BRAZIL BEFORE AND AFTER THE ANTICORRUPTION LAW OF 1999: A CASE STUDY

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ABSTRACT

Political corruption has never been absent from popular debate in Brazil. It is a general and common opinion that the country is corrupt and helpless. It was considered a ‘very serious’ problem by 96% of the population in 2010, being the number one country most concerned with it. However, a civil society reaction against corruption took place in the late 90’s resulting in the enactment of the ‘vote buying’ law in 1999, through the popular initiative of law, a direct participatory mechanism, guaranteed by the 1988 Constitution. This paper is a first step toward the understanding of why and how this law was created using the constitutional mechanism. Besides the description of the process, relevant domestic and international characteristics help explain the favorable context in which Brazil was inserted at the time. Preliminary conclusions point to the approximation of politics, society and the judiciary producing a social accountability episode (Peruzzotti and Smulovitz, 2006). The research still finds itself in the fieldwork phase, identifying important questions to understand the popular and political behavior against corruption in Brazil.

Keywords:
Brazil, corruption, the vote buying law, popular initiative

1 BBC Brazil, 2010.
1. Introduction

Political corruption has never been absent from popular debate in Brazil. It is a general and common opinion that the country is corrupt and helpless. It was considered a ‘very serious’ problem by 96% of the population in 2010, being the number one country most concerned with it\(^2\). In 1996, Brazil was the 37\(^{th}\) most corrupt country out of 41\(^3\). Although that is the general opinion, a civil society reaction against corruption took place in the 90’s through the enactment of the ‘vote buying’ or 9840 law.

The struggle toward the creation of a law to define and punish vote buying started in February of 1997 and ended with its actual enactment in September of 1999. However, the favorable context from which it emerged can be traced back to the early 90’s. Domestically, Brazil was organizing its civil society, since the transition to democracy, being able to mobilize for the cause in that decade. Secondly, the country had experienced corruption scandals locally and federally, with the significant participation of the media. Third, the popular demand originated from these two factors was positively responded by the political elite motivated to change the low support and eroded image of the National Congress of Brazil, seeing the law project as an effective chance to do so.

The ‘vote buying’ law is briefly described in this paper and one of its most interesting characteristics is the constitutional process which it was enacted: the popular initiative. Popular initiatives are predicted by the 1988 Constitution and are one of the three mechanisms of direct participation, along with the plebiscite and the referendum. Following the description, the specific change in the law will be seen along with more details of the national and international context which collaborated to the process and finally, questions still unanswered are identified.

The mobilization to collect more than a million signatures necessary for the popular initiative of law brought society, the judiciary and politics together and it was a demonstration of social accountability, as Peruzzotti and Smulovitz (2006) described. The question that guides this project is why and how was the two main anti corruption laws, in Brazil, enacted through the popular initiative of law path? This first paper focuses on the 9840 law, as said, and it still finds itself in the fieldwork phase, bringing preliminary conclusions. The project will continue focusing on the clean slate law of 2010 because of the similarities between the two.

\(^2\) BBC Brazil, 2010.
\(^3\) Ramalho, 2004, according to Transparency International.
2. The history behind the proposition of the 1999 vote buying law

In February of 1997, the Brazilian Commission for Peace and Justice (CBPJ), which is part of the bigger and well known National Conference of the Bishops of Brazil (CNBB), issued a project called ‘The Combat of Electoral Corruption’. This project was a part and a continuation of a wider campaign the year before held by CNBB. The theme was ‘fraternity and politics’ (MCCE, 2012).

The CBPJ identifies that vote buying is one of the major problems faced by the Brazilian electoral system. According to the Movement of Combat against Electoral Corruption (MCCE) website, the 1965 Electoral Code already classified vote buying as a crime, but it would rest unpunished. In 1997, Fernando Henrique Cardoso enacted the Law of Elections, which still did not treat the vote buying matter. One of the reasons for the amendment of that law (Law 9504) in 1999 is because it objectively describes what vote buying is and therefore makes it clear to identify the crime and apply the State law (MCCE, 2012).

The website also points out a ‘cultural’ problem faced by Brazil’s population: It has been considered normal and accepted to buy and sell votes. That situation was aggravated by the levels of poverty and extreme poverty at the time: in 2000, 11.6% of the population was living in extreme poverty and 30% in poverty⁴. The ease into which vote buying occurred was decisive in elections (MCCE, 2012). Without a political culture congruent to democratic principles, the constitution is reduced to a simple formality of the state. This is what the amendment of the law 9840 proposed to change and it did, mostly because of the process of its enactment because it involved public participation.

Motivated toward the change in the political culture as well as in the law, the CBPJ chose to trail through the popular initiative of law path. This constitutional mechanism demands 1% of the population’s signatures, from five different capitals totalizing about one million and sixty thousand voters in order to become a law.

Therefore, in April of 1997, the project ‘The Combat of Electoral Corruption’ was presented by CBPJ in the 35th CNBB General Assembly. The project consisted of three phases: first, the execution of a national survey to assess the gravity of vote buying; second, the organization of public audiences and third the proposition of a law project.

⁴ IBGE, 2000. Those considered living in extreme poverty receive less than ¼ of the minimum wage and those in poverty receive half. That percentage increases in the Northeast region of Brazil: 25.2% and 54.3%.
Hence, a survey was developed by *DataBrasili*, with 50 questions to be answered by all Dioceses, regional offices of CNBB, and whoever was interested in the project. Three hundred questionnaires were answered; however, it is unknown who answered them, where and how results were analyzed. The MCCE website claims the research diagnosed the gravity and the high incidence of vote buying in a geographically distributed and significant sample⁵.

In November of 1997 public audiences were held in order to collect people’s opinion from several places in the country. Generally, there was a debate about electoral corruption. In May of 1998 these audiences were also held to collect signatures for the popular initiative of the law project, which was the third phase of the project.

The law project was elaborated by a workgroup composed of the former Republic’s general attorney, Dr. Aristides Junqueira Alvarenga; former electoral judge, Dr. Dyrceu Aguiar Dias Cintra Jr.; and the regional electoral attorney from Ceará, at the time, Dr. José Gerim Cavalcante. The law project was presented along with the survey results from the first phase of the project in the 36th CNBB General Assembly on April 1998, receiving some attention from the media. After the Assembly, its participants compromised to support the collection of signatures for the popular initiative act. Other national and regional entities also decided to support the project (MCCE, 2012) totalizing fifty five civil society organizations⁷ that mobilized and gathered half of the signatures needed in one year. They decided to keep collecting them, even more motivated by the slogan ‘vote does not have a price, it has consequences’.

Catholic Church media means announced the law project and the need for signatures. In August of 1998, the Permanent Council of CNBB made a declaration asking for popular support. In the next month, a press conference was held by the presidencies of CNBB, the National Council of Catholic Churches (CONIC) and the Bar’s Federal Council of Brazil (OAB) issuing the ‘National Week of Signature Collection’ as another attempt to collect more signatures. Other efforts were subsequently carried on, such as the advertising of the support from the Superior Electoral Court President during the 1998 elections and videos with television material on the subject edited by the Dehonian Priests.

⁵ From Cândido Mendes University, Rio de Janeiro.
⁶ Even though there might be problems with this research, it is not the objective of this paper to criticize it, and therefore it will attain itself in the impact of its results as part of the description of the enactment of the 9840 law.
⁷ Annex 1.
It was planned to have a million signatures by the end of 1998 and to have the project handed in to the Congress in the beginning of 1999 in order to make the law effective for the 2000 elections. However, in the beginning of 1999 the number of signatures was still way below a million. The 37th CNBB General Assembly concluded that the difficulty to collect the signatures was both because of the necessity to provide the *título eleitoral* on the time of the signature\(^8\) and also motivated by the distrust in general politics and in the possibility of change through the proposition of a law project. Being simultaneous with electoral campaigns represented a third difficulty since it would be mistaken by an electorally motivated project. An educational action was also required, since the law project had an anti clientelistic nature; and, the fear of retaliation from the lower classes of the population was always present. Collecting the signatures was so difficult that a proposal to amend the constitution to reduce the number of signatures needed to half was elaborated\(^9\). It seemed impossible to collect all of them (MCCE, 2012).

Motivated by local electoral corruption scandals in São Paulo, TV channels were campaigning for the instauration of Parliamentary Inquiry Commission to investigate the municipal cases. This also motivated Globo channels\(^10\) to join the campaign. They helped publicize the link between electoral corruption and the municipal politician’s corruptive acts and appealed to the indignation of the population toward the mobilization to collect the signatures for the project. The TV broadcasts also informed the phone number of the Metropolitan Curia of São Paulo, which instantly received more calls than its capacity. Rapidly, other signature collecting events were organized in the local parishes. Other TV channels and media corporations also began to advertize the necessity for the approval of the law project.

The remaining obstacles still demotivated many. Nevertheless, it was the general opinion that the campaign should continue for educational purposes. The failure to collect the signatures was a real possibility, but the campaign was presenting some results towards the rise of the collective political conscience, and therefore proceeded. A newspaper was issued by Pastoral da Criança\(^11\) and Caritas\(^12\) with the

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\(^8\) According to the MCCE website, in every five people available to sign the popular initiative, only one had their electoral documents on them. Therefore, it is supposed that the million signatures in reality represented about five million people.

\(^9\) In the MCCE website, there is not further information on this matter.

\(^10\) Globo is the main media corporation of Brazil. It is not clear, however, in the MCCE website if these Globo channels were local or not. This deserves further investigation.

\(^11\) A social action organism under the CNBB, which aims at the full development of children until six years of age in their family environment and communities.
support of other entities such as Confederação Brasileira dos Aposentados, Pensionistas e Idosos\textsuperscript{13}, Central Única dos Trabalhadores (CUT) and the National Federation of Journalists (MCCE, 2012), spreading the theme ‘together we will seek for the half million signatures’ that were still lacking. The effort was converted in more signatures in the Dioceses; in the main labor unions, CUT and Força Sindical, which collected signatures in industries’ doors and in local branches of OAB. The three consecutive months were enough to reach the half million signatures.

Although local media endeavors were numerous, it was only when the Globo national TV News broadcast in June 1999 informed about the popular initiative that the law project had its successful fate sealed. After a three minute and a half broadcast, the average access to the CBJP went from five per day (1998) to 5,000 in the 24 hours after the news. The total number of signatures was getting closer to the demanded.

Without this mass media intervention, it is possible that it would have taken longer to collect all the signatures. On August 10, 1999 a committee of thirty entities, presided by D. Jayme Chemello (president of CNBB), handed in what was thought to be 952,314 signatures to the president of the low chamber of Brazil, Michel Temer, but in reality they were 1,039,175\textsuperscript{14}. This was the second time the popular initiative mechanism was being used in Brazil after ten years of the Constitution. It was a significant event and all TV channels covered the happening.

From that day, there were 7 weeks available for the proposal to be analyzed and approved by the relevant commissions in the Congress and by the president, Fernando Henrique Cardoso. The majority of the population was attentive to the approval of the law, therefore, if any politician was against it, it would not declare as such, because of the fear of losing support.

However, the project did not proceed as a popular initiative, and instead it followed as a parliamentary initiative for several reasons, one of them because of the necessity to recount and check all the signatures and their ‘electoral title’ numbers. The recount and checking of signatures would take several weeks and thus would not be able to be enacted before the deadline to be validated for the 2000 elections. Eleven congressmen (one from each political party represented in Congress) signed and

\textsuperscript{12}Confederation of 162 humanitarian organizations of the Catholic Church which coordinates social actions in over 200 countries.

\textsuperscript{13}Brazilian Confederation for retirees, pensioners and seniors.

\textsuperscript{14}Annex 2 provides the number of signatures per state.
represented the project of law that was already a consensus and it was amazingly approved within 35 days.  

2.1- **The modification of the law and some outcomes**

The 9840 law modifies the 9504 law of September 30, 1997 and also transforms provisions in the law 4737 of July 15, 1965 (The Electoral Code). It includes the possibility of abrogation of the registry of the candidate who donates, offers or promises goods or personal advantages in exchange for votes.

The Electoral Law Code of 1965 (a year after the military coup) had already established that in elections ‘the interference of economic power, misemployment or abuse of the authoritarian power in disfavor of the liberty of the vote, will be cohibited and punished’ (art. 237). Votes would also be cancelled if elections were vicious with ‘falseness, fraud, coercion, the means stated above (art. 237) or employment of process of advertisements or the captivation of votes prohibited by the law’ (art. 222). The following article (41-A) was included in the law in 1999 and defines what captivation of votes actually is:

it is established as captivation of suffrage, restricted by this law, the donation, offering, promise, giving, by the candidate to the voter, in order to obtain their vote, of goods or personal advantages of any nature, including jobs or public offices, since the registering of the candidacy until the day of the election inclusive, under penalty of 1,000 to 50,000 UFIR and the abrogation of the registry or of the diploma … (Law 9540 amended by the art. 41-A one of the changes proposed by the 9840 law, 1999).

This article, as it can be read, foresees vote buying and the utilization of public administration machinery for electoral purposes. During its transitioning through the legal channels, two amendments were proposed, the first one, about the abrogation of diploma was approved and the second one, considered unconstitutional, was about judging innocent those who sold the vote because are considered poor.

In 2000, the Law was valid; however, there is no number of how many candidates were abrogated as well as before 1999, if it ever happened. Two years later the Movement of Combat against Electoral Corruption (MCCE) was released.

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15 Annex 3 – Chronology of the process
16 Annex 4 – Integral 9840 law
17 In the complete research the legal pathways of the Law will be fully described and the presentation and discourses analyzed in the DCD.
18 In interview with Chico Whitaker, one of the MCCE founders and Executive Secretary of CBJP in 1997, an association called Amarribio (Amigos Associados de Ribeirão Bonito) was able to abrogate one mayor. However more investigation about this is yet to be done.
Composed of a national network of civil society entities, social movements and religious organizations, its main objective was to help and ensure the enforcement of the 1999 law.

By the elections of 2002, the MCCE estimate is that about 100 politicians had lost their diplomas. In 2004 that number was 320, allowing the municipal lower chambers to be renewed by the substitution of old politicians by newer ones. By September of 2006, the total of revocation of mandates was 419 and their statistics were disaggregated by state, type of office, electoral crime, political party and so on. The majority of politicians that had lost their mandates were at the municipal level: mayors and vice mayors; and belonged to DEM (Party of the Democrats). The MCCE also counted 1,100 processes still running in courts in 2012.

This year, on May 4th, three Brazilian municipalities held elections because their mayors and vice-mayors were accused of vote buying and lost their diplomas\(^1\). Nevertheless, according to a Transparency Brazil report of 2007, the offers to buy votes reached alarming numbers: 8% of the voters interviewed attested that were offered to sell their vote. Hence, the precise outcomes of the law are still to be evaluated.

The popular initiative of law brought society, politics and the judiciary closer. The campaigns against corruption, the collection of signatures, and the major communication corporations had an informative and educational role stressing the importance of clean and fair elections increasing the quality of democracy in Brazil, at least in the municipal level.

3- Domestic and international contextualization

The enactment of the ‘vote buying’ law was also the outcome enabled by a collection of domestic and international factors which produced a favorable context toward an anti corruption act. Until this point, the present research identified that, domestically, the civil society organization and the local corruption scandals, mainly in São Paulo, and also federal ones, during the 90’s were relevant to the outcome. Internationally, the debate against corruption was receiving attention. There had been an Inter-American Corruption Convention in 1996 and the OECD Anti-Bribery Convention in 1997. Both conventions are just an example of how the world was stimulating a transformation in the way political corruption was being handled.

\(^1\)The municipalities were: Cabeceiras in Goiás, Mossoró and Francisco Dantas, both in Rio Grande do Norte (Agência Brasil, 2014a).
The political domestic context into which Brazil was immersed in the 90’s is complex and needs further investigation. However, (1) the organization of civil society; (2) corruption scandals at the federal level (including the 1992 impeachment of former president Fernando Collor de Mello and related to the privatizations executed by Fernando Henrique Cardoso) and at the municipal level (e.g. ‘Máfia dos Fiscais’ in São Paulo) and (3) the low popular support for the Congress, can be considered the fuel for the running motor of change domestically.

According to Wampler and Avritzer (2004) ‘the proliferation of civil society organizations in Brazil during the transition to democratic rule was accompanied by the development of new political values and strategies that fostered institutional renewal at the municipal level’. The 9840 law is certainly an effort toward this institutional renewal at the municipal level caused by the organization of civil society. The final phase of the military regime (1977 to 1985) was marked with new forms of civic engagement (open meetings, public deliberations, transparent implementation processes and so on) and new political practices originated in new forms of voluntary associations (Wampler and Avritzer, 2004) that can be seen throughout the 90’s. As explained, the approval of the ‘vote buying’ law was an effort of 55 civil society entities.20

‘Corruption flourished during Collor’s presidency’, according to Ramalho (2004). The news press at the time attested that loans and contracts would only be achieved if the campaign manager, PC Farias, was bribed. It was a time when political connections were determinant for outcomes. The national disclosure of this corruption scandal in the federal government could have alerted the population toward the anti democratic aspects of political corruption.

In 1999, also at the federal level, the political scenario was not free from the debate about corruption. The DCD records show that MPs were concerned about the exchange of accusations between Jader Barbalho (president of PMDB) and Antônio Carlos Magalhães (president of the Senate). Both politicians claimed the other was corrupt and Jader Barbalho demanded the opening of three Parliamentary Investigation Committees (CPIs). This conflict is also responsible for the erosion of the Congress’ image.

Another popular concern was about the privatizations Fernando Henrique Cardoso was executing. Mentioned by Avenzoar Arruda (PT-PB) on the Sept. 22 1999 DCD, there was a demand to install a parliamentary committee of inquiry to investigate

20 Annex 1.
the privatizations of e.g. Cemig (telecom company from Minas Gerais) and the ones involving Banco Opportunity. The MP affirms that these scandals were causing a reaction from the people that opposed the Congress as a whole, and not the president.

Locally, corruption scandals were constant in São Paulo’s media. The general demand was for the creation of parliamentary committees of inquiry to investigate and punish mayors and municipal councilors involved in regional administrative corruption acts. The election of these mayors was greatly accomplished through buying votes. The MCCE website mentions a mayor\textsuperscript{21} that was accused and imprisoned for offering ‘free’ transportation of patients in public ambulances in exchange for votes. The politician was sued in 1992, condemned in 1997, but he appealed and had the decision suspended.

In addition, the ‘Mafia dos Fiscais’ (‘inspector’s mafia’) had recently been exposed. During Celso Pitta’s mandate as mayor of São Paulo from 1997 to 2000 and in connection with it, the ‘Mafia dos Fiscais’ was a group of regional administrative inspectors who requested bribes to allow the execution of constructions. The media enabled a healthy public debate about the distance between the function of the members of parliament and their performance during the mandates (Chaia and Teixeira, 1999).

In interview with Chico Whitaker\textsuperscript{22}, his opinion is that the ‘Máfia dos Fiscais’ was specifically important for the participation and support of TV Globo in the popular initiative project. The corporation’s construction sites were having problems with the mafia. As a way to end it, a journalist Chico Pinheiro, started to cover and investigate the mafia, producing material for the local SPTV broadcast. Chico Whitaker, explaining that most of the corrupt mayors are elected because of vote buying, asks for the journalist’s support, which responds positively after reading the popular initiative of law project. This local journalist linked Chico Whitaker to the national news (\textit{Jornal Nacional}) producer, spreading the cause nationally\textsuperscript{23}.

\textsuperscript{21} The website does not mention his name.

\textsuperscript{22} In July 15, 2014. one of the founders of MCCE and Executive Secretary of CBJP in 1997.

\textsuperscript{23} The rise in awareness enabled by the focus of the media on local politics shows a shift in the media trend which followed the broader change of attitude toward corruption. According to Chaia and Teixeira (1999), the coverage of the ‘Máfia dos Fiscais’ is an example of this shift. In the beginning of the 90’s, the media noticed that the citizen’s acting level is the municipality and therefore the news should focus on municipal level politics as a way to attract more readers. Mainly written press, hence, dedicated part of its articles to local debate: e. g. in 1992 the \textit{O Estado de São Paulo}, one of the main newspapers introduces a section entitled ‘seu bairro’ (your neighborhood) which is a space for the readers to post municipal demands.
A third domestic factor was the low popular support for Congresso Nacional. This factor was mentioned by Chico Whitaker and also by Jorge Alberto (MP from PMDB-SE) on the DCD of September 22, 1999. The passing of 9840 law was being simultaneous to the defense of an MP from Acre that was accused of killing his political enemies. It was the general opinion in the Low Chamber that it needed to renew its image. In negotiations with Michel Temer (president of Congress at the time), Chico Whitaker affirms that the approval of the ‘vote buying’ law was also of his interest. It was broadly known that the Congress had to change. Jorge Alberto mentions a Vox Populi research which concluded that 38% of the population disapproved the Congress. His speech on this day also expresses a worry about the image of the Brazilian Congress.

Internationally there was also a favorable context to the approval of the law. According to Ramalho (2004) the awareness of the harmful effects of corruption was widespread among international institutions (e.g. the World Bank had supported more than 600 anti-corruption programs from 1996 to 2004). Brazil’s Corruption Perception Index (Transparency International) was 2.7 out of 10 (where 10 is the least corrupt), which ranked Brazil in number 37 out of 41 countries in 1996.

On that same year, the Inter-American Corruption Convention, in which Brazil was also a signatory, agreed and enacted a set of laws against corruption. A year later, OECD held an Anti-Bribery convention with the same objectives. These two conventions probably do not account for the whole international context behind the creation of the ‘vote buying’ law in Brazil. More research needs to be done in that regard and also, important questions are still to be answered, which will be seen next, and hopefully will be so during the fieldwork of this project.

4- Unanswered questions, investigation and some clues to its answers

1. In 1996, where did the idea for the Fraternity Campaign, “Fraternity and politics” come from? How did CBJP identify that vote buying was a serious problem in Brazil in the first place?

This question might be answered interviewing those engaged with the Catholic Church at the time: Jaime Chemello (president of the CNBB) and Chico Whitaker (Executive secretary of CBJP), who will be interviewed a second time. It is important to understand the magnitude of vote buying back then and how the Catholic Church decided to investigate the cause before carrying on the research elaborated by DataBrasil. Also, it is relevant to know the Church’s relation to vote buying, i.e. if it was harmful for the Catholic Church, which leads us to the next question.
2. What was in it for the Catholic Church? Did the Catholic Church start and engage to the cause because of its benevolence?

The involvement of the Catholic Church must be problematized. Similarly to the engagement of TV Globo (motivated by corrupt inspectors who delayed and stood in the way of allowing the conclusion of their constructions), the Catholic Church might have a specific reason to have started the campaign.

3. Why and how did TV Globo decide to inform about the law project in the most important TV news? How significant was the impact of the media to the episode?

The great overall impact is clear, however, it is important to identify the extent to which the national or local media was determinant to the enactment of the law. According to the MCCE website, without the Jornal Nacional story, the project would not have reached the other half million signatures needed. The involvement of the local TV news is explained (because of 'Mafia dos Fiscais'), however, why did the national media get involved?

4. After the military regime, it can be said that there was a growing political participation in society, but was there, in fact, growing popular participation? Or growing participation from a specific elite?

Can we say there was a general growing awareness or only in one part of society? Did, in fact, the Brazilian population learned and realized the seriousness of vote buying? This growing general participation might be traced back to Assembleia Constituinte (1985 a 1988), but who were these actors? The 1988 Constituição Cidadã (Citizen Constitution) received this name because of the high level of popular participation. There were 122 amendments proposed by population, but which part of population and was it the same group that struggled for the ‘vote buying law’?

5. What are the impacts of the law today?

The latest news is that three municipalities held elections this year because mayors and vice mayors were abrogated, as it was said. Nevertheless, there are no precise numbers to show how often this happens. Contact was made with the TSE (Tribunal Superior Eleitoral – Superior Electoral Court) requesting the number of abrogations per state and municipality, and the total number of law suits motivated by the 9840 law and number of indictments. The answer was that the system does not enable an automatic

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extraction of these numbers, therefore it would be necessary to consult each process individually. Besides, TSE would only have information regarding the law suits that in fact reached the institution, and it is known that the majority of cases rest in TRE (Tribunal Regional Eleitoral – Regional Electoral Courts).

Transparency Brazil attested in 2007 that the outcomes of the 9840 law were minimum and that 8% of the population interviewed was offered to sell their vote. The efficacy of the law still needs to be assessed and an interview with judge Marlon Reis might solve this problem.

6. Why was vote buying not described in the 1997 ‘Lei das Eleições’ (law 9504)?

As already stated, the ‘vote buying’ law amends the 9504 Law of Elections. This law regulates elections not only according to social demands, but also due to technological advances, modernizing the previous 1965 Electoral Code (Rocha, 2007). The voting machine, used since 1996, is one focus of the law and its evolution; however, it left out important factors such as ‘vote buying’.

7. How was the enactment of ‘Lei da Ficha Limpa’ (Clean Slate Law) in 2010 similar or different than the process of the ‘vote buying’ law?

This question will be answered in further papers, being the second phase of this research. Perhaps it can be said that there was no political will to include and describe ‘vote buying’ in the 1997 law of elections. Therefore, the change had to be made bottom-up. The research will continue to identify the mechanisms of change and critical junctures of the 2010 ‘Lei da Ficha Limpa’ in order to investigate its continualities or ruptures in comparison to the 9840 law.

5- Preliminary conclusions

This paper briefly described the history and process of enactment of the 9840 ‘vote buying’ law. The process began in February of 1997 and ended in September of 1999. One of the striking features of this process is the constitutional mechanism which it went through: the popular initiative of law. To follow this path, more than a million signatures were collected and over 55 civil society organizations mobilized, including the main TV corporation: TV Globo, locally and nationally.

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Finally in 1999, the paragraph 41-A was included in the 1997 law of elections (9504) describing what vote buying is and establishing the abrogation of the registry of the candidate as punishment. The national and international context into which the law was created is also significant to understand the flow of change in Brazil. Nationally, the organization of civil society, which started during the transition to democracy, was effervescent in the 90’s and mobilized to oppose against corruption scandals both locally and federally. The political predisposition to respond to this social demand was also caused by the low popular support faced by the Brazilian Congress at the time. Internationally, Brazil was one of the most corrupt countries in 1996, according to Transparency International which led the country to be signatory of two international conventions: the Inter-American Corruption Convention in 1996 and OECD Anti-Bribery Convention in 1997.

Although the outcomes of the law are still to be assessed, the episode fits the theoretical description of social accountability of Peruzzotti and Smulovitz (2006). Social accountability is an alternative form of political control that is centered on citizen’s actions and media organizations. This new type of accountability is a third way to overcome the problems with political and legal accountability; the first derived from the imperfect nature of representation and the second, from the lack of institutional preconditions for the functioning of controlling agencies. Therefore, the workings of civic associations, NGOs, social movements and media organizations not only add new resources to the classic repertoire of electoral and constitutional institutions for controlling government but, can also, on occasion, compensate for many of the built-in deficits of these mechanisms. Social accountability is a nonelectoral yet vertical mechanism of control of political authorities that rests on the actions of an array of citizens’ association and movements and the media (Peruzzotti and Smulovitz, 2006).

The story of the enactment of the ‘vote buying’ law is a demonstration of social accountability (Peruzzotti and Smulovitz, 2006). Opposed to traditional horizontal and vertical accountabilities (elections, separation of powers, checks and balances and so on), it recognizes the participation of social actors. It used the three most effective strategies: a judicial mechanism through popular mobilization and media coverage.

Although the research is still lacking the fieldwork phase, and many important questions are still to be answered, the fact that two of Brazil’s main anti corruption laws were enacted through a popular participatory process is at least intriguing. The second step of this research will be to attain itself to the clean slate law of 2010. The investigation and description of the ‘vote buying’ law being followed by the ‘clean slate’
law enables us to understand the politicians’ and society’s position toward corruption and how causal mechanisms bring about changes toward this problem.
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7- Annexes

Annex 1 - CNBB 55 main associated civil society entities for supporting the popular initiative:

1- ABESC - Associação Brasileira de Escolas Superiores Católicas
2- ABI - Associação Brasileira de Imprensa
3- ABONG - Associação Brasileira de Organizações Não-Governamentais
4- Ação da Cidadania - São Paulo - SP
5- ADI - Associação para o Desenvolvimento da Intercomunicação - São Paulo - SP
6- AEC - Associação de Educação Católica do Brasil
7- AJD - Associação Juízes para a Democracia - São Paulo - SP
8- ANDES - Sindicato Nacional de Docentes das Instituições de Ensino Superior
9- ANDI - Agência de Notícias de Defesa da Criança
10- ANSUR - Associação Nacional do Solo Urbano - São Paulo - SP
11- ASSESSOAR – Assoc. de Estudos, Orientação e Assistência Rural - Francisco Beltrão - PR
12- Associação de Entidades do Canal Comunitário de Goiânia - Goiânia - GO
13- Caritas Brasileiras
14- CEARAH Periferia - Centro de Estudos , Articulação e Referência sobre Assentamentos Urbanos - CE
15- CECIP - Centro de Criação de Imagem Popular - Rio de Janeiro - RJ
16- Centro Cida Romano de Formação de Educadores - São Paulo - SP
17- CERIS - Centro de Estatística Religiosa e Investigações Sociais
18- CETRA - Centro de Estudos do Trabalho e de Assessoria ao Trabalhador - Fortaleza - CE
19- CIMI - Conselho Indigenista Missionário
20- CIVES - Associação Brasileira de Empresários pela Cidadania
21- CJP - Belém - Comissão Justiça e Paz - Regional Norte II
22- CJP - Brasília - Comissão Justiça e Paz - Brasília
23- CJP - Ceará - Comissão Justiça e Paz - Regional Nordeste I
24- CJP - São Paulo - Comissão Justiça e Paz - São Paulo
25- CNL - Conselho Nacional de Leigos
26- CONIC - Conselho Nacional de Igrejas Cristãs
27- CPO - Comissão Nacional de Pastoral Operária
28- CPT - Comissão Pastoral da Terra
29- CRB - Conferência dos Religiosos do Brasil
30- CUT - Central Única dos Trabalhadores
31- DIAP - Departamento Intersindical de Assessoria Parlamentar – Brasília - DF
32- FAOR - Fórum da Amazônia Oriental - Belém - PA
33- FASE - Federação dos Órgãos para Assistência Social e Educacional
34- Fé e Alegria - Fundação Fé e Alegria - Rio de Janeiro - RJ
35- FENAJ - Federação Nacional dos Jornalistas
36- Força Sindical
37- IBASE - Instituto Brasileiro de Análises Sociais e Econômicas – Rio de Janeiro - RJ
38- IBRADES - Instituto Brasileiro de Desenvolvimento – Brasília - DF
39- INESC - Instituto de Estudos Sócio-Econômicos – Brasília - DF
40- JCJC - Movimento Nacional Juventude Comunidade Justiça Cidadania
41- MEB - Movimento de Educação de Base
42- MNDH - Movimento Nacional dos Direitos Humanos
43- Movimento do Ministério Público Democrático
44- Movimento dos Focolares - Região Centro-Sudeste
45- MST - Movimento Nacional dos Trabalhadores Rurais Sem Terra
46- OAB - Conselho Federal da Ordem dos Advogados do Brasil
47- PACS - Instituto de Políticas Alternativas para o Cone Sul – Rio de Janeiro - RJ
48- Pastoral Carcerária
49- Pastoral da Criança
50- PJB - Pastoral da Juventude do Brasil
51- PNBE - Pensamento Nacional das Bases Empresariais
52- POLIS - Instituto Polis - São Paulo - SP
53- PU - Pastoral Universitária
Annex 2 – number of signatures per state

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Signatures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acre</td>
<td>937</td>
</tr>
<tr>
<td>Alagoas</td>
<td>13,362</td>
</tr>
<tr>
<td>Amazonas</td>
<td>4,777</td>
</tr>
<tr>
<td>Amapá</td>
<td>1,584</td>
</tr>
<tr>
<td>Bahia</td>
<td>24,596</td>
</tr>
<tr>
<td>Ceará</td>
<td>46,504</td>
</tr>
<tr>
<td>Distrito Federal</td>
<td>27,727</td>
</tr>
<tr>
<td>Espírito Santo</td>
<td>53,144</td>
</tr>
<tr>
<td>Goiânia</td>
<td>24,720</td>
</tr>
<tr>
<td>Maranhão</td>
<td>5,769</td>
</tr>
<tr>
<td>Minas Gerais</td>
<td>173,722</td>
</tr>
<tr>
<td>Mato Grosso do Sul</td>
<td>5,348</td>
</tr>
<tr>
<td>Mato Grosso</td>
<td>9,642</td>
</tr>
<tr>
<td>Pará</td>
<td>24,688</td>
</tr>
<tr>
<td>Paraíba</td>
<td>11,713</td>
</tr>
<tr>
<td>Pernambuco</td>
<td>16,249</td>
</tr>
<tr>
<td>Piauí</td>
<td>10,304</td>
</tr>
<tr>
<td>Paraná</td>
<td>92,847</td>
</tr>
<tr>
<td>Rio de Janeiro</td>
<td>32,415</td>
</tr>
<tr>
<td>Rio Grande do Norte</td>
<td>3,993</td>
</tr>
<tr>
<td>Rondônia</td>
<td>2,446</td>
</tr>
<tr>
<td>Roraima</td>
<td>98</td>
</tr>
<tr>
<td>Rio Grande do Sul</td>
<td>37,632</td>
</tr>
<tr>
<td>Santa Catarina</td>
<td>13,420</td>
</tr>
<tr>
<td>Sergipe</td>
<td>4,587</td>
</tr>
<tr>
<td>São Paulo</td>
<td>393,259</td>
</tr>
<tr>
<td>Tocantins</td>
<td>1,895</td>
</tr>
<tr>
<td>Diversos</td>
<td>1,797</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,039,175</strong></td>
</tr>
</tbody>
</table>
Annex 3 – Chronology of the process

February 1997 – The project “Combat against electoral corruption” is issued;

April 1997 – 35th CNBB General Assembly when the project “Combat against electoral corruption” was presented;

November 1997 – Beginning of public audiences held by CBJP;

April 1998 – 36th CNBB General Assembly when the results of the survey and the law project were presented;

May 1998 – The popular initiative of law project was issued nationally in Fortaleza;

September 1998 – National Week of Signature Collection

April 1999 – About 500,000 signatures collected and the 37th CNBB General Assembly.

June 1999 – The TV Globo national news talks about the law project and helped attain the second half of million signatures required.

August 1999 – 30 entities handed in the 1,039,175 signatures to the Congress;

September 1999 – Enactment of the 9840 law.

Annex 4 – The 9840 Law


Altera dispositivos da Lei nº 9.504, de 30 de setembro de 1997, e da Lei nº 4.737, de 15 de julho de 1965 – Código Eleitoral.

O PRESIDENTE DA REPÚBLICA Faço saber que o Congresso Nacional decreta e eu sanciono a seguinte Lei:

Art. 1º A Lei 9.504, de 30 de setembro de 1997, passa a vigorar acrescida do seguinte artigo:

"Art. 41-A. Ressalvado o disposto no art. 26 e seus incisos, constitui captação de sufrágio, vedada por esta Lei, o candidato doar, oferecer, prometer, ou entregar, ao eleitor, com o fim de obter-lhe o voto, bem ou vantagem pessoal de qualquer natureza, inclusive emprego ou função pública, desde o registro da candidatura até o dia da eleição, inclusive, sob pena de multa de mil a cinqüenta mil Ufis, e cassação do registro ou do diploma, observado o procedimento previsto no art. 22 da Lei Complementar nº 64, de 18 de maio de 1990."

Art. 2º O § 5º do art. 73 da Lei nº 9.504, de 30 de setembro de 1997, passa a vigorar com a seguinte redação:

"Art. 73.................................................................

................................................................."

"§ 5º Nos casos de descumprimento do disposto nos incisos I, II, III, IV e VI do caput, sem prejuízo do disposto no parágrafo anterior, o candidato beneficiado, agente público ou não, ficará sujeito à cassação do registro ou do diploma." (NR)
Art. 3º O inciso IV do art. 262 da Lei nº 4.737, de 15 de julho de 1965 – Código Eleitoral, passa a vigorar com a seguinte redação:

"Art. 262.............................................................................................................
..................................................................................................................

IV – concessão ou denegação do diploma em manifesta contradição com a prova dos autos, nas hipóteses do art. 222 desta Lei, e do art. 41-A da Lei nº 9.504, de 30 de setembro de 1997." (NR)

Art. 4º Esta Lei entra em vigor na data de sua publicação.

Art. 5º Revoga-se o § 6º do art. 96 da Lei nº 9.504, de 30 de setembro de 1997.

Brasília, 28 de setembro de 1999; 178º da Independência e 111º da República.

FERNANDO HENRIQUE CARDOSO
José Carlos Dias

Este texto não substitui o publicado no D.O.U. de 29.9.1999 (Planalto, 1999)