regime. The Spanish Court of Audit (Contaduría Mayor de Cuentas, after named Tribunal de Cuentas) was established in the constitution law of 1812. Its attributions, independence and empowerment varied a lot according to the diverse national political periods. Each different configuration of the dominant power and executive versus legislative relationship was reverted in a diverse political and institutional anti-corruption policy context (Velarde Fuertes, 1996).

The administrative reform of 1870 aimed, among other things, the reorganization of the

public finances and its control and the limitation of the Court of Audit attributions. The solution was then the creation of an internal control in the Spanish central executive government. The General State Comptroller (Intervención General de la Administración del Estado) is under the Finance Ministry supervision since then (Gutiérrez Robles, 1993).

Both agencies were responsible for the external and internal control, respectively. They represented all the Spanish anti-corruption force until the re-democratization period. The beginning of the re-democratization transition did not represented memorable advances in accountability measures, which started mainly in the 90s.

Spain's new democratic constitution is from 1978, after a long dictatorship period. Since then the country is a parliamentary government under a constitutional monarchy. In 1986 it joined European Union and adopted euro as the official currency in 2002 which transformed substantially the local economy.

The political scandals and social movements against it were intensified after 1990 and the well known Juan Guerra case, brother of the deputy prime minister and accused of illicit enrichment through government relationships. From then on the political context was completely modified, according to Jimenez (1998). The popular approval of the government party (socialist party) started to decline, the opposition media became evident and the social accountability raised. Also, the opposition party were re-organized and started to raise in importance. Corruption scandals started to be used also with political purposes.

That context corroborated for the creation of the Anti-corruption Prosecutors' Office (Fiscalía Especial para la Represión de los Delitos Económicos relacionados con la Corrupción, nowadays named Fiscalía Contra la Corrupción y la Criminalidad Organizada), in 1995, as recommended by the Congress, academic researchers and international experts (Machado, 2010).

The anti-corruption Prosecutors' Office mission is to investigate and prosecute judicially the corruption acts (including non public ones) and economic frauds. It was located in the Prosecutors' Office (Ministerio Fiscal), which has a more hierarchical structure and some diverse attributions in relation to the Brazilian one.

In order to do it so, it was formed by a multi-disciplinary workforce of prosecutors (lawyers), auditors, fiscal specialists, policemen and other office workers. The auditors and fiscal specialists came from the General State Comptroller and the State Tax Administration Agency

(Agencia Estatal de Administración Tributaria) respectively (Machado, 2010).

An important fact, nonetheless, is important to be noticed. The creation law of the Spanish Anti-corruption Prosecutors' Office was from the beginning of the 1995, but the real agency operations dated only from the end of the year, when civil servants were allocated to the agency. That fact is important if considered the election time proximity, in the beginning of 1996 and government external pressure for a control policy change (Machado, 2010).

Another distinctive point is the complains from the agency's servants against its level of dependence from the executive power. Varying slightly on time, their argument is that the chief of the Prosecutors' Office is overly powerful in relation to the special agency decisions. That includes sensible and strategic decisions as list of investigation priorities. It caused an European bad evaluation of the Spanish controlling policy in 2002, not completely solved up until now, despite some improvements (Machado, 2010; Fiscal General, 2011).

The rapidly raise of demand for buildings in Spain, after its joined to the European Union, an ancient legislation and weak government controls formed an explosive combination that resulted in severe speculation and corruption related to the Spanish urban land. In 2007, nonetheless, the government responded to society and international appeals and modified the Urban Land Law as an attempt to improve controls under this area (Sanchez, 2008).

Some other issues influence the national control policy in democratic times. In terms of political context, the country usually had the same party dominating both executive and legislative powers. That situation almost cancel the checks and balances control between powers. It also tends to diminish the independence and enforcement of the control agencies (Heywood, 2007).

The control agencies coordination, essential for the policy effectiveness, is precarious until nowadays. Some agents even complain of individualistic actions and power disputes between the agencies stead of cooperation activities (Machado, 2010).

4. IMPACTS OF CONTROLLING CHANGES IN CORRUPTION FIGHTING

With information in hands about Spanish and Brazilian anti-corruption change process,

the objective of this study is to better comprehend the reasons why anti-corruptions policies works better in some democratic countries than in others. After all, the supposed benefit of the democratic regime on the corruption fight is that it should gives more incentives for the public actors to be probe than to act illegally. All the democratic control mechanisms should raise the cost of corruption acts and consequently inhibit its practice.

Why, despite brand new democratic institutions, economic development and controlling public resources' reforms, does corruption persists? This research answer is in the control change process and agents motivations. According to Mahoney and Thelen (2010), in each historical moment, the political and institutional context change in a matter that affects directly the policy change mode. It also affects the actors responsible for the change process who also determine the change mode. This model trace the process of how and why an institution change.

In this explanation framework, the national institutional background plays a very important restrict role. All changes initiatives are co-opted by the former institutions and agents. The agents' intent or motivation then are an essential influence on the public policy results, even if considering non desired or programmed results. In the control policy case, for instance, changing actors can be motivated to improve corruption fight and inhibit illegal actions or just to act according to political convenience (Streeck and Thelen, 2005).

Corruption can cause many problems to society, from unequal distribution of resources to government mistrust, inefficient public policies and waste of resources. Promoting its inhibition should be one of government's priorities. In economical terms there is an endless academic discussion about corruption's impacts. Some scholars agree on its perverse effects on distribution of resources and negative impact on economic growth (Mauro,1995). Others argue that black-market can actually correct specific previous economic distortions and contribute to political mediation, promoting economical growth (Bardhan, 1997; Nieto, 1997).

However, it is well known the negative impacts corruption and low effectiveness in controlling policies cause to democracy system confidence and to the public administration management. It discredits the control agencies themselves (O'Donnell, 2003). It does not prevent the waste of public resources and also gives incentives to rent seeker behavior (Rose-Ackerman, 2002; Soren and Bo, 2010). It also exacerbates the inefficiency and immobility on public management (Mainswaring, 2003).

But the essence of the corruption (of the public corruption at least) is its beneficial results to political agents and civil servants. That is what keeps it going. Then, actors have a second possible motivation to change the control policy. It is to maintain their privileges or benefits from illegal transactions. But to do it so in the long run in a democratic regime it is essential to deal with other people reactions, including public opinion and sectors from all state powers.

That is when the control policy can be used as an instrument of political convenience and social anesthesia. Borzel and Pamuk (2011) studied how three former communist countries used the anti-corruption's best practices induced by the European Union as an instrument to cut power resources of their political opponents. It was also a priority in relation to improve their governance. According to them: "Corruption is fought where it helps to oust political opponents, deflect international criticism, and attract foreign assistance and investments" (p. 20).

Levy (2005) studied the case of changes in social policies in France from the 80s on. According to its research, public resources were used to pacify and demobilize the victims and opponents of market-led adjustment defined by the government. The author defined that strategy of using one policy to possibility another considered more important as social anesthesia.

Using Spanish and Brazilian anti-corruption change process information, in other words, investigated how and why it occurred, this paper exercised then an analysis of the possible agents motivations in order to better comprehend its results and effectiveness.

It is widely reported the low progress the anti-corruption policies presented in both countries in the last twenty years of democratic regime. This can be so due to proper difficulties of the corruption fight task or because of the change agents' contradictories motivations. So, are the increments in the control policies in Spain and Brazil more associated to an convenient response or is it a real instrument of corruption combat?

Answer that question is tricky and requires some sensitiveness. Tracking the changing process is part of the solution. Agents motivated only by social anesthesia are tended to act in moments of social commotion when population is claiming for authorities answers for corruption fight. Unfortunately, it does not happen intermittently, but in occasional situations, like political scandals or pre-election periods.

In the case of strict political convenience agents' intent, they usually act for changing

control policy in a way the control agencies and anti-corruption rules and laws can benefit them or neutralize their political oppositors. Agents committed to corruption fight effective results are probably going to act to improve the polices procedures and demand rules, laws and agencies re-structuring when they judge necessary to efficiency of the process.

Despite very different from each other, agents' intent or motivations are not necessarily opposed. They can occur simultaneously in different scales. That is possible because agents can have different purposes and motivations at the same time. Also a public policy generates more than one effect (including indirect ones) and there are many actors involved in the decision and, mainly, in the operation of the policy. Then, it is delicate to associate a change decision with just one motivation. Nonetheless, this paper intention is to point out the probable main view according to the changing process context.

In both countries the democratic transition represented incremental layering changing process in the control policy in which public agents played different roles according to the political and institutional context of the moment. In general terms, the improvements in the control policies were slow and usually taken after social or political opposition commotion that demanded government response.

Even between two nations that keep cultural similarities and had both a relatively common process of re-democratization followed by macroeconomic reforms, as Brazil and Spain, there are distinctions in there anti-corruption reforms options and policies effectiveness. That seems consistent with the idea of non-convergence between countries in which institutional specificities constrict institutional changes in distinct ways^{xiii} (Hall and Thelen, 2008).

In Brazil, the constitution represented an opportunity for all the control agencies inside actors to include antique claims and their advanced ideas about anti-corruption policies in the national legislation. They acted mainly lobbying the constituents agents that were also imbued in the accountability notion of the democratic spirit.

However, the implementation of the modern attributions took many years to be concluded as the agencies were not given enough organizational instruments or training to do so. The political and institutional contexts were improved incrementally and the necessary agencies' structure, laws and rules developments came slowly.

During the following years, moments of political scandals required reaction from the

government. In these occasions, executive agents usually responded to the public opinion and, sometimes, the legislative opposition with different control policies changes. One example is the period of unusual political perturbation in the country due to corruption scandals, from 1992 to 1994. It represented an window opportunity for agencies' actors to better organize their internal structures and rules. It is not a coincidence that all Brazilian control agencies were (re)organized at that time.

In Spain, the re-democratization did not represented changes in the anti-corruption policy from the start. They came incrementally years latter according to the transformations in the political context. Two important modifications seems to be a result of political and social anesthesia motivations. The creation of the Anti-corruption Prosecutors' Office during massive political scandals and in an electoral period had a clear party message. The urban law modification after the election was then part of the victorious party's campaign promises.

After twenty years of democratic anti-corruption fight, frauds and public resources waste continues to be considered a very problematic subject for Brazil and Spain up until now, but taking in consideration that its progress has been mainly motivated by political convenience and social anesthesia, it is possible to ponder if the lack of effectiveness is not part of the plan, at least of some actors' one, instead of a constant error.

In other words, maybe the real issue is not "what is going wrong" in the control policy, because actually it was not supposed to go "right" in the sense that maybe corruption controls are not supposed to work better than they are (or not much better at least), but just pretend to.

5. CONCLUSIONS

The supposed benefits of the democratic regime on the corruption fight is that it should gives more incentives for the public actors to be probe than to act illegally. All the democratic control mechanisms should raise the cost of corruption acts and consequently inhibit its practice. Spanish and Brazilian cases, nonetheless, demonstrate that the democracy effect on curbing corruption can be smaller than the initial expectations.

That is possible because, despite what is commonly assumed, there are not only positive effects of democracy reforms on the corruption phenomenon. The effects are contradictory as public agents (products of the democratic system) have simultaneously incentives to curb and to

maintain corruption. Then, some of the democratic effects tend to decrease corruption cases, as the participation of media, but others to raise it (or, at least, not fight it), as the coalition party practice.

This paper analyzed the change process public expenditures' policies and corruption fight started on the democratic transition in Spain and Brazil through a theory of incremental change. According to it the conjugation of political and institutional context is able to set the actors seek to transformation and determine the institutional change mode.

In the case of the anti-corruption policy change, the political context is influenced mainly by the independence of the control agencies, the enforcement guaranteed by the legislative and judiciary powers, the checks and balances and social accountability. That characteristics are responsible for setting the agents veto possibilities for maintaining the status quo.

The institutional context represents the level of reinterpretation of the institution and its facility on changing. It is influenced specially by the congruence of the control procedures, the accordance of the legal rules and the control agencies' coordination.

In this explanation framework, the national institutional background plays a very important restrict role. All changes initiatives are co-opted by the former institutions and agents. The agents' intent or motivation then are an essential influence on the public policy results, even if considering non desired or programmed results. In the control policy case changing actors can be motivated to improve corruption fight and inhibit illegal actions or to act according to political convenience. Both behaviors are not necessarily exclusive.

In Brazil and Spain the democratic transition represented incremental layering changing process in the control policy in which public agents played different roles according to the political and institutional context of the moment. The improvements were slow and usually taken after social or political opposition pressure that demanded government response.

In Brazil, the constitution represented an opportunity for policy change. However, the implementation of the modern attributions took many years to be concluded as the agencies were not given enough organizational instruments or training to do so. The political and institutional contexts were improved incrementally and the necessary agencies' structure, laws and rules developments came slowly.

In Spain, the re-democratization did not represented changes in the anti-corruption

policy from the start. They came incrementally years later according to the transformations in the political context. Two important modifications seems to be an example of political and social anesthesia motivations. The creation of the Anti-corruption Prosecutors' Office during massive political scandals and in an electoral period had a clear party message. The urban law modification after the election was then part of the victorious party's campaign promises.

After twenty years of democratic anti-corruption fight, frauds and public resources waste continues to be considered a very problematic subject for Brazil and Spain up until now, but taking in consideration that its progress has been mainly motivated by political convenience and social anesthesia, it is possible to ponder if the lack of effectiveness is not part of the plan, at least of some actors' one, instead of a constant error.

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- i Corruption, in this study, is taken in the sense of public corruption. It means, by definition, misuse of public function for private benefits or serious violation of expectations associated to public administration (Johnston, 2002).
 - ii This paper considers as anti-corruption institutions all rules, laws and agencies that are related to public expenditure's control and corruption fight. It includes the mainly organizations dedicated exclusively or not to this function and related to all central state powers.
 - iii The increase of re-democratization process in the 70s and 80s helps explain the boom on the discussion about anti-corruption measures from the beginning of the 90s on (Tanzi, 1998). See, for example, the initiatives on international legislation against corruption started by United Nations Convention against Corruption, in 1993, and the construction of corruption's perception index.
 - iv The International Organization of Supreme Audit Institutions firmed as effective control the one that gives reasonable security on the execution of the public polity in an orderly, ethical, economic, efficient and effective way (Intosai, 2004).

Thus, when it is stated that the control is not effective, it means that there is low accountability, there is no certainty of punishment to the agents who commit an illegal act or fraud and the control agencies are not effective in prevent or correct the existing gaps that permits the corruption. It does not depend exclusively on

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- the control agencies though. It goes beyond the frontiers of just one organization and, more than that, it surpasses the limits of all control agencies. It also depends on the presence and timing, for example, of the judicial power and the legislative control. In other words, it includes anti-corruption political and institutional context.
- v Other researches have studied the control policy or agencies from an institutional perspective. See i.e. Loureiro, Teixeira and Moraes (2009). *Democratização e reforma do Estado: o desenvolvimento institucional dos tribunais de contas no Brasil recente*. *Revista de Administração Pública*. 43 (4). Nonetheless their focus was on the changing process itself, not on the policies' results.
 - vi Institutionalized corruption characterizes a government that works besides and, many times, because of the corruption. It is integrated in the system in a way that the public institutions work normally with it and sometimes can not do it without it (Nieto, 1997, p. 94).
 - vii This explicit introduction of actors' role is a new feature in historical institutional analysis and may expand the possibilities of incremental changes (Van der Heijden, 2010; Bell, 2011).
 - viii Nonetheless some improvements from the 60s to the end of 80s, the internal control agency was still weak. The head office location changed some times, from the Finance Ministry to the Management Secretary and then back to the Finance Ministry in 1985.
 - ix The internal control's provisional law was reedited eighty-eight times before becoming law in 2001. That fact expresses the precarious situation of the agency at the moment. There were profound divergences about the structure and attributions the agency should have (Alves, 2008).
 - x The internal control agency was integrated to it in 2002 and, in 2003, the new organization was named *Controladoria-Geral da União*.
 - xi Brazil was recognized by United Nations and UNCTAD, in 2008, by its public money spending' disclosure site initiative. Nowadays it has some cooperation agreements with some South American and African countries for transfer of experiences (CGU, 2010). All control agencies firm contracts with international organizations independently, what difficult their results monitoring.
 - xii If two countries implement the same measure, they are probably going to have different results because of their different institutional background (political, institutional and actors) (Hall and Thelen, 2008; Olsen, 2009). That implies that best practices and benchmarking are not very so efficient as advertised.