

Recent reforms on electoral campaign financing in South America – regional phenomena or singular events?

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Introduction

The 2000s were of great significance for south-American countries in terms of reforms to their electoral systems – be it in how their candidates were elected or in how they were financed. Since the turn of the century, 9 Latin-American countries promulgated at least one law that changes the way their electoral financing system works, with Bolivia as the only exception. However, this information is not enough to reach any conclusions that go beyond the obvious: that the rules for financing electoral campaigns in these countries have changed. Generally developed with a local focus, studies about electoral campaign financing in Latin America lack projects that try to understand this wave of reforms as a Latin-American phenomenon that seeks to deepen and perfect the democratic process in this region. Even classic studies such as Daniel Zovatto's, in partnership with the *International Institute for Democracy and Electoral Assistance* – (IDEA), covers each country separately from all the other countries in the continent.

Because of this, the current paper seeks to study the current reforms in electoral financing that have been happening over Latin America, in order to understand them as a collective process of Latin-American democracies.

The main idea of the paper is to produce a comparative analysis of the new regulations that have begun to show their effects recently. The aim is to, firstly, look for normative patterns that might be found. Here, the intention is to answer the following question: *Is there a Latin-American tendency to solve similar electoral financing issues through the use of similar mechanisms? Or are the normative answers to similar diagnosis different?* These questions rest on the knowledge that all these countries, which are all presidential – and most have bicameral legislatures – are very heterogeneous in terms of electoral systems: distribution methods, type of party-list used, district magnitude and the presence – or lack thereof – of barrier clauses, all of which are factors that must exert a strong influence in how the systems of electoral financing are regulated.

The paper brings the discussion about the regulation of electoral finance systems to the regional level, seeking to fill a void of continental analysis of the problem. Even the most important studies that cover the whole of Latin America, such as Zovatto and Gutiérrez (2011), Griner and Zovatto (2007), and Zovatto (2007), treat each country in an isolated and independent manner, instead of looking at it as a whole.¹

1 The only exceptions are chapters 1, 2 and 3 of the second part of the book by Griner and Zovatto (2007), which deals with sub-regional analysis with one chapter for central America, another one for the Andean States and one for the Southern cone.

1 METHODOLOGY

In order to achieve what this paper proposes to do, the electoral financing systems of ten different south-American countries will be analysed: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela.² This task will have the book organized by Zovatto and Orozco in 2008, which talks about political and electoral reforms in Latin America, as well as the books organized by Gutiérrez and Zovatto in 2011, which analyses the financing of political parties in the continent, as its starting point.

The difference between what this paper will try to achieve and that which has already been done by Gutiérrez and Zovatto in 2011 is clear: while the authors develop an analyses of the electoral financing systems currently operating in each country of the Latin American continent, they do so by treating each country separately, while this paper aims to, through the use of the individual data of each country, identify collective trends. That said, the main objective here is not to understand what the law in each country determines and how that affects their internal dynamics, but rather identify whether the reforms put forth by these 9 countries somehow point to a common way of dealing with the same issues. In other words, are the answers provided by these reforms to the electoral financing issues have something in common?

To answer these questions, each legislation will be analysed according to the following variables that make up the electoral financing system. They are: a) can legal entities make donations?; b) Is there a limit for private donations?; c) Is there indirect public financing? How?; d) is there direct public financing? How is it divided?; e) What are the conditions to access this kind of public financing?; f) Does the State provide subsidies for media publicity (such as TV and radio)?; g) is there a limit to campaign spending?; h) What are the limitations on how these resources are used (e.g purchasing time on the radio and on TV); I) Are anonymous donations allowed?; j) how and when is the accountability done?

The use of each of these categories is based on the wide bibliography by the International Institute for Democracy and Electoral Assistance (IDEA) and on the research of Reis *et al* (2011). We decided not to use the question “is the financing public, private or mixed?”, based on the understanding that most systems will be categorized as mixed – the only exception to that rule are Uzbekistan (with an exclusively public system) and Venezuela (which had an exclusively private system up until 2010).

We have also made the decision not to use the questions “Can candidates be financed directly or only the parties?”, which Rei *et al* (2011) brought up. The answer to that is on Rei’s paper itself, where he points out that the possibility of financing both – candidate and party – is a peculiarity that exists only in Brazil and in the United States (Reis *et al*, 2011, page 8-9).

These analytical categories are enough to cover the four main elements that make up the electoral finance systems: public financing, private financing, resource output (campaign spending) and the transparency with which the financial operations are done by candidates and parties. Furthermore, beyond being based on the references already mentioned, these categories have proven themselves efficient in their purpose on the recent research done by Borel (2015), which analyses the historical development of electoral financing systems in Chile and Argentina, starting from the 80s up until the system currently being used.

2 Bolivia was removed from this list as they have not changed their electoral financing system since 2001, meaning that it would not make sense to include it in an analysis about recent changes to such systems.

2 THEORETICAL FRAMEWORK – JUSTIFYING THE VARIABLES

The proposals for reforms in electoral financing had a focus on, broadly speaking, changing the financing system specially in 4 specific fields: the income of public resources, the income of private resources, campaign spending and the accountability of the three previous fields. Each of these fields has its own singularities and subdivisions and it is those specificities that we must study in order to understand the different ways to regulate electoral financing. If Zovatto chooses to distinguish between the *real elements* and the *formal elements* of the financing systems – meaning, the difference between how it is regulated and how it actually works -, this paper focuses on analysing only the formal characteristics of each country.

2.1 Public financing

The first step towards analysing the public financing of electoral campaigns is to define whether it was done directly (through cash, directly transferred into campaign/party accounts) or if it was done indirectly, by donations or concessions which can be monetarily estimated but are not done through cash, such as free TV time.

Indirect public financing is defined by Araújo (2012)

as positive action of the State, geared towards granting parties and candidates with some sort of advantage, as a way to reduce costs and favor the development of electoral campaigns. It is called indirect financing because it doesn't imply a direct transfer of public resources but rather as a provision that doesn't need to be processed. (ARAÚJO, 2012, page 322)

Pushing it to the limit, any action authorized by the State that results in a loss of tax collection and benefits electoral campaigns can be considered as indirect public financing. However, as we analyse legislations it can be perceived that the two biggest species of indirect public financing is through not taxing real estate and movable assets that belong to the parties as well as through granting parties with free public airtime on TV and radio. That said, the current paper will use the granting of free public airtime as the variable to analyse indirect public financing.³

On the other hand, direct public financing happens when the federal government transfers resources directly into the accounts of parties or electoral campaign committees. These resources can be spent in any way, as long as it is according to the legislation, which means that there are no attachments on how these resources should be spent⁴. Generally, direct public financing presents itself to parties in the form of a monetary fund to be shared amongst them or through the expression of preferences of the electorate – mainly the vote.

The monetary party fund is kept, usually, by making use of specific revenues which are dedicated to it by the federal government as well as other minor sources such as voluntary donations, revenues from electoral fines, etc. According to Bourdoukan (2009), the way the monetary party fund is split between parties should follow 4 criteria, which are: whether the money will be given to the parties or the candidates; whether the division will be done equally amongst parties or if it will be proportionate to some pre determined criterion; if it will be proportionate, then which criterion will be followed – according to the number of votes a party has had or according to the number of legislative seats; whether this criterion will be based on the results of past elections or current elections.

3 This choice was made after the analysis of the south-American legislations, which showed that all countries apart from Venezuela, provide tax exemption to parties. Apart from that, no other form of indirect public financing was found expressed directly in legislation.

4 This attachment might come into existence. In Chile, part of the direct public financing must be used in political education courses aimed at young people.

When the division of the monetary fund depends on the preferences of the electorate, it is usually connected to the electoral performance of the parties. In this case, the State will give each party a specific amount of money for each valid vote received. This system may also use the results of past or current elections. It might also be transferred to the parties before or after the elections take place.

Other alternatives include a voucher system or a matching funds system. In the voucher system, each citizen picks which party they would like to receive their share of the party fund.⁵

In the matching fund system, which is the one used by the United States, public financing is proportional to the private financing parties have already acquired. It's as if the State gave an specific sum to each dollar the parties manage to gain by way of private financing.

Finally, the last thing we should question in terms of public financing is if there are any conditions put in place, limiting who actually access the fund. These are known as barrier clauses and they're usually based either on electoral quotas or on election thresholds. Without meeting these quotas (or requirements) the party will not be allowed to access the public party fund. This kind of mechanism only exists in Bolivia and Colombia and therefore will not be included in the current analysis, on account of it being too specific.

Therefore, the main criteria used to analyse the way public financing happens are: the way it is divided/shared; at what point in time the transfer of resources happens (before or after the elections) and the eligibility criteria parties are submitted to in order to access said fund, such as barrier clauses.

2.2 Private financing

When it comes to private financing, it's important to look into who can make donations, if there are any limitations imposed to where the resources donated should come from and if there are any limits on how much each candidate and party can receive.

Those allowed to make donations can be divided into the following categories: a) native individuals; b) national profit legal entities; c) non profit national legal entities⁶; d) employer's unions; e) legal entities that are subsidiaries of the State; f) foreign individuals; g) foreign legal entities; h) religious entities and finally, one last category that doesn't correspond to private financing but that faces all the prohibitions, I) State owned enterprises.

Any of these entities can be forbidden from making private donations to parties, however, according to Zovatto (2005), the only ones that enjoy a consensus on their permission to make donations are native individuals and national profit entities.⁷ That said, the search to find which categories can and cannot make donations will be a search to find which types of legal entities can and cannot donate.

The second point to look into is whether or not there are limitations on the amount that can be donated. The limitation might fall upon the donor themselves, by establishing an amount that cannot be surpassed when making the

5 This works as a way to divide the resources before the campaign, based on the performance parties have had in current election, because – in theory – no one would choose to finance a party they don't want to vote for.

6 The difference between profit and non profit organizations isn't merely illustrative. There are legal distinctions between them in the legislation that regulates private financing, even if it's not that clear.

7 Zovatto's paper creates a sub category called "political and social organizations". The author isn't precise when determining what organizations fit into that category, but we can imagine them as being less integrated than unions, employer's unions and non profit legal entities. This sub category has permission to make donations in 12 of the 18 countries.

donation, or upon the candidates, imposing a limit to how much each candidate can receive. These limitations differ in form and in purpose. On the one hand, putting a limit on how much can be donated seeks to restrict the influence that these donors might have over the elected officials in the future. On the other hand, putting a limit on how much candidates and parties can receive seeks to stop parties and candidatures from becoming far more competitive than the rest due to their economic support. In this case, private funding is used as a proxy for electoral success. The table below is a synthesis of the most common ways to limit donations:

Table 1 – Mechanisms to limit donations to donors and candidates

Limit on donations (on donors)	Proportional to income (annual individual income)
	As a percentage of the total collection
	Conditioned to the amount of public funding received
	Nominal in absolute values
Limit on how much can be received (on candidates)	Absolute value is previously established
	Conditioned to public funding received
	According to the district magnitude

Source: Borel (2015), page 25.

2.3 resource output

Here, what needs to be discussed is whether or not there is a limit put on how much can be spent by each candidate and/or party, as well as whether any specific regulations about this limit exist. There are quantitative and formal conditions put on resource output which deal with the sheer amount of resources that can be spent and how these resources can be spent (which activities can be part of campaign spending), respectively.

The quantitative limitations tend to follow the same pattern as the above mentioned limits on how much can be received by candidates, which means that they are determined either by the public financing or by the size of the electorate. Similarly, it tends to have the same intentions as the limitations on how much each candidate can receive⁸, meaning that it seeks to prevent spending from determining the winners⁹. Zovatto (2004), says that:

Con base en estas consideraciones una primera observación radica en el hecho de que la falta de límites a los gastos electorales aunada a la circunstancia de que generalmente son pocos los políticos que tienen acceso a grandes cantidades de dinero, conllevaría el peligro de que las personas o grupos con abundantes recursos económicos serían los que en principio – si bien no necesariamente – estarían en condiciones de ganar siempre o casi siempre las elecciones o, en todo caso, de obtener un grado desproporcionado de influencia debido precisamente al poder del dinero. (Zovatto, 2004, pp. 15-16)

8 Although very similar, the limitations on how much each candidate can receive and on how much they can spend are different simply because, without a threshold put on how much each campaign can receive, campaigns can receive much more than they are allowed to spend, transferring the “excess” over to other, less popular campaigns. Putting a limit on how much each campaign can receive avoids that.

9 Electoral spending seems to better explain the relation between money and electoral success than how much parties receive as financing.

The limitations on how the resources should be spent, however, refer to what is or isn't considered as electoral spending. The objective behind such mechanisms is avoiding practices such as vote buying and to balance the output of resources, something which isn't done when donations are received. In order to avoid vote buying, practices such as gift distribution, putting up gigs, giving away basic need items, etc, are forbidden.

2.4 Transparency and accountability

Finally, the search for transparency follows the principle that informations about campaign spending is a efficient way of guaranteeing that citizens have control over candidates and their mandates. As Speck Says:

The principle of transparency, based on the accountability of campaign spending and in the public access to data, is a "third way" for countries that haven't managed to solve their problems through the use of vetoes and limits or by complementary public financing. They gamble on a simple principle: sunlight is the best disinfectant. (SPECK, 2004, p. 3)

The access to this kinda of data, when qualified, can allow citizens to exercise public control over his candidate in two ways: firstly, if this information is available before the electoral race, citizens will be able to practice the "informed vote". By informed vote we mean the possibility of individuals deciding their vote based on broad access to information about each candidate. Accountability plays an important role on the political platform of candidates during elections, considering that it is possible to link each candidate's donation source to their behavior e to interest groups – which makes it possible to check if there is coherence between their speeches and the interests that hide behind their electoral financing.

The way we see it, public disclosure about the origins and uses of electoral funding is more important than setting limits and restrictions, which are harder to apply and control: informing the citizens about who is behind each candidate. This disclosure, if done at the right moment and completely, creates the possibility of the "informed vote" and creates incentives for the parties to control each other as well as to adjust their behavior to the legal parameters and the demands of public opinion. Furthermore, the information about who funds a candidate allows citizens to check their speech and the real intention behind their decision making process, if they are elected. (RUBIO, 2005, pg. 7)

As for the second form of control, it involves following and scrutinizing legislative behavior of elected candidates, checking to see if their support for certain public policies matches up with the interests of those who contributed to their campaigns.

Transparency is, therefore, a way to empower citizens.

The discussion so far presented the analytical variables, which were determined by analysing legal texts and looking to see which ones were already backed up by the literature in the area, justifying them theoretically, describing how they tend to be ruled as well as their relevance for democracy and for understanding how different electoral financing systems work. Thus, the next step will be to read up on the political reforms led by south-American countries in their electoral financing systems, checking to see how the rules have changed in the past few years.

3 CURRENT LEGISLATIONS IN SOUTH AMERICA

3.1 Argentina

The current legislation in Argentina is based on the law 25.600/2002. This law laid the foundation to the current electoral financing system in the country. However, two different laws have been passed, changing the system slightly. They are: The law of political parties finances (number 26.215/2007) and the law for the democratization of political representation, transparency and electoral equity (number 26.571/09).

Argentinian public financing of parties is now done through a party fund. Its division is done differently, according to the office each candidate aims to win. Nonetheless, for all offices, 50% of the fund is divided equally amongst the candidates and the other 50% is either divided proportionally to the number of votes in the last election or the number of voters each district has (law 26.571/09, article 54). Parties also receive a sum that is enough to print one and a half electoral ballot for each candidate that is able to vote (law 26.571/09, article 53). The Free Media Time (FMT), granted by the State should take up 10% of TV stations daily schedule during the electoral race. This time is divided as follows: 50% of it is divided equally amongst all the parties that have candidates running and the other 50% is proportional to the number of votes each party received in the last legislative elections. If there is need for a second round, the parties will receive 50% of the time the party with the biggest amount of time during the first round. Purchasing extra media time is strictly forbidden (law 26.571/09, article 56), and there are no barrier clauses to access this type of public financing.

Regarding private financing the most important rule is that legal entities cannot make donations. Individual donations are still allowed, as long as they correspond to at most 2% of the allowed total spending for each campaign (law 26.215/07, article 35). The most recent rule also created something known as “electoral modules”¹⁰, which is used to estimate the maximum spending. Each module is equivalent to one citizen that is allowed to vote¹¹ (law 26.571/09, article 60).

As for transparency, anonymous donations are prohibited and parties are accountable at two points: first when they should make an estimate of how much they received and spent, at least 10 days before the electoral race starts and a more definitive version of that estimate, with details as to input and output of resources, at least 90 days after the race is over.

Table 2 – Argentina (most recent law: 2009)

Donations by legal entities	Legal entities are not allowed to donate.
Direct public financing	50% of the party fund is divided equally while the other 50% is proportional to the number of votes for the lower house plus resources for printing ballots.
Free media time	50% of it is divided equally while the other 50% is proportional to the number of votes for the lower house.
Purchase of free media time	Prohibited
Barrier clauses	–
Maximum donation	2% of the total allowed spending
Maximum spending/income	One electoral module for each citizen allowed to vote.
Anonymous donations	Prohibited.
Accountability	10 days before the race starts and 90 days after it ends.

¹⁰ During the 2015 elections, an electoral module was about \$ 5,40. Approximately US\$ 0,35.

¹¹ For determining the maximum spending, no district should be considered to have less than five hundred thousand voters.

3.2 Bolivia

The Bolivian legislation about electoral campaign financing is ruled by the Electoral Code, law number 1984/01 and by the Political Parties Law (law number 1983/99). Direct public financing is done through a party fund, which is divided between parties in two different points in time: firstly, 50% is transferred to the parties in proportion to the votes each gained in the last general elections. Then the other 50% is transferred after the elections, in proportion to the votes gained in the current elections (Political Parties Law, article 53). In order to access these resources, parties need to have had at least 3% of the valid votes in the last election. The State also grants parties with free media time on TV, with all the parties having the same amount of time (Electoral code, article 115). Purchasing more TV time is allowed, but limited to 10 minutes a day (Electoral Code, articles 117 and 119).

There are no limits to how much can be spent nor to how much parties can receive, however, no private donation can add up to more than 10% of what a party collects in a year. All donations must also be identified, although anonymous donations are allowed if received through popular collections (Political Parties law, article 51). All the parties that received public financing should be held accountable up until 120 days after the electoral race is finished (Political Party law, article 61).

Table 3 – Bolivia (most recent law: 2001)

Donations by legal entities	Allowed
Direct public financing	50% is divided in proportion to each parties performance on the last elections while the other 50% is based on the performance in the current elections
Free media time	Divided equally
Purchase of free media time	Allowed, but limited to 10 minutes per day
Barrier clause	3% of the total of valid votes
Maximum donations	10% of what a party receives in a year
Maximum spending/income	–
Anonymous donations	Allowed only if received through public collections
Accountability	120 days after the electoral race is done, only for parties that received public funding.

3.3 Brazil

In Brazil, the electoral financing system is organized according to the Organic Party Law (number 9.096/95) and by the Election Law (number 9504/97).

The current financing system in Brazil is made up of, in regards to public financing, a party fund that is divided 5% equally and 95% in proportion to the votes each party received in the last election for the lower house. Indirectly, public financing is done through free media time, which is divided as follows: a third of it is divided equally amongst all parties and the rest is proportional to the number of representatives in the lower house. Purchasing media time is prohibited.

As for private financing, legal entities have been forbidden from donation since 2015, according to a decision of the Electoral Supreme Court. Therefore, private donations are allowed only to individuals and can be limited to only 10% to the donor's annual income in the year before the elections. There is no maximum spending for either parties or candidates.¹²

¹² According to the legal text, the law of each electoral year should determine the maximum spending. If that limit isn't determined – which it never has – it's

Finally, parties and candidates must present to the Electoral Justice, before the elections (once in august and once in September), two reports detailing the resources received for the campaign and the way they were spent. 30 days after the election, parties should be held accountable one more time and detail the total they received and the total they spent. Anonymous donations are not allowed, meaning that everything received and spent must have a clear resource.

Table 4 – Brazil (most recent law: 2015)

Donations by legal entities	Prohibited
Direct public financing	5% of the party fund is divided equally while the other 95% is divided according to the number of representatives each party has in the lower house.
Free media time	Divided using the same rules as direct public financing.
Purchase of free media time	Prohibited.
Barrier clause	–
Maximum donations	10% of the donors yearly income.
Maximum spending/income	–
Anonymous donations	Prohibited.
Accountability	30 days after the elections.

3.4 Chile

The last change in Chile's electoral financing system came in 2005, when the law number 20.053 was passed, changing law 19.884 in terms of transparency, limits and electoral spending control. Historically speaking, that laws that bring change to the Chilean system are specific, slowly building up to form a whole system. That means that, even with the changes passed in 2005, some parts of the system are still ruled by law 19.884/03 and law 18.700/88.

In terms of who can contribute to campaigns, the 2003 law forbids donations by legal entities that a) receive grants or contributions from the State that make up more than 15% of their yearly income for the past three years; b) that have a contract with the State, if that contract is 40% or more of their yearly income for the past three years; c) are taking part in a public bid during the time of the election (article 25). Private donations, whether they come from individuals or from legal entities, have the same limits – a thousand “development unities” (DU) for each candidate or ten thousand DU for parties (article 9). Anonymous donations are allowed, as long as they remain below the limit of twenty DU and even so, no candidate can have more than 20% of what they receive be anonymous ¹³ (law 19.884/03, articles 17, 18 and 19). Donations between 20 and 600 DU for mayors and city councilors, 800 for representatives or senators and 1500 for presidents will have a “reserved” character.¹⁴ Maximum spending is different according to the position the candidate is running for and will be calculated according to a fixed sum, multiplied by the fractions of DU by the number of citizens allowed to vote (law 19884/03, article 4).¹⁵

up to the party and/or candidate to decide their maximum spending.

13 Donations that are more than 20 DU and less than 100 will have a “reserved” character. These kinds of donations will be put into an account maintained by the electoral service and will then be transferred to the candidates and parties. This way, it will be known whose donation it was, but that information won't reach the party/candidate.

14 Reserved donations are made directly into an account kept by the electoral service and are then transferred to the candidates/parties. There is no identification on to who the donor was passed onto the candidates/parties.

15 E.g: for the lower house, the formula would be: fixed sum of DU + (number of citizens allowed to vote x hundredths of DU). OR 1.500 DU + (200.000 x 0.03 DU).

Direct public financing is done before the elections and its criterion is based on the number of votes received in the last elections, multiplied by the value of one DU (article 14). Public financing for those running for president has been altered by the 2005 law. It is done in a retroactive way and cannot go beyond three hundredths of DU for each vote gained by the candidate in the first round. If there is a second round, this value goes up to one hundredth of a DU. (law 20053/05, article 13).

State grants for media time and the purchase of extra media time are still regulated by the 18700/88 law. Free media time lasts 30 minutes during single elections and 45 minutes when presidential and legislative elections coincide. That time will be divided equally between those running for president and, amongst those running for legislative seats, it will be divided in proportion to the votes each party had in past elections. Additional media time may not be purchased. (law 19884/03, article 31).

Finally, parties are held accountable 30 days after the elections are over and they must present all their income as well as their spending. This information should be made available on the Internet by the Electoral Service.

Table 5 – Chile (most recent law: 2005)

Donations by legal entities	Legal entities with certain types of contracts with the State and those applying for public bids cannot donate.
Direct public financing	Defined according to the office, based on fractions of the DU.
Free media time	Divided equally for those running for president and proportionally to the votes received in lower house elections, for legislative elections
Purchasing of extra media time	Prohibited
Barrier clause	–
Maximum donations	A thousand DU for one candidate, up to 10 thousand DU for parties/group of candidates.
Maximum income/spending	Different for each office, but exists for all of them.
Anonymous donations	Allowed, if lower than 20 DU.
Accountability	30 days after elections are over.

3.5 Colombia.

The 1994 law was altered by two other ones: the 996/05 law, that only changes the rules for presidential elections¹⁶ and law 1475/2012, that brought new rules for the organization and operation of the parties, as well as to the electoral process.

In regards to sources and private financing, the most recent law forbids donations from individuals or legal entities with more than half of their yearly income coming from contracts or grants with the State (law 1475/12, article 27). The maximum donations is 10% of the total amount of allowed spending. The maximum spending will be defined by the National Electoral Council, and they must define it every electoral year. No campaign is allowed to receive more than the maximum spending (law 1475, articles 23 and 24).

As for direct public financing, the National Electoral council is now responsible for defining the amount of the restitution for each valid vote received by candidates and they must define that every election year. In order to access these resources, parties must have over 4% of valid votes (which is a barrier clause) as defined by article 21 of law 1475 and

¹⁶ The presidential elections differ from other for two reasons. Firstly, the limit on private donations for these campaigns is 2% of the total spending, instead of 10% like it is for others. Secondly, public financing might happen before and after the campaigns, with a barrier clause for both cases: 4% of representation on the lower house to access it before the campaign and 4% of votes in the current election to access it afterwards.

article 10 of law 966/05. Free media time is also overlooked by the National Electoral council, and its division is done equally to all parties (article 36). Purchasing extra media time is allowed (law 1475/12, article 54).

Finally, parties will be held accountable at least two months after the elections (law 1475/2012, article 25) and anonymous donations are not allowed (law 1475/12, article 27).

Table 6 – Colombia (most recent law: 2012)

Donations by legal entities	Legal entities with large contracts with the State are not allowed to donate
Direct public financing	Restitution for each valid vote received. The value will be decided by the NEC.
Free media time	Equal for all parties
Media time purchasing	Allowed
Barrier clause	4% of valid votes
Maximum donations	2% of maximum spending for presidential campaigns, 10% of maximum spending for all others.
Maximum income/spending	Must be defined by the NEC every electoral year.
Anonymous donations	Prohibited
Accountability	2 months after the elections

3.6 Ecuador

Recent electoral reforms in Ecuador changed the rules of the Party Law and of the Organic Law of Control of Spending and Electoral Propaganda. The current set of rules comes from two new laws, the first one being 2009's "organic and electoral law, democracy code" and 2012's National Electoral Council resolution.

Firstly, this law forbade any individual or legal entity that had a contract with the State from donating. It also forbade anonymous donations, making them illegal (organic law, articles 217 and 219). It established maximum spending for campaigns as US\$ 0,15 for citizen allowed to vote, with 40% of that being the maximum spending in case of a second round. No private donation can amount to more than 5% of this maximum spending.

The law doesn't mention how direct public financing will happen, establishing only that it will be the National Electoral Council responsibility to "execute, monitor and control public financing of electoral campaigns". Because of that, public financing only started being regulated in 2012, when the NEC published a guideline.

It defined that each candidate would receive 40% of the allowed spending established in 2009. The guideline also allows for hiring publicity on TV stations.

Accountability will be held within 90 days after elections are held. (organic law, article 230).

Table 7 – Ecuador (most recent law: 2012)

Donations by legal entities	Not allowed for legal entities that provide services, do construction work for the State or explore its natural resources.
Direct public financing	40% of the allowed maximum spending
Free media time.	–

Purchasing media time	Not allowed.
Barrier clause	–
Maximum donations	5% of the allowed maximum spending
Maximum income/spending	US\$ 0,15 for each citizen allowed to vote (40% of that total for second rounds)
Anonymous donations	Not allowed
Accountability	90 days after the elections.

3.7 Paraguay

The last reform to Paraguay's electoral financing system dates back to 2012, when law 4743/2012 was passed. Some rules from former law, 834/96, were kept.

With the newest law, public financing was established as 15% of the value of a minimum jornales¹⁷ for each vote received in the last elections. The State established that mass communication stations must have at least 3% of its schedule for free media time, which will be divided equally amongst all parties. There are no impediments to purchasing more of that time (article 302).

As for private financing, both individuals and legal entities are only allowed to donate the equivalent to seven thousand minimum jornales, which would be about 490 million guaranis or 87.500,00 US dollars. Anonymous donations are not allowed, but an exception is made to the donations made through public collections.

Maximum campaign spending was established to 10% of a minimum jornales for each citizen allowed to vote in the district in which the candidate aims to run. All of the spending as well as the income of campaigns must be held accountable at least 40 days after the elections are over.

Table 8– Paraguay (most recent law: 2012)

Donations by legal entities	Allowed
Direct public spending	15% of a minimum jornale for each vote received.
Free media time	Divided equally.
Purchasing of media time	Allowed
Barrier clause	–
Maximum donation	Seven thousand minimum jornales
Maximum income/spending	10% of a minimum jornale for each citizen allowed to vote
Anonymous donations	Not allowed, unless made through public collection
Accountability	40 after the elections

3.8 Peru

The Peruvian system is ruled by the law of Political Parties, number 28094/2003. However, the original text was altered in 2005, 2006, 2007, 2009 and 2015. The current system dedicates a Tax Unit¹⁸ to each vote received by con-

¹⁷ A minimum jornales is about 70.200 or US\$ 12,5. conversion was made using the website of the brazilian central bank on the 31st of March, when US\$ 1 was around 5.617.

¹⁸ According to Decretos Supremos, a Tax Unit, in 2016, was worth S/. 3.950,00, which amounts to around US\$ 1.200,00.

gress representatives. 40% of this sum is divided equally amongst all the parties with representation in congress, while the other 60% is proportional to the amount of votes each party received during legislative elections (article 29). The State also grants campaigns with free media time. 50% of this time will be divided equally amongst all the parties and the other 50% will be divided according to representation in congress (article 38). Purchasing more media time is allowed (article 39). There are no barrier clauses for accessing public financing.

Private donations from both individuals and legal entities cannot go beyond 60 Tax Units a year, which amounts to about S/. 237.000,00 or US\$ 72.000,00. Parties may receive up to 30 TU anonymously each year and other donations must be identified (article 30). Candidates and parties will be held accountable yearly, 6 month after the end of the year.

Table 9 – Peru (current law: 2003, altered in 2015)

Donations by legal entities	Allowed
Direct public financing	40% of the party fund is divided equally while the other 60% are proportionally divided, according legislative elections.
Free media time	50% will be divided equally, the other 50% according to representation in congress
Purchasing media time	Allowed
Barrier clause	–
Maximum donations	60 tax units a year
Maximum spending/income	–
Anonymous donations	Up to 30 tax units a year
Accountability	Yearly, six months after the end of the fiscal year.

3.9 Uruguay

According to Zovatto and Orozco (2008) up until 2007, Uruguay had no legislation that dealt specifically with electoral financing, and the public financing of parties was determined every electoral year by ad-hoc arrangements. Therefore, law 18485 can be understood as the first step towards developing a legal system that directly controls electoral financing.

Law 18485/09 defines the total amount of public financing as 87 Tax Units¹⁹ (approximately \$ 313) by valid vote for presidential candidatures on the first round and 10 Tax Units (approximately \$36) by valid vote during the second round. For the departmental elections, the same criterion is used, with 13 tax units (approximately \$47) for each valid vote (article 20).

Therefore, public financing is done once the elections are over. 20% of the public financing received by each party should be put towards presidential campaigns, 40% for senate campaigns and the other 40% for campaigns for the lower house (article 22, 23 and 28).

Parties will be held accountable 30 days before the campaigns start, when they'll have to show how much they think they'll receive and how they plan to spend it. They will also be held accountable 90 days after elections, and will have

¹⁹ This value is updated periodically by the National Statistics institute of Uruguay. The values for March and April of 2016 are available in <http://www.inecub.uy/documents/10181/30921/UI+Marzo+-+Abril+2016/5f34315c-af24-454e-bee1-d92efe1ab462>

to provide a report on resources input and output during the campaign, as well as where they were spent (article 33 and 34). Anonymous donations below the 4 thousand tax units are allowed. However, no party shall receive more than 15% of their total income anonymously.

Table 10 – Uruguay (Only law: 2008)

Donations by legal entities	–
Direct public financing	Predetermined number of tax units to each valid vote
Free media time	–
Purchasing media time	Not forbidden
Barrier clauses	–
Maximum donations	300 thousand tax units.
Maximum spending/income	–
Anonymous donations	Allowed
Accountability	30 days before the campaign starts and 90 days after elections.

3.10 Venezuela

Venezuela is, by far, the country with most gaps in the regulation of electoral financing. There are no specific laws about electoral financing and the only text that resembles that is a resolution, published by the National Electoral Council in 2010. The only existing regulations are the prohibition of donations by legal entities which provide public services (article 9) and the prohibition of anonymous donations. It also establishes that parties will be held accountable at least 60 days after the elections.

Apart from that, there are no limitations on private donations or on how parties/candidates spend their resources. There is no public financing either, not even indirectly. It can be said, therefore, that this legislation is empty in terms of granting public financing and also on regulating private donations. Because of that, it can be said that this is a system with exclusively private characteristics.

Table 11 – Venezuela (only resolution: 2010)

Donations by legal entities	Not allowed for entities that provide public services. (Art. 9)
Direct public financing	–
Free media time	–
Purchasing media time	–
Barrier clause	–
Maximum donations	–
Maximum income/spending	–
Anonymous donations	Not allowed (article 9).
Accountability	60 days after elections

4. JOINT LEGISLATION ANALYSIS

In his book *“dinero y política en América Latina”*, published in 2004, Daniel Zovatto discusses about how electoral financing is regulated in the continent, in an attempt to define the main normative models used to deal with the variables that rule the electoral financing systems as well as the difficulties countries face when trying to take those normative models into reality. Zovatto’s study points to the fact that, in regards to the variables discussed here: a) most countries have a mix of public and private electoral financing; b) most countries have direct and indirect public financing mechanisms; c) public financing distribution mostly follows a model where it is done in proportion to the number of votes of each party, followed by a model where part is divided proportionally and the other is divided equally and there is no pattern as to when the State transfers those resources to the parties (it can happen before or after elections); d) most countries have a barrier clause that limits access to public resources; e) most countries have prohibitions to some form of private donation; f) some countries limit how much can be donated privately; g) most countries have free media time; h) most countries have an institution responsible for controlling and holding parties accountable.

The main question here is: how current is the Zovatto’s 2004 diagnostic? This question is relevant because, since 2004, all countries (with the exception of Bolivia) have altered their electoral financing systems somehow. The table below illustrates the existence, or lack thereof, of rules about for each of the variables used in this research:

Table 12 – Rules of each country for each of the variables analysed

Countries	Variables							
	Direct public financing	Free media time	Prohibition on media time purchasing	Prohibits donations by legal entities	Has a limit on donations	Has a limit on spending	Prohibits anonymous donations	Accountability
Argentina	✓	✓	✓	✓	✓	✓	✓	✓*
Bolivia	✓	✓	X	X	✓	X	✓*	✓
Brazil	✓	✓	✓	✓	✓	X	✓	✓
Colombia	✓	✓	X	X	✓	✓	✓	✓
Chile	✓	✓	✓	✓	✓	✓	X	✓
Ecuador	✓	X	X	X	✓	✓	✓	✓
Paraguay	✓	✓	X	X	✓	✓	✓*	✓
Peru	✓	✓	X	X	✓	X	X	✓
Uruguay	✓	X	X	X	✓	X	✓	✓*
Venezuela	X	X	X	X	X	X	✓	✓

* Allow anonymous donations when made through public collections.

* Demand accountability before and after the elections.

The way electoral financing is regulated is, in fact, mostly mixed, with 9 out of 10 countries allowing private donations, with Venezuela as the only out-lier. However, there’s a caveat to be made about this: Zovatto points that it should be taken into consideration how much weight each side – public and private – has in the campaigns (even though he doesn’t do it). In regards to this, the unanimity of the mixed system has been put into questions, seeing as some countries – Argentina, Brazil and Chile – not longer allow legal entities to make donations, meaning that the participation of public funding will be disproportionally larger than its private counterpart. On top of that, we have Venezuela, which allows only private electoral financing. It is also important to point to Colombia’s, Ecuador’s and Venezuela’s decision to ban donations from entities that have some sort of connection to the State, such as contracts, exploration of natural resources, etc.

The existence of public financing – direct and indirect – remains unanimous, with the exception of Venezuela, the only country that refuses to allow public financing to parties. Out of the 9 countries that allow public financing, six do so strictly proportionally to received votes, two use a mix of proportional and equal methods and only Ecuador grants it completely equally to all parties.

As for when the transfer of public resources is done, although Zovatto says that there is no pattern to it, the new changes in south-american regulations seems to point in the direction of that transfer being made before the campaigns start. This happens because most countries have some sort of proportional mechanism of party fund division, meaning that the results of the election that happened immediately before can be used to guide said division. Uruguay is an out-lier, with the moment of transfer happening after the elections. Bolivia, on the other hand, transfers half the resources before elections, according to the result of past elections, and half of it after the current elections, according to current performance.

Public grant of free media time is also allowed in most south-american countries, with the only exceptions being Ecuador, Uruguay and Venezuela. As for how that free time is shared, however, there is no pattern. Amongst the 7 countries that grant free media time, three divide it equally to all parties. The other four use a mix between the equal and the proportional method – Argentina does it 50% equally, 50% proportionally; Brazil does it 5% equally, 95% proportionally; Chile offer equal times for presidential candidatures and a proportional division for legislative candidatures. Brazil sticks out as the only country that grants more importance to the proportional division of free media time than to the equal division of it. Barrier clauses to access any form of public financing are only available in Bolivia and Colombia. As Zovatto says, pushing it to the limit, the need for parties to launch candidatures and to be accountable for their actions can be understood as barrier clauses – specially when it comes to the accountability of their campaigns and day to day spendings. This type of “barrier” can indeed be found in most countries but it is not a quantitative barrier, but rather a procedural one.

As for the purchasing of media time on TV stations, it follows a interesting and perfect pattern in the region: it is prohibited only in all the countries that don’t allow donations from legal entities – meaning: Argentina, Brazil and Chile. All the other countries allow donations from legal entities as well as purchasing of media time.

Private donations are – with the exception of Venezuela – subjected to a limit in all countries. The rules tend to sway between a previously decided amount or on percentages based on the income limit for parties. Brazil, once again, stands out imposing as a limit to the donations not a percentage of the maximum spending or income limits of the parties, but rather a percentage of the donor’s annual income, which means that people of different economic strata have different limits on how much they can donate.

In terms of the limits on spending, another pattern emerges: it coincides with the existence of limits on donations. Maximum spending is defined, in all 5 countries that do it (Argentina, Chile, Colombia, Ecuador and Paraguay), by a predetermined value assigned to each citizen allowed to vote for the office in question – this value is usually assigned as an electoral module.

The regulations on transparency seem to be the set of rules that present the most uniformity in the region. Amongst the 10 countries, only Chile, Uruguay and Peru allow anonymous donations, with Uruguay being the only one that doesn’t impose a limit on how these donations can be made. It is important to point out that Bolivia and Paraguay allow anonymous donations but only through public collection. However, the impact these donations have in the campaigns is probably irrelevant.

Finally, the need for accountability before the electoral justice is the only criterion common to all countries. Even then, three countries deserve a mention. Firstly, Bolivia stands out negatively for not demanding an specific accountability process for electoral campaigns, which means that all electoral accounts are delivered mixed in with the usual, yearly accounts of parties. Secondly and positively, we have Argentina and Uruguay, that demand an accountability process before and after the elections. Demanding accountability measures before elections is positive because it allows citizens one more piece of information to take into consideration when deciding on who to vote. Because of that, it is clear that we should no longer ask whether or not accountability is demanded but rather “how many times do parties need to be held accountable during the electoral race?” or “which mechanisms of data transparency and accountability are being used?”, seeing as these are the informations that will make countries stand apart from each other.

Therefore, out of the eight categories analysed in this paper, the “limit on spending” was divided (with 5 countries using it, and 5 not using). The two categories on media time are regulated in similar ways in all six countries that adopt them. The last five categories presented similarities between at least five countries.

Doing a historical analysis of how these policies changed over time would provide an enormous analytical gain. It would allow us to understand not only the direction in which countries are going with their regulations, but also the deepening of democratic institutions happening through these reforms. In other words, we can see not only what has been changing but what each country considers important: limiting the influence of private capital, strengthening parties, deepening transparency measures, etc. This task has already been undertaken by Borel (2015) for the Chilean and Argentinean legislations, where the author analyses how the electoral financing laws have changed in these two countries since their re-democratization, seeking to find the path traced by these legislations in terms of democratization of electoral legislation based on four core values: data transparency, equality amongst voters, party independence and competition amongst candidates. However, historical analyses demand more time and pages than a paper such as this allows for. This historical analysis should be done in a case by case manner, with Borel’s (2017) Argentinian case study as an guiding light.

It is obvious that observing a series of characteristics that allow us to talk about a “electoral financing model traditionally south-American” incurs in a series of arbitrary decisions – specially because of the arbitrary terms used to define a certain type of legislation as a “pattern”. Here, we opted to do it by dividing each legislation in different categories which were common to six or seven countries. It is even more difficult to identify a clear pattern in the region because of the cases of Venezuela and Uruguay, that have huge gaps in their legislations, specially in regards to controlling the influence of private capital in their electoral processes.

However, the comparison between the legislations of 10 countries, as seen on table 12, shows that there are more similarities than dissimilarities on the electoral financing systems of the region. The only analysed variable that didn’t reach a level of 70% congruency between countries was the existence (or lack thereof) of a limit to campaign spending. It is possible to identify a slight tendency in countries that don’t establish a limit to the spending of being against donations by legal entities (the opposite isn’t true, however). The only exception to that rule is, once again, Brazil, where the veto to legal entities donations came not through “ordinary” legislation but rather because of a Supreme Court ruling.

Afterall, is there a model of electoral campaign financing that can be described as being typically south-American? The study of several legislations, followed by an aggregative analysis of their contents points to the conclusion that yes, it is possible to notice at least a pattern in the way legislations are written and how mechanisms are used across the ten south-American countries. This conclusion is made even stronger if one decides to consider Venezuela’s case as

an out-lier and exclude it from this comparison – even if it’s not needed nor recommended to do so, considering how this analysis has a low number of cases. The “south-american model” could be described as a system that accepts both public and private resources as part of its electoral financing, as well as allowing legal entities to donate. The State takes part in the direct financing of campaigns, usually before elections, basing the way it distributed its resources on the result of past elections, at the same time that it grants media time to all parties. Private financing would be submitted to a limit – which doesn’t mean the same would happen for campaign spending²⁰ - and the money parties received could be used to buy more media time on TV.

Finally, parties would have to be held accountable about all income and outcome of resources during the campaign, clearly identifying its sources and, thus, making it forbidden for anonymous donations to be made.

20 The only category analysed that had a clear divide was the limit on campaign spending, which was used by 5 countries and not used by the other 5.

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