

ABOUT ELECTIONS PUBLIC FUNDING

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ABSTRACT

It is a research about the proposal from some people in the society, including some specialists of the elections Science, of using only the public funding in policy's campaigns, taking into account the current Brazilian situation and paradigm. It takes a closer look on the most serious proposal, the one studied on the houses of legislative and executive, how it would work on reality, whether it would be good or not, and its side effects. The text contains public expenditure comparatives, critics of the current system, the death of party institutions and its ideals, as well as the lack of candidates who can present a serious government plan and be elected without being a party leader (or close to one). It aims on criticize the inspection on investments and donations too, what is the reality-to-be in both systems and what is only theory, concluding that the real problem is the inspection, that must work against something that victimize the whole electoral system.

KEYWORDS: Campaigns. Government. Inspection. Elections. Democracy

SOBRE O FINANCIAMENTO PÚBLICO DAS CAMPANHAS ELEITORAIS

RESUMO

Trata-se de estudo sobre a proposta ventilada em alguns setores da sociedade, inclusive por estudiosos dos sistemas eleitorais, de usar somente o financiamento público em campanhas, no contexto do Brasil contemporâneo. Faz-se análise sobre o tema, sobretudo com base na principal das ideias veiculadas (proposta trabalhada por Câmara e Senado), da potencial utilização prática, efeitos normais/previstos e colaterais e a real efetividade da ideia. Contêm comparativos de gastos do governo, crítica ao atual sistema eleitoral, à falência das instituições partidárias e seus ideais e à ausência de políticos que se apresentem de forma concreta e substanciada para um dia serem eleitos nos dois sistemas debatidos (financiamento público e privado) que façam parte da elite das agremiações. Objetiva criticar, também, a fiscalização de investimentos e doações, o que pode se tornar realidade e o que se desconfia possa ser usurpado em sua passagem da teoria

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This article was translated by Isadora Falcão and authorized for publication by the author in 10/11/2012. Version in portuguese received in 19/07/2011 , accepted in 11/11/2011

para a prática em ambas as propostas, concluindo que o real problema das eleições é a fiscalização, que tem por objeto algo oriundo do formato eleitoral brasileiro como um todo.

PALAVRAS-CHAVE: Eleição. Financiamento Público. Financiamento Privado. Fiscalização.

1 Introduction

On July, 2005, Brazilian paper “O Globo” reproduced an interview that reverberated in the media, with the then president of Brazil, Luiz Inácio Lula da Silva, in which he said that his party’s slush fund was a widespread practice in the country. Further investigations about the context imply that the reason for part of the corruption unveiled throughout his commission was the repeated use of irregular income to finance campaigns of their own, allies and adversaries ones.

Due especially to the several corruption scandals that ravage the country, as well as the permanent relation between those and the elections period – embezzlement of public fund to finance campaigns, payment of the “investment” made by businessmen, non-declared income, currency in circulation outside the legal norms, amongst others – the idea of public finance of Brazilian election campaigns is (re)born.

2 What is the public funding of political campaigns

Public funding means that all the money invested in campaigns should mandatorily be public. If, in one hand, the idea seems to disrespect the taxpayer, on the other, does not seem to be that bad in the long term, since, that way, fewer businessmen and lobbyists could benefit from the illegal outgrowths of those acts practiced in the gap between the beginning of the party’s fundraising and the material gratification given by corrupted people, as a reward to the financial outlay of those who bet on it.

In 2005, disclosed by the acme of the scheme known as *mensalão*², a proposition for political reversal – which involved the public funding of electoral campaigns – got to be widely

² The term can be translated as “big allowance”, and describes the monthly payments which were the core of a vote-buying scandal planned by high-ranking members of the Brazilian Worker’s Party.

discussed, but lost its strength, at least for the moment. On April, 5, 2011, the proposal was ratified by the Commission for Senate's public reversal (*Estadão*, 2011), but rejected by the Commission of Constitution and Justice at the same Parliament on August, 24 of the same year (*Terra*, 2011). However, that proposal can be the basis for knowing (exemplifying, debating, studying) what it takes to structure the branch of one of the strongest ideas to rule public funding – which, in case of future changes on that direction (something that is still possible), will probably have significant impact in the end of the lawmaking process:

“The political reversal assumes the finance of electoral campaigns exclusively by public income. Donations made by natural persons and private companies are forbidden and subjected to punishment. On election years, says the proposal, the Budget Law will include additional credit in order to finance electoral campaigns which values equal the number of electors in the country. The resources will be multiplied by R\$ 7, taking into account the current electorate on December, 31 of the year prior to the elaboration of the Budget Law. Considering an electorate of 115 million people, the amount saved for the campaign would be R\$ 805 million. The National Trust will deposit the resources in the Bank of Brazil, in a special account available for the Superior Electoral Court, until May, 1st of the election year. It will be the responsibility of the Superior Electoral Court (TSE) to distribute the resources to the national directories of the political parties, within ten days, starting from the day of the deposit, following the criteria below:

- 1%, equally shared between all parties whose statutes are registered at the TSE.
- 14%, equally shared between the parties and federations represented in the House of Representatives;
- 85%, shared between the parties and federations, proportionally to the number of representatives elected in the latest election for the House of Representatives. (House of Representatives, 2005)

The text, entirely taken from the House of Representatives' website, is from July, 5, 2005.

3 The issue of private funding

Direct funding of political campaigns in Brazil, nowadays, is entirely private – made both for natural persons and legal entities. Until the issue of “campaign leftovers” by PC Farias, at the Collor Age, only natural persons were allowed to contribute (ROLLO, 2011). Act 9096/95 provides the limits to donations made by legal entities, which were, afterwards, altered by act 9504/97, in force nowadays, which limits the

donations to 2% (two per cent) of the annual gross fiscal revenue, corresponding to the fiscal year prior to the election year. It is interesting to note, as did Márcio Nuno Rabat, that even this limitation, opposed to the one for donations from natural persons, appears in the section of “Temporary Provisions”, something that perhaps points to the eagerness for clearer rules for this subject – which has not happened yet (RABAT, 2011).

As time went by, an embarrassing and unsustainable situation was noticed, regarding the so-called slush fund, a sort of illegal fomentation fund, monetarily fed by donations of those who were not allowed to make them – the main problem used to regard legal entities. There was no statement of income and actual donations and scarcely were proved the bonds between the “investor” legal entities and the elected ones, which hampered the investigations and the penalties for favors in the opposite direction for those who economically believed in the election of pseudo-representatives.

It is fundamental to remind, at this point of the work, that on rules prior to the aforementioned acts, electoral courts would not even check the parties’ finances. Its leaders would publically demonstrate, to their colleagues from other groups, the account renderings, so that the corruption made room for complicity – no one was to check the others’ accounts, in order not to be investigated either. Very convenient.

The solution found for this issue was the legalization of donations made by legal entities, as said before, safeguarded the objective prerequisites, as the amount; and the subjective ones, as, for example, the restrictions to the capacity of donating, imposed to some juristic entities, as provided by art. 24 of act 9504/97:

“Art. 24. It is forbidden, to parties and candidates, to receive, direct or indirectly, donations in cash – or so valued – including those obtained by advertisement of any kind, derived from:

I – Foreign entity or government;

II – Public administration – direct or indirect – body or foundation maintained by public resources;

III – public utility or assignee;

IV – private law entity which receives, as a payee, mandatory contribution derived from legal provisions;

V – public interest entity;

VI – union or trade association;

VII – non-profit legal entities which receive foreign resources;

VIII – beneficent and religious entities;

IX – sports entities;

X – non-governmental organizations which receive public resources;

XI – public interest civil partnership organizations.

Sole paragraph. Cooperatives whose cooperates are not public utility or assignees are not comprised by this article's prohibitions, unless they benefit from public resources, regarding the provisions of art. 81"

(BRASIL, 2011)

By the time, it was thought that, since any possible donation was to be done publically, any material or moral bond between the elected candidates and their supporters would be noticed. That way, the inspection of the gratitude's fruition – illicit and economic advantages, as in license agreements, funding, tax exemption on investments, bids – should be easily noticed and, evidently, punished (not only legally, in court, but also by the people, who would no longer elect the corrupted person).

That is an illusion. Starting from the notorious fact known as *mensalão* (see note above), slush fund policies got public, as well those regarding electoral money making without raising suspicions. Please note that this credit is even more valuable in terms of aid, since, as big as it is, if it is not found through bewildering investigations, the undue bond between those involved will never even be suspicious. We may say that the values of the official fund only appear because it would be totally unacceptable to say that there is no donation at all for the campaign.

That way, a vicious circle is clearly formed: there are illegitimate donations to the candidates; those are elected; they return with advantages; the system finally demonstrates to be profitable, and the investments come back to the infamous reelection. That is the undue fruition of public finance on elections and on the post-electoral period. As if the welfarism (fruition of public finance for non-constructive social fomentation, regarding improvements on the social condition, from lower to upper socioeconomic classes) was not enough, advertising, eventual press censorship – “democratically” provided by law – there is also this obscure aspect of the public revenue, paying for the administrator's entrance more than he should actually receive.

It is convenient to highlight, however, that it is compatible with the Rule of Law to finance a campaign by believing in the projects or the judgments of a given person, which is frequent, actually, on great historical ideas and political battles the world has seen so far – and

Engels' financial support, as an industrial, for Marx's literary production one of the classic cases of legitimate belief on someone else's idea.

4 Important features of public funding

We will do, by now, some statistical and critical analysis regarding public funding, based specially on the proposal presented on the beginning of this piece. The objects of that part of our research are comparative figures from the different areas of state investment, the shaping of Brazilian electorate, formal aspects and inspection, as they are nowadays (or were at the time of the draft law that constitute the core of this debate) and might be throughout future legal modifications.

4.1 Transfer value: comparison and criticism

Since 2005 figures regard 2004 situation, as presented on the beginning of this work, there must be an idea of the overwhelming amount the government wishes to transfer, *a priori*, to political parties. The truth is, if public finances are going well and are getting better and better (due much to an international scenario that favors the emerging countries that had fewer external investments when the world economic crisis came up, in 2008), that does not mean that it spends well. According to data taken from INEP's official website, the transfer value to parties is equivalent to the average federal expenses with student loans (which is less than the transfer value) and with scholarships (which is a little more), in 2004 and 2005. Still according to the institute, it also corresponds to about 75% of the transfer value to states and 60% for cities to invest in education in the first year and 50% and 40% of the transfer value in the second year. It is noteworthy, however, that 2005 was the year prior to the 2006 presidential elections, when the then president Luiz Inácio da Silva applied for reelection – and succeeded. It would not be abnormal if, at each election year, a new calculation, that considered a higher number of electors, was made, equating, that way, those percentages to the prior year's, especially when we take into account that the lay elector does not follow and inspect all of the state's financial moves, in order to evaluate it properly (something really difficult).

It is essential also to remind that, throughout income tax deduction and diminishment of the revenue due to free political airtime, just to TV broadcasters is destined 1 (one) billion reais (figures from 2010 election), as exemption from taxes that should be paid to the government (MORAES, 2011).

That clear factual inversion of values could be dogmatically explained by Law, by saying that political parties are key-pieces for democracy. That is not untrue, evidently. However, the budget for “make-up advertisement”, for “side-by-side campaigns”, noticed only at each election period, from those parties with no ideals and corrupted people are nothing more than distortions of the historical beauty and relevance that the development of idealistic political units represent to society. More on that will be discussed timely.

4.2 Election systems and people involved

Another proposal, faced as necessary to the fruition of public income by political parties, is the implementation of “closed lists”. That is, nowadays, there are “open lists”, which means the sequence of people who will hold the positions is established by voting, either individual or from the party. Although in the representative system that is not so strict, since some people’s personal renown end up pulling other ones together, who are unknown and have no chance of being elected to the Congress, the electors still vote for the individual. It is proper, of course, to criticize this system: in a consultation to INEP, we can notice that Brazil is a country where 57% of the electors have not even concluded high school and illiteracy, yet functional, is huge. There is an evident consequence of political alienation of the general public, which is not able to communicate with the most educated portion of society, which points government’s distresses. That is, there is no point in saying that the country has a stagnant economy; that the improvement stage was due more to chance and previous incompetence; that even what was improved could be better with more honest people in charge (something that, apparently, no one else demands from a candidate and spreads the common sense that every politician is corrupted, and the only demand that can be made to them is not to stand still when elected); if, to the citizen who has no understanding about politics and economics, his life seems to be better than before, especially moneywise – as well as the life of his equals, according to the speeches of the one who declared himself as a workman. To sum up, people are not able to understand the parties, what they really are and want, what are the consequences of voting the “vote pullers” – a character unfortunately played by the ex-clown Tiririca, and comprehended as an electorally

needed piece by the parties, due especially to Enéas Carneiro and his election as a congressman in 2002, when we pulled together five other unexpressive candidates of his party, Prona, to the Congress with almost only his votes. The parties, for their turn, lost their identities, no longer have actual ideals, make no intelligent opposition. They demand their political space in one or another department, otherwise they would vote against government projects, whether they are good or not. That essential party nomination no longer makes sense.

Resuming the main subject, the closed lists are the sequence of people elected by the parties as they conquer places beside the “twin towers” of the government. Explaining: if candidate A reaches more votes than B, but only one place is available for the party and B is listed first, only him will be elected. That hypothesis must be taken with a grain of salt, since, with individual advertising for the candidates, people can vote for him, but cannot see their candidate close to representing them. In that case, in order to grant the desired effect, both the advertising and the votes should be directed to the parties – but, as aforementioned, the parties’ disrepute does not accredit much sense to those practices.

4.3 The quotas of the proposal and its effects

We now observe the figures presented on the proposal exposed in the beginning of this work, on chapter four. There are, first of all, complications regarding what is and what is not destined to each country. Well, if 1% (one percent) goes to each party that has a registered statute, it can stimulate the opposite of what the party politics from years ago tried to. The more representative parties (or, at least, with the required representation for that) could divide themselves to obtain a little more money – taking, at the same time, from the others. Of course that is hard, since divided parties tend to lose their strength, or even part of the rest of the money (99%, that is, the vast majority). However, considering that many people build a career in politics without getting to be elected, there will be no surprise if someone puts that plan into practice only to obtain a certain amount of money – especially people from tiny parties, if they are dishonest and have no actual political aspirations, of course.

The next 14% (fourteen per cent) go to those who were able to elect any congressman, equally divided no matter their number (it is important to enhance that the draft law regards, in order to distribute the amount, only those elected to the executive house of congress). There is, already, a disservice to democracy. If the use of machinery of government, as strong as it is, is already criticized (and somehow inhibited), to direct 14% of the public income to someone who

has already been elected is only going to stimulate people who have been in charge to be reelected. That finding is even worse when the 85% (eighty five per cent) left of the money are shared according exactly to the representation in the Congress. What is the point then in a political career, in social activism, history and individual accomplishments – everything people of decent political character do in life – if they will not be able to compete with the stronger ones (who will be elected at the expense of their tributes)?

Of course, in thesis, they will be able to join big parties. However, they are independent entities, which can or cannot accept the candidanship of other people. Moreover, “strong” components of the group should not give up their privileged position. They must always be the elected ones – especially in the case of the aforementioned closed lists – those who have more support, more available airtime, more internal power. At the same time, both the small parties – and, with them, any left chance of return to the idealization that gave rise to parties that someday could grow bigger, as PT (workers party) – and good candidates. They simply would not have the chance of being, at least, in practice, electable yet nowadays they have an actual – even if small – chance of being elected.

The usage of state incomes to those elections is also condemned, due to the moral reprehensibility of the usage of resources charged from the taxpayer in order to finance something in which they do not believe or understand as essential. After all, the parties survived, until now, without public money, and the mistrust of citizens regarding the honesty of parties and politicians is latent.

4.4 The inspection

By considering the hypothesis of public expenses for the purposes here studied, inspection comes up in two points of view: first, as a fact – it is easier to inspect something when we know its source; second comes the necessity: without the inspection of bills and budget definitions, public money might just be wasted.

The first part is indeed easy. There will be no complications in checking if the transfer was correctly made to the parties. Then it will get more complicated, since it is going to be necessary to know how the money was spent, and the usage of stalking horses and fake invoices, especially by candidates who are benefited by slowness and political debt of the judicial clergy,

should make the process harder. Investigations, of course, will be appropriate, especially by the Federal Police, and the noteworthy role of the Federal Public Department (amongst others) to lend the taxpayer's money an upright destination.

The last part fits the second point of view, particularly failed nowadays, unfortunately, but, asserted by the defenders of the proposal discussed here to have bigger chances of succeeding.

The problem is that it will also be necessary to trust the ethics of the political characters, so disbelieved nowadays. That is, the fraud of the official research institutes, the legal amendments that can increase the transfer of the revenue, or change the way they happen do not at all seem to be far from Brazil's contemporary reality.

Still regarding the inspection, the matter gets to the most delicate questioning: how to actually know if there is no private investment in the candidacies? The truth is that there is no way to be sure of that. If that inspection was simple, it would have been done before. However, it is poorly made, and when it is right, not necessarily encompasses the whole problem – does not reach all the parties, all the donations – actually, provably not even the donations made by a certain company to a certain party. Starting with the premise that the money source is known, it becomes easier to inspect it, none of that should happen. There is actually room for parties' illicit indulgence because part of the amount – from its generation to its delivery to the party – is out of the reach of inspection, which invariably happens in both systems of campaign finance.

In a logical reasoning now, it is worth to think: if there is going to be public money for the campaigns, spent together with the money used for the inspections and also with the money that comes from illegal donations, what is the point in putting an end to the current system?

The inspection of what is illegal has already become almost impossible in an enormous country like Brazil, not only of donations, but also of drugs, guns, people trafficking... Moreover, if some criminals control people trafficking and execution, amongst other illicit activities, from inside the penitentiaries, what is to think about the effectiveness of the inspection of financial activities as a whole? To think that it will work now is just an illusion.

5 Suggestions

A suggestion to put an end on the abuse of purchasing power, which generates deceptive advertising, gathering votes from unaware people, is to limit, somehow, the

campaign. For example: only the mandatory timing of free airtime on TV and radio will be used, besides each candidate being able to have a page on the internet. Besides that, any advertisement would be forbidden.

That way, both the proposal of public and private funding make a little more sense, that is: the money received would only make an actual difference until a certain point (by hiring a better advertising director, for example, or a better screenwriter). Also, some money destined to opinion researches could also be legalized, since it is indispensable for the candidate to fit the people's wishes – and it is necessary to question the public opinion researches from other institutes as well, otherwise they could induce the national electorate.

The airtime on TV and radio could also be equally shared between parties, especially when we consider that nowadays an official party is not born exclusively from the will of idealizers, as it was demonstrated by the recent entanglement regarding the creation of Gilberto Kassab's new party, PSD. That means less time for the lack of electoral objectivity, as showing the "smile of Mrs. Maria" and the "happiness of Mr. João". Airtime should be used strictly to present proposals, show what the person has or has not done, important and real accomplishments, not some poor occasional actors. It could be possible to allege that the birth of small parties would become almost impossible (due to political biases, probably with new restrictions, for that to happen), but some rules could be elaborated, as the level of social commotion, the legality of the actions, the suitability of the members, what has or has not been done by them at the time of activist foundation (an almost necessary road to those parties which are not generated from internal dissidences of other ones), so that more parties could be created.

What we try to say here is that if advertising and electoral actions are limited, the usage of money is going to be lower. That also would not affect democracy, since the electors would perfectly know where and when to find the proposals of their candidates.

Moreover, another essential feature for the execution of actually democratic elections is the vote not to be mandatory – a basic prerequisite of the Rule of Law. That way, candidates would finally have to show their work and have truly great life achievements, otherwise there would not be that many people fighting for their stay at the time of reelection without the mechanical awakening of democracy that mandatory voting brings to nowadays electors.

After the presentation of this study, it becomes clear the misunderstanding in thinking that, with the usage of public money on electoral campaigns, the illegal fomentation of candidacies, which will be paid afterwards “with interest and dividends”, in many ways, as aforementioned.

The problem lies on the inspection of what is illegal, not of what is legal. That inspection will go on without being effective, and the parties’ purchasing power will go on conquering electors mistaken by more incisive or convincing advertising.

Limiting political advertising can be a good answer to solve the problem, since it is not the incumbency of Law to wait for people’s moral growth, but to restrain what is wrong with its legal bonds.

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