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**TAKING MATTERS INTO YOUR OWN HANDS: WHEN  
DOES CORRUPTION CONTROL NEED SOCIAL  
MOBILIZATION TO BE EFFECTIVE?**

## Resumo

Today, corruption is the biggest problem of Brazil, according to the opinion of most of its population (34%). It is more serious than other issues such as health (16%), unemployment (10%), education and violence (both with 8%) and economy (5%) (Datafolha, 2015<sup>1</sup>). Does this general corruption awareness motivate further social actions against it? If so, can the population help and interfere in the control of such a problem or should it be left for the politicians to regulate it themselves? Is it necessary for the population to get involved? When is it effective?

The answer to these questions will be investigated through the analysis of anticorruption laws in Brazil. Since 1988, 115 norms and rules were created to control corruption, 83% of which were produced by the Executive Power, 16% in the Legislative Power and only 1% by popular initiative (The Republic Presidency, Brazilian Legislative Portal<sup>2</sup>, 2013 *apud* Filgueiras and Araújo, 2014). Interestingly, the two bills proposed by popular initiative are the most important and effective ones toward the regulation of electoral corruption. Social mobilization was determinant for the Vote Buying Law of 1999 and the Clean Slate Law of 2010; however, it was non-existent in the others, the latest one being the Anticorruption Law of 2013. Why was that the case?

Social mobilization involves awareness of the issues being discussed. In the case of the laws mentioned above, the high corruption perception among the population was the fuel that ran the motor of social engagement, resulting in their enactment. Even though corruption perception was significant across the years, it did not motivate social mobilization in other situations. This paper examines the reasons why that was the case.

Corruption perception can be a key variable to the understanding of the effects of social mobilization in corruption control. However, perception does not have a straight forward effect on social mobilization toward accountability. It can go both ways: high corruption perception can stimulate mobilization or distance citizens from the public sphere, collaborating both to the increase and decrease of democratic standards.

### Objectives

Three variables are linked in this paper: corruption perception, social mobilization and anticorruption laws. In the first part, anticorruption laws will be analyzed in terms of the absence or presence of social mobilization in its process of enactment. Following, the relation of corruption perception and social mobilization toward the enactment of such laws will be explained.

### Methodology

The methodology used here is qualitative and fieldwork was done in Brazil in 2014. The processes of enactment of the laws were investigated through process tracing enabling a causal mechanistic explanation. Through the Low Chamber Official Diary (*DCD - Diário Oficial da Câmara dos Deputados*) we assess how involved was society in the process of enactment of the laws.

### Preliminary results

Three major conclusions can be drawn from the research. First, corruption perception can increase social engagement, as it was seen in the case of the Vote Buying and the Clean Slate Laws. Second, different types of corruption demand different types of accountability. Electoral accountability is more effective if done with social engagement, but popular participation can be irrelevant in the control of other types of corruption. Lastly, corruption perception can help increase corruption control depending on the information effect and levels of understanding (political sophistication).

**Palavras-Chave:** Corruption, social mobilization, law.

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<sup>1</sup> <http://www1.folha.uol.com.br/poder/2015/11/1712475-pela-1-vez-corrupcao-e-vista-como-maior-problema-do-pais.shtml>

<sup>2</sup> *Presidência da República, Portal da Legislação Brasileira.*

## 1. Introduction

Corruption has always been a world problem and recently has received extra attention due to the release of the “Panama Papers” on May 2016. This international corruption scandal astonished the whole planet revealing the ways in which the rich and powerful hide their money<sup>3</sup>. This massive wave of corruption scandals also swept Latin America<sup>4</sup> disclosing the involvement of several leaders and politicians. Specifically in Brazil, the law firm responsible for the offshore money laundering scheme participated in the Petrobras corruption scandal and is being investigated in the “Car Wash” operation<sup>5</sup>. This atmosphere invites us to reflect upon solutions.

The first and foremost way to combat corruption is through the enactment of laws. However, the passing of laws seem restrict to the state domain. Thus, can ordinary people have a participation in passing anticorruption laws? Can we, ordinary people, help control corruption? This paper attempts to address the question using the case of Brazil. The choice to study Brazil is motivated by the existence of a constitutional act called “popular initiative”, which allows citizens to push and initiate bills. The paper analyzes the laws enacted through this mechanism in comparison to some of the main anticorruption laws that underwent ordinary paths. This comparison is done using the records of the Low Chamber and National Congress Official Diaries<sup>6</sup> and fieldwork research.

In total, 6 laws are analyzed in this preliminary and exploratory paper. Three of them were initiated by the Executive: Law 8429/1992 which regulates administrative improbity, Law 8666/1993 about bidding processes and public-private contracts, and Law 12.846/2013 called the “anticorruption law” or “the clean company law”. The fourth law, number 12527/2011, was initiated by the Legislative and institutes the citizen’s right to information. The fifth and sixth laws were both enacted through popular initiative: the Vote Buying Law, 9840/1999 and the Clean Slate Law, LC 135/2010. Social mobilization was crucial to make these two laws of electoral accountability real; nevertheless, there was hardly any social participation in the first four anticorruption laws.

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<sup>3</sup> <http://www.theguardian.com/news/2016/apr/08/mossack-fonseca-law-firm-hide-money-panama-papers>

<sup>4</sup> <http://www.coha.org/latin-america-exposed-the-panama-papers/>

<sup>5</sup> For an extensive analysis of the ‘Car Wash’ scandal, look for Fernanda Odilla de Figueiredo ‘Inside the Car Wash: from the narrative of a corruption scandal in Brazil to a “Campaign Finance Quid pro Quo” model’, 2016

([https://www.psa.ac.uk/sites/default/files/conference/papers/2016/Car%20Wash%20PSA%20final1\\_0.pdf](https://www.psa.ac.uk/sites/default/files/conference/papers/2016/Car%20Wash%20PSA%20final1_0.pdf))

<sup>6</sup> *Diário Oficial da Câmara* (DCD) and *Diário Oficial do Congresso Nacional* (DCN).

Preliminary conclusions point out that corruption perception added to national information campaigns led to the mobilization of society toward the enactment of the electoral anticorruption laws. The nature and substance of electoral accountability requires some degree of social participation.

## 2. Corruption perception and experience

In 2015, 34% of Brazilians mentioned corruption as the main problem of the nation which is a far off percentage from the second place: health 16%<sup>7</sup>. From 1996 until 2002, under Cardoso's mandates, 53% of Brazilian's were worried about unemployment. Sometime during Lula's second presidency, the main worry was security and violence. In 2008 that shifted again to health, lasting until July 2015. Under both administrations, corruption was not even close to being the main problem, reaching only 9% at the most. It was in 2013 when the subject started to gain more and more visibility and was mentioned by 11% of the electorate.

In 2016, Brazil lost 7 positions in the Transparency International rank mainly because of the "Car Wash" corruption scandal. Today it is ranked in the 76<sup>th</sup> position and only about 10% of the population agrees that 'most other people can be trusted, whereas in Denmark it is 65% (Rothstein and Eek, 2009). The investigation of "Car Wash" was caused by the 'growth of a middle class that does not accept "rouba, mas faz"' anymore (Winter in *Folha de São Paulo* 06/03/2016). According to the 2015 Latinobarometro report, corruption is the 4<sup>th</sup> most serious problem in the continent. For 22% of the Brazilians, it is *the* most important problem.

Between 1990 and 2010, there were 10 major corruption scandals that implicated 841 people; however, only 55 of them were convicted (Taylor and Daros, 2015). One of the reasons for the small number of convictions is the sluggishness of the judicial system. An illustration of this slowness is the case of Luiz Estevão. In 2006, as former senator he was accused of misappropriation of funds for the construction of a court house in São Paulo. He only presented himself to the police to start fulfilling his prison sentence of 31 years in 08/03/2016, about 5 years later. These 5 years were gained by Estevão through 34 appeals (Estadão, 08/03/2016).

Corruption presents a multitude of causes and consequences<sup>8</sup>. Developing a concept that covers the complexity of this phenomenon is still a challenge to scholars. Most scholars consider corruption as a misuse of public office for private gain (ONU office on Drugs and

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<sup>7</sup> Unemployment 10%, education and violence 8%, lastly economy, 5% (*Folha de São Paulo*, 29/11/2015).

<sup>8</sup> Treisman, 2000 and 2007.

Crime, 2002 *apud* Speck, 2005). However, few consider the formal and informal aspects of corruption. Formally, it refers to the violation of explicit rules, but goes beyond that: corruption is also about the lack of expected behavior when rules are not explicit. Vote buying and owning a clean slate are behaviors that once belonged to the “informal” aspect of corruption, but have been recently regulated by the law.

Another challenge equally important is the study of corruption under its differentiated forms, whether it is perceived or experienced. Researchers not aware of this tend to consider corruption’s antidemocratic consequences under the same rules and causing the same effects. Perceived, experienced or tolerated corruption are distinct faces that can motivate or not social mobilization.

Building corruption indicators to differentiate perception, tolerance and experience from corruption, Bonifácio and Paulino (2015) confirm that past *experience* with corruption and *tolerance* increases the chances of engagement in politics. However, when *perception* was tested, it did not present a clear tendency, contrarily to Zéphyr’s (2008) findings. These results stand when several forms of participation were tested, except voter turnout<sup>9</sup>.

In the case of Mexico, Bailey and Paras (2006) pose the following question: “if rather few respondents claim direct experience with corruption in their daily lives [about one fourth of the respondents], why do so many express such firm and pessimistic views about corruption in so many distant spheres of political and social life?” (p. 58). The answer to the puzzle might be in the differences between perceptions and experiences of corruption.

Experience with corruption is not a good predictor of its perception, nor does experience explain perceptions (Abramo, 2008). These two aspects of corruption are independent and possess mechanisms of its own. There is evidence that in richer countries, people’s opinions about institutions explain their opinions on corruption effects (Abramo, 2008). Wealth and “years of schooling” are two variables that walk side by side. Therefore, it is not surprising to find positive correlations on opinions about institutions and corruption.

Experimentation and perception of corruption will thus have different effects on society’s motivation to act against corruption. The increase in participation caused by high corruption *perception* has to be contrasted to its *experience*.

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<sup>9</sup> That is explained by the fact that voting is compulsory in Brazil, therefore having a negative effect. The other modes of participation tested included contact with political and government actors, communitarian activism and protesting activism.

### 3. Anticorruption laws in Brazil

Brazil's legal milestone of corruption regulation dates back to its democratization process in 1985 and it intensified with the Constitution of 1988 according to Filgueiras and Araújo (2014). These scholars claim that Brazil, in fact, has a public policy to combat corruption which consists of two main elements: "public administration's institutional expansion of control mechanisms" and "the diffusion of a transparency policy of public actions, programs and finances". Institutionally, corruption control was expanded through the creation of the Office of the Comptroller General (CGU<sup>10</sup>), through increasing the power of old institutions such as the General Accounting Office (TCU<sup>11</sup>) and guaranteeing the autonomy of the Public Ministry to investigate and prosecute (Filgueiras and Araújo, 2014).

Transparency policies were initiated with the Fiscal Responsibility Law in 2000 and were solidified by the Law of Access of information in 2011. According to Prado and Carson (2014) there has been significant progress associated with the systems of oversight and investigation (Speck, 2011; Arantes, 2011 *apud* Prado and Carson, 2014) but very little progress associated with punishment (Avritzer, 2011; Filgueiras, 2011; Taylor, 2009 *apud* Prado and Carson, 2014).

The Brazilian anticorruption policy was a reaction to critical junctures produced by corruption scandals and motivated by international influence (Filgueiras and Araújo, 2014). Corruption has been gradually unveiled and thus is increasingly gaining attention from society. Corruption perception is one of the elements composing a background where critical junctures enable change. Since 1987, there have been about 57 corruption scandals, including the latest one Operation "Car Wash" (Filgueiras and Araújo, 2014). Thus, corruption awareness grew gradually from 1987 on due to corruption scandals covered by the media, which also rose in number and visibility. Since the return to democracy, the 1988 Constitution and the direct elections of 1989, Brazil has been plagued by corruption scandals (Parson and Carson, 2014).

Common to all of these scandals, there was the mass media coverage, the dissemination of the opinion that "all politicians are corrupt", and lastly, they all produced an atmosphere of demand for change in the population (Filgueiras e Araújo, 2014). According to Pereira, Rennó and Samuels (2011), corruption scandals have the attention of the media, therefore mobilizing the public opinion. They concluded that congressmen exposed had a

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<sup>10</sup> *Controladoria Geral da União*. Recently, interim president Michel Temer transformed CGU in the Transparency Ministry, and currently its regulatory powers are at stake.

<sup>11</sup> *Tribunal de Contas da União*.

lower probability of running for elections and a lower chance of being reelected. These scandals altered the pattern of accountability.

The international influence mainly came under two conventions against bribery, one organized by OAS (Organization of the American States) and the other by OECD (Organization for Economic Co-operation and Development), in 1996 and 1997. Brazil was a signatory to both and in 2002 incorporated the suggested legal changes. Therefore, these two conventions are evidence of the world consensus on combating corruption internationally. The monitoring carried by these international organizations in each of the signatory countries was also a stimulus for corruption regulation domestically. According to Cuervo-Cazurra (2008), “laws against bribery abroad are effective in making investors become more sensitive to host country corruption and, as a result, further reduce their investments in corrupt countries”.

Until 2014, after almost 30 years of democracy and mostly under the 1988 constitution, Brazil created 116 norms to regulate corruption. 83% of these norms were initiated by the Executive, 16% in the Legislative and 1% were enacted through popular initiative (Filgueiras and Araújo, 2014). The number of legislative initiatives and institutional changes increased accordingly to the rise in number of corruption scandals. Among all of these changes, Filgueiras and Araújo point 12<sup>12</sup> that were crucial to establish an anticorruption policy in Brazil.

Unfortunately and for unknown reasons, the authors do not mention the Vote Buying and the Clean Slate Laws, both which account for the 1% of anticorruption laws enacted through popular initiative. These laws will be analyzed in comparison to the Administrative Improbity Law of 1992, Public Bidding and Contracts Law of 1993 and the Anticorruption Law of 2013 which were initiated by the Executive; and the Right to Information Law of 2011, initiated by the Legislative. All five are ordinary laws. The laws were investigated using the Low Chamber and the National Congress’ Official Diaries. We looked for references to social participation and engagement throughout all the bill proceedings, and any evidences related to it. The popular initiative laws were also researched through fieldwork.

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<sup>12</sup> 1- TCU’s extension of prerogatives in 1992; 2- Law 8429/1992 of Administrative Improbity; 3- Law 8666/1993 about public bidding and contracts; 4- Decree 1171/1994 which is the Public Servant’s Code of Professional Ethics; 5- Constitutional amendment 19/1998 which modified the regime and establishes the principles and norms of public administration; 6- Complementary law 101/2000 of fiscal responsibility; 7- Brazil was a signatory of the OECD Convention in 2002; 8- Law 10467/2002 about the criminal act of laundering money; 9- The creation of CGU in 2003; 10- Complementary Law 131/2009 which established the “portals of transparency”; 11- Law 12527/2011 that established the right to information; and 12- Law 12846 about civil and administrative responsibility of private companies.

## 4. Executive and Legislative initiated laws

### The Administrative Improbability Law of 1992

Also known as the “White Collar Law” (*Lei do Colarinho Branco*), the Administrative Improbability Law is one of the first anticorruption laws enacted after the country’s democratization. The Law establishes the sanctions for those public servants accused of illicit enrichment and it intends to enforce constitutional moral principles. An administrative improbity act is an illegal act which harms public funds<sup>13</sup>.

Sanctions involve suspension of political rights, loss of public position, and devolution of the funds illegally taken. Not all improbity is considered a crime, but all of these acts are disciplinary and civil responsibility violations. In other words, it punishes (administratively and not criminally) wrong and improper public administration actions caused by either dishonesty or ineffectiveness<sup>14</sup>.

The proceedings of this law in the Lower Chamber started with the bill number 1446 in August 16, 1991<sup>15</sup>. It became a proper law in June 2, 1992, about a year and two months later. Generally, the MPs agreed on the need for the law and its main aspects had their support. What justifies the time of appreciation is the number of amendments proposed: 302. The bill was also debated in two commissions<sup>16</sup>: Constitution, Justice and Citizenship and Labor, Administration and Public Service.

The 302 amendments were organized and analyzed in another document, technically called “the substitute” in Portuguese, becoming a second version of the bill. Because of its extensive and detailed substance, the discussion and voting of the bill was delayed and new deadlines were set.

The discussions were mainly about the amendments and technicalities of the bill. The MPs generally agreed that the bill had to be passed because administrative improbity is one of the “foundations of the combat against corruption and of impunity” (Lower Chamber Official Diary on April 3, 1992, p. 66). However, there was the fear expressed by MP Nelson Jobim that the law could become an arbitrary “policing instrument to hold public activities accountable”. The MP, Nilson Gibson, claimed “there was a national cry for stricter laws in the field” and that was one of the few references to the Brazilian society.

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<sup>13</sup> <https://d24kgseos9bn1o.cloudfront.net/editorajuspodivm/arquivos/pags%2013%20a%2024.pdf>

<sup>14</sup> [http://www.amprs.org.br/arquivos/comunicacao\\_noticia/Improbidade%20administrativa.pdf](http://www.amprs.org.br/arquivos/comunicacao_noticia/Improbidade%20administrativa.pdf)

<sup>15</sup> <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=192235>

<sup>16</sup> The Lower Chamber’s way to organize thematically is through the commissions.

Although Filgueiras and Araújo (2014) affirm that this law was a reaction to the Collor corruption scandals and impeachment in 1992, there is no reference about it in the official diaries except for the general acknowledgment by the MPs that the bill represented an important part of corruption control. There is no evidence, in the official diaries, that public opinion or social engagement were relevant to the enactment of the law.

### **The Public Bidding and Contracts Law of 1993**

The Law 8666/1993 was a first attempt to regulate public procurement. Until 2013, during its 20 years of existence, the law was modified by 61 provisional measures and 19 laws, which in total account for 80 norms; an average of 4 per year (Fiuza and Medeiros, 2013). The numbers are an evidence of the complexity of the matter and the high level of technicality required to define it legally.

The bill 1491's proceedings dated back to June 10, 1991 until June 21, 1993 taking about 2 years to become the 8666 Law. Its appreciation in the Labor, Administration and Public Service Commission generated the proposal of 63 amendments in the beginning of the proceedings. Later, the discussion in the plenary generated 442 amendments on May, 27 1992. Like the Administrative Improbability Law, another document organizing these amendments was done, demanding more time. 29 other bills already undergoing through Congress' proceedings, related to public bidding and contracts, were attached to the 1491 bill.

The records of the proceedings showed general consensus to the necessity and relevance of regulating public bidding and contracts because they are also a source of corruption. In MPs Jones Santos Neves' speech he mentions that according to TCU, in 1990, 93% of the expenses of the National Treasury were executed without public bidding<sup>17</sup>. Besides the technicalities of the bill which took a great amount of time, the format of the proceeding was also an issue intensely debated in the plenary. The estimate was that the law would regulate the spending of 100 billion dollars per year<sup>18</sup>.

Many MPs did not want to rush its appreciation using the "most urgent" tool (*urgência urgentíssima*) and the process was slowed down prioritizing the quality of the law and allowing time for a technical report to be done by one of the MPs. The rushing of the bill was seen by MP Prisco Viana as a way to hide "other intensions". There was the fear, expressed by MP

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<sup>17</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD29ABR1993.pdf#page=68> p. 69.

<sup>18</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD15ABR1993.pdf#page=73>

Gerson Peres, that the “law would not allow the Congress to have a good image in face of the nation”<sup>19</sup>.

Some of the MPs accused the bill to be designed in a way to give big companies advantages. Public purchases that did not require bidding was still set at a high price (article 22); meetings with the competing companies previously to the release of the auction notice (article 37); and the performance bond<sup>20</sup> were some of the polemic points. The bill was removed from the agenda of the day twice and had its voting delayed in both Houses. “The substitutes” organized by both Houses conflicted, but the Low Chamber’s understanding prevailed. The lack of agreement made the bill be discussed by the Low Chamber and then the Senate, as it usually happens; however, it went back to the Low Chamber in order to debate the modifications suggested by the Senate. Parties also used their power to obstruct the agenda several times.

The bill 1491 consisted of more than 100 articles and 680 provisions. These rules would apply to all levels of the federal government and also to joint enterprises such as the Bank of Brazil and Petrobras. The current public policy for government procurement was seen as one of the reasons for the institutional crisis the Congress was going through and the reason for public scandals<sup>21</sup>. According to Aloizio Mercadante,

regulating public bidding is a demand from the country that enables tax readjustments. The quality of the public spending demands the review of the public bidding procedures. Many of the accusations we are watching in the press are caused by the lack of criteria<sup>22</sup>.

The president of the House, at the time, MP Ibsen Pinheiro, is surprised by the fact that the issue was a product of an agreement of every party with the support of every president of the commissions and directing boards, and they were still having difficulties to fulfill it<sup>23</sup>.

The Public Bidding and Contracts Law was also a reaction to the corruption scandals in the Collor Government, specifically one called “The State Budget Dwarves” (Fiuza and Medeiros, 2013). In the Official Diaries there are two references to the Congressional Committee of Inquiry (CPI) of PC Farias one made by MP Aloizio Mercadante. He mentions that

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<sup>19</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD14MAI1992.pdf#page=6>

<sup>20</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD18JUN1992.pdf#page=46> p. 98.

<sup>21</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD21MAI1992.pdf#page=184> statement of MP Aloizio Mercadante, page 203.

<sup>22</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD28MAI1992.pdf#page=291> p. 211

<sup>23</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD29MAI1992.pdf#page=191> p. 215

only one person was arrested, and it happened in the United States because Brazil does not have the legal instruments for such<sup>24</sup>.

Other than that, there are general and insignificant references to the importance of the law in combating corruption. Mercadante demanded that the Public Bidding and Contracts Bill defined crimes and punishments in the case of its violation. Some MPs thought it was not important since the Penal Code could be used for it.

In conclusion, the official diaries show an intense discussion about the technicalities of the bill, about the best ways in which the substance of the bill should be appreciated and its deadlines. Throughout the entire process, 12 versions of the bill were written<sup>25</sup>. It was generally acknowledged that the bill was an important step against corruption. The references to society were generally few and insignificant to the process. However, it is clear that the bill was originated inside the Congress who hoped society would eventually notice how the state itself regulated its relationship with the private sector<sup>26</sup>.

### **The Right to Information Law of 2011**

The bill 219 was first presented in the Congress on 26 of February, 2003 and it became a law on 18 of November, 2011. The law basically establishes a 15 day period for the releasing of public information. It guarantees citizens rights to inquire and to obtain information from public institutions because “a law to access public information is one of the biggest antidotes against corruption and the abuse of authority which a democracy should create to guarantee the transparency of the public administration”<sup>27</sup>. The law extinguished “eternal secrecy” limiting the confidentiality to 50 years and it extended itself to the municipalities.

The original bill was a Legislative initiative, but during the process, the Executive attached to it a general bill in which several other related bills were also attached. The evaluative report of the bill was elaborated and approved by the Labor, Administration and Public Service and the Constitution, Justice and Citizenship Commissions on the same year.

About a year later, in 2004, there was a request for a public hearing that only happened in 2009. Organizations from the media, civil society, including Transparency Brazil,

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<sup>24</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD15ABR1993.pdf#page=73> p. 124, the other reference in <http://imagem.camara.gov.br/Imagem/d/pdf/DCD30ABR1993.pdf#page=84>.

<sup>25</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD06MAI1993.pdf#page=3>.

<sup>26</sup> <http://imagem.camara.gov.br/Imagem/d/pdf/DCD06MAI1993SUP.pdf#page=1> p. 130.

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[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=1A2A8CAA7BF8449B5505E18737417894.proposicoesWeb2?codteor=175103&filename=Tramitacao-PL+219/2003](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=1A2A8CAA7BF8449B5505E18737417894.proposicoesWeb2?codteor=175103&filename=Tramitacao-PL+219/2003) p. 3.

and from people inside the government itself were invited. The bill underwent some activity in 2005 and none in 2006. A similar bill was attached to it in 2007, but in the following year, there were no actions on it again. In 2009 more bills are attached to it and the Congress decided the bill would undergo its legal proceedings in the “priority” manner. This longer path for the bill was chosen to enable the creation of a special committee to discuss the legal matter.

The report from the Special Committee mentioned society’s desire to have a legislation that would fully regulate the 1988 Constitution which established transparency and information access a right and “the oxygen of democracy”<sup>28</sup>. The Committee considered that the law would enable the development of social control which is one of the most effective instruments in fighting corruption.

On 16 of March of 2010 the bill was being processed as an urgent matter. In the evaluative report of the Special Committee<sup>29</sup> it is said that the law “will change the history of society” (p. 1) and also that the Congress should make the law be inserted in society so citizens understand the importance of the availability of information.

Finally, the bill was discussed in the plenary in April, 2010. Parts of the bill still made it possible the arbitrary denial of information. However, the bill was agreed upon because the MPs thought “information is a public good”; because “there is no democracy without transparency” and because of a global movement to make information accessible. There had been 6 years that similar bills were undergoing the House proceedings and bill 219 was the one to solve the problem. There was a general hope that the population would use this given right to information.

MP Luciana Genro is the only one that mentioned the classified documents of Brazilian dictatorship. According to her, the bill was a long battle fought by the families of those lost and murdered during the dictatorship. The MPs thanked civil society and social movements that helped the writing of the bill. The president acknowledges that the bill was consensual and the debate in the House was just theoretical.

Compared to the previous laws, the Right to Information Law presented more specific references to society’s participation in its final debate. However, the fear that society would

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[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=1A2A8CAA7BF8449B5505E18737417894.proposicoesWeb2?codteor=723610&filename=Tramitacao-PL+219/2003](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=1A2A8CAA7BF8449B5505E18737417894.proposicoesWeb2?codteor=723610&filename=Tramitacao-PL+219/2003) p. 8-9.

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[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=1A2A8CAA7BF8449B5505E18737417894.proposicoesWeb2?codteor=760411&filename=Tramitacao-PL+219/2003](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=1A2A8CAA7BF8449B5505E18737417894.proposicoesWeb2?codteor=760411&filename=Tramitacao-PL+219/2003) p.1.

not use the law was more recurrent. The reading of the Official Diaries gave us the impression that the Right to Information Law was a gift from the Legislative to civil society.

### **The Anticorruption Law of 2013**

Bill 6826 was presented in Congress in February of 2010. It proposed to regulate the civil and administrative responsibility of companies regarding illegal acts against the public, national and foreign administrations. In August 2013, the Law number 12.846 punishes “any entity doing business in Brazil that attempts to bribe either a foreign or Brazilian officials [...], even if the act occurs outside Brazil” (Richard, 2014, p. 5). Before this law, companies could not be accused of fraud in public biddings and contracts, specifically, the bribing of international public employees and organizations. There were no legal ways to reach company’s resources to refund what was illegally taken from the state<sup>30</sup>.

The bill reckons the importance of the combat of corruption and the fortification of the institutions including foreign public administration. Three conventions were ratified: the Inter-American Anti-Bribery Corruption Convention (organized by OAS – the Organization of American States – in 1996), the Combat of Corruption by Foreign Public Employees in International Commercial Transactions Convention (organized by OECD – Organization for Economic Co-operation and Development – in 1997), and the United Nations Convention against Corruption (in 2000).

The administrative punishment is a way to circumvent the failure of the Penal Law in penalizing companies and it corrects other flaws in the Administrative Improbability, Public Bidding and Contracts Laws and others. However, none of them regulated crimes against the Foreign Public Administration, which is what Law 12.846 proposes to solve. From 2002, when Brazil ratified the OAS and the OECD Conventions, until 2012, “Brazilian authorities had initiated only one case and pursued two investigations concerning international bribery” (Richard, 2014, p. 4).

Besides being discussed in 4 permanent commissions<sup>31</sup>, a fifth temporary commission was created including members of the Mixed Parliamentary Corruption Combat Front<sup>32</sup> and from civil society: OAB (The Federal Council of the Brazilian Bar Association), MCCE (Movement

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[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=ACBFC2423876822DC86023EE1A939118.proposicoesWeb2?codteor=735505&filename=Tramitacao-PL+6826/2010](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=ACBFC2423876822DC86023EE1A939118.proposicoesWeb2?codteor=735505&filename=Tramitacao-PL+6826/2010)

<sup>31</sup> Labour, Administration and Public Service; Economic Development, Industry and Commerce; Finance and Taxes; and Constitution, Justice and Citizenship.

<sup>32</sup> *Frente Parlamentar Mista de Combate à Corrupção*.

of Combat against Electoral Corruption), and former CGU (Office of the Comptroller General) and several other specialists<sup>33</sup>. 35 amendments to the bill were proposed, generating 3 drafts, 3 evaluation reports (2 by the rapporteur and one by the special commission), and 4 public hearings were held.

Although these numbers show that the legal process which resulted in the Anticorruption Law was not simple, there was not a significant or open opposition to it. The analysis of the proposed amendments, show that Deputy Edio Lopes (PR-RR) proposed 10 amendments in the attempt to exclude, reduce and restrict aspects of the bill. 2 of them were accepted. Rather than that, the proceedings of the bill were mostly consensual.

It is the rapporteur's opinion (Deputy Carlos Zarattini) that society had decided to put an end to the "corruption vicious circle and to adopt a governmental and business style guided by transparency".<sup>34</sup> However, more significant and strong was the influence of the international conventions which were determinant in the creation of legislation that fulfilled Brazil's commitments against corruption. In conclusion, society exerted little influence in the creation of Law 12.846/2013. Contrarily, the Vote Buying and the Clean Slate Laws were initiated by civil society.

## 5. Popular initiative laws

### The Vote Buying Law of 1999

In February of 1997, the Brazilian Commission for Justice and Peace (CBJP), which is part of the larger and well-known National Conference of the Bishops of Brazil (CNBB), launched a project called 'Combating Electoral Corruption'. This project was a part and a continuation of a wider campaign begun the year before by CNBB, themed 'Fraternity and Politics' (Almeida and Mara, 2014; MCCE, 2012).

CBJP noted that vote buying was one of the major problems faced by the Brazilian electoral system (MCCE, 2012; CBJP, 2000). For CBJP, the solution to the problem would be a change in the legislation through the *popular initiative of law*. This constitutional mechanism demands 1% of the population's signatures, from five different capitals totaling about one million and sixty thousand signatures in order to become a law.

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<sup>33</sup> Such as former Minister of CGU, Jorge Hage; Jorge Abrahão, form Ethos Institute of Companies and Social Responsibility; Judge Sérgio Moro; and several scholars.

<sup>34</sup> P. 13,

[http://www.camara.gov.br/proposicoesWeb/prop\\_mostrarintegra;jsessionid=ACBFC2423876822DC86023EE1A939118.proposicoesWeb2?codteor=970659&filename=Tramitacao-PL+6826/2010](http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=ACBFC2423876822DC86023EE1A939118.proposicoesWeb2?codteor=970659&filename=Tramitacao-PL+6826/2010)

The bill was developed by a civil society group<sup>35</sup> and supported by TV Globo. The national TV News informed the population about the bill, increasing the number of signatures being collected. Nevertheless, the bill did not proceed as a popular initiative, but rather as a parliamentary initiative for several reasons, among them, the need to recount and check all the signatures and the “electoral title”<sup>36</sup> numbers of those who signed the petition. The time constraint would impede the bill to be validated for the 2000 elections. Thus, eleven congressmen (one from each political party represented in Congress) initiated the bill’s legal proceedings as if it was theirs. Bill 1517/1999 was approved in the record time of 35 days.

Fieldwork showed that a small, politically sophisticated and somewhat powerful group of people led society into the popular initiative process. This group had experienced corruption in their public offices and knew that a national information campaign would motivate the population to sign the petition and also to pay attention, through the media, to the passing of the law. The national campaign had the Catholic Church as its powerful ally and increased the perception of corruption. The social mobilization pushed the legislation into Congress who had no other option rather than to pass the bill.

### **The Clean Slate Law of 2010**

Civil society mobilization continued after the enactment of the Vote Buying Law. Almost ten years later, MCCE was able to pass another law against electoral corruption, the Clean Slate Law. According to the MCCE website (2012), society must have the right to define its candidates’ profiles. The 2010 law prevents candidates without a clean record from running in elections, increasing the number of cases of ineligibility, and extending the penalty for doing so to an eight-year of ban on running for office. The requirement of having a final verdict (i.e. when no more appeals are allowed) was also withdrawn. Again, popular participation solidified through the popular initiative was decisive to this process.

The popular initiative was presented in Congress in September 2009 with the 1.3 million signatures. It was expected to be examined through June 2010, in order to be validated in the municipal elections of 2010. The problem was that, this time, no MPs wanted to support the bill in its legal proceedings through the Houses (Assunção and Assunção, 2010). According to the Transparency Brazil website (*apud* Assunção and Assunção, 2010), 41% of the deputies were involved in judicial lawsuits. In December 2009, 200,000 extra signatures were also submitted to Congress, totaling 1.5 million.

Instead of pressuring Congress, the MCCE spoke directly to the voter’s and asked them to pressure their representatives. Finally, thirty-three MPs supported the bill; once again it ceased to be a popular initiative bill (Assunção and Assunção, 2010). The bill encountered resistance in Congress. Some MPs were afraid the law would allow powerful politicians to use it against their competitors making, the latter ineligible; others thought it was still necessary to have the complete verdict (achieved through the exhaustion of all appeals) in order to apply

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<sup>35</sup> Mr. Francisco Whitaker is the idealizer of the process. He coordinated people such as the Attorney General of Brazil at the time, Dr. Aristides Junqueira Alvarenga; a former electoral judge, Dr. Dyrceu Aguiar Dias Cintra Jr.; and the regional public prosecutor from Ceará, Dr. José Gerim Cavalcante.

<sup>36</sup> Brazilian document equivalent to a voting registry.

the law. The lack of agreement delayed the passing of the law in the Low Chamber. Amendments that distorted the bill were proposed in an attempt to fake change.

On May 5<sup>th</sup>, the bill passed in the Lower Chamber. Although approved by the MPs, its main text risked being severely altered by the amendments, to the point where AMB<sup>37</sup> threatened to withdraw its support. 445 MPs registered their presence on the floor, but 55 left without voting. The bill was also approved in the Senate; however, there was a debate about timing, which remains controversial today. It was not clear if the law would stop dirty slate candidates accused before its existence.

On June 4<sup>th</sup>, President Lula, who was advised by the AGU<sup>38</sup> and the Ministry of Justice to approve it without veto, signed the law into effect. The TSE decided it would be applicable to the 2010 elections, and it would also be valid retroactively for those sentenced before its enactment. Paulo Maluf (PP-SP), José Roberto Arruda (DEM-DF), Joaquim Roriz (PSC-DF) and others were immediately prosecuted (Assunção and Assunção, 2010). 497 candidates were prosecuted by the federal Public Ministry of Brazil based on the Clean Slate Law, of a total of 4,115 electoral lawsuits (*Carta Capital*, 20/08/2014)<sup>39</sup>.

Since 1993, a similar bill (PLC<sup>40</sup> 168) was undergoing the legal proceedings of Congress, however, without any visibility or success. Initiated by the Executive, PLC 168 did not become law because it is not the majority of MPs' interest to reduce their access to political power. Therefore, social mobilization was also determinant for this bill to pass. Similar to the Vote Buying Law, corruption perception was increased by a national campaign which stimulated social mobilization.

## 6. Conclusions

This paper analyzed 6 anticorruption laws in which 4 were initiated by the Congress and 2 by society. Why social involvement in the creation of these laws was so different? When does corruption control need social mobilization to be effective? In the case of the Congress initiated laws, corruption perception was a distal condition. The society that perceives corruption negatively sets the scenario to enable executive and legislative initiatives of laws, presenting a passive role in them. Contrarily, civil society had an active and determinant role in the electoral anticorruption laws.

Why does the Congress regulate itself? There are two levels of explanations: one regarding the political relationship among MPs and the other regarding the relationship between MPs and society. Some MPs are interested in corruption regulation because it levels the political competition. Smaller parties can have better chances when the competition is fair. When political competition involves corruption, the wealthy have advantages. MPs also regulate themselves as a response to society. When corruption scandals break loose, society watches more attentively to the MPs acts. This explains why the bills attached to the bills that became laws were unsuccessful. The attached bills had no motivation from corruption

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<sup>37</sup> Brazilian Magistrate Association.

<sup>38</sup> Attorney General's Office (Advocacia Geral da União).

<sup>39</sup> <http://www.cartacapital.com.br/blogs/blog-do-serapiao/mpf-impugna-497-candidatos-por-ficha-limpa-5868.html>

<sup>40</sup> Supplementary Bill (*projeto de lei complementar*).

scandals to become laws. This also explains the few references to society in the Official Diaries. Therefore, the timing of appreciation of these bills matter.

The Congress' will to make political competition fairer and to show society that it is doing something against corruption was not enough to make them act against vote buying and dirty slate candidates. These two laws are obstacles to their achievement of power. It is natural that politicians will not bar themselves from running elections. Thus, through the analysis of these laws, it seems that electoral accountability requires a minimum level of popular engagement.

Harder than explaining *why* there was social mobilization in the Vote Buying and the Clean Slate Laws, is explaining *how*. It is hypothesized that *experience* with corruption stimulated the participation and the creation of the group who designed the bill and directed the national campaign, whereas the *perception* of corruption stimulated participation of ordinary people. Experience with corruption seems to be a bigger motivator of participation than corruption perception. Political sophistication is also an important variable and it is widely known that those politically sophisticated tend to participate more.

The bulk of the population who signed the popular initiative perceived corruption and learned, with the national campaign that something could be done against it. Corruption perception added to the information effect caused the social mobilization which pressured the government to pass the laws. Therefore, can we, ordinary people, help control corruption? Yes we can, but we need an organized social movement to provide us with information.

This paper's research still lacks an accurate measure of corruption perception. Qualitatively, it will include media articles and quantitatively, it will use secondary data from the World Values survey to assess the variation in corruption perception. It also needs to include more anticorruption laws to broaden the generalizability of its findings.

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