

# 36º ENCONTRO ANUAL DA ANPOCS

GT 13 – Financiamento político no Brasil: o impacto do dinheiro sobre partidos, eleições, candidatos e representantes

## **Campaign finance in comparative perspective: a nested analysis approach\***

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### **Abstract**

This paper analyzes campaign finance in a comparative perspective, giving special attention to Brazil and the United States. The focus regards the level of regulation on the sources of campaign contributions. Methodologically, the research design adopts a nested approach, combining descriptive and multivariate statistics with deep case studies and documental analysis. Additionally, we replicate data from the Institute for Democracy and Electoral Assistance (IDEA) to estimate a standardized measure of regulation. The results suggest that most countries show low levels of control over the sources of campaign contributions. However, both Brazil and the United States display high levels of regulation on campaign finance, despite their widely different institutional designs.

**Keywords:** campaign contributions; regulation; comparative law

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\* We are thankful to Jim Hilbert for the institutional support and Peter Erlinder for his thoughtful suggestions. Any mistakes are solely due to authors' responsibility.

## Introduction

Imagine the following situations: (1) an election where candidates provide both food and beverages (including alcoholic) for voters just before they cast their votes; (2) a public service system where jobs are assigned by political criteria and 3) an incumbent candidate is charged of receiving campaign contributions in exchange for making favors for state contractors. These cases are not about Latin American countries that are well known by lack of law enforcement. These cases are not about African nations that are worldwide acknowledged by high levels of corruption. These cases represent both the U.S. (cases 1 and 2) and Canada (case 3) before regulate their campaign finance<sup>1</sup>.

Theoretically, campaign finance regulation aims to achieve two objectives: the promotion of political equality, and the prevention of corruption (SMITH, 2001)<sup>2</sup>. Arguments that favor increasing regulation are based on four assumptions: a) too much money is spent on political activity<sup>3</sup>; b) campaigns funded with large contributions are not representative of public opinion but biased toward big donors; c) a candidate's spending largely determines electoral results and d) money exerts a powerful corrupting influence on the legislature.

The main purpose of paper is to analyze campaign finance regulation in a comparative perspective, giving special attention to Brazil and the United States. The focus regards the level of regulation on the sources of campaign contributions. Methodologically, the research design adopts nested analysis technique, combining descriptive and multivariate statistics with deep case studies and documental analysis (legislation and jurisprudence). In addition, we replicate data from the Institute for Democracy and Electoral Assistance (IDEA) to estimate a standardized measure of regulation. The results suggest that most countries show limited levels of campaign finance regulation. Nevertheless, both Brazil and

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<sup>1</sup> According to Smith (2001), in 1757, George Washington spent £39 to buy food and rum for his voters.

<sup>2</sup> According to Ansolabehere (2007), the primary objective of campaign finance regulations is to prevent political corruption. Limits on contributions and expenditures aim to restrict both the supply and demand for political donations, thereby reducing or perhaps eliminating altogether the influence of donors and the private interests that they represent over publicly elected officials (ANSOLABEHERE, 2007: 163).

<sup>3</sup> Respecting the increasing costs of elections, Ansolabehere, Gerber and Snyder (2001) point out that total expenditures in the average contested House election were \$318,000 in 1972, \$735,000 in 1992, and \$973,000 in 2000 (all figures in 1990 dollars). Similarly, Jensen and Beyle (2003) argue that the costs of gubernatorial campaigns have been rising since 1968. Abrams and Settle (1976) demonstrate that the costs of presidential elections also follow this same pattern.

the United States display high levels of control over the sources of campaign contributions, despite their widely different institutional designs.

The remainder of the paper is divided as follows. Next section reviews the literature on campaign spending and election outcomes. Section 3 describes data and methods. Section 4 presents the empirical results. Section 5 examines the historical development of campaign finance legislation in Brazil and in the United States. Section 6 summarizes the main conclusions.

### **Brief literature review<sup>4</sup>**

The relationship between campaign spending and electoral outcomes is a canonical issue in Political Science (PALDA, 1973, 1975; WELCH, 1974, 1980; JACOBSON, 1976, 1978, 1985, 1990, 2001; SHEPARD, 1977; GLANTZ, ABROMOWITZ and BURKHART, 1976; ABROMOWITZ, 1988, 1991; GREEN and KRASNO, 1988, 1990; GERBER, 1998, 2004; BARDWELL, 2005). The typical research design has three main characteristics: (1) it estimates a regression of a candidate's vote share on some function of the candidate's spending levels after controlling for additional variables; (2) it uses ordinary least squares functional form<sup>5</sup>; (3) the unit of analysis is the United States House of Representatives. According to Gerber (2004), the basic model to analyze the relationship between money and votes is the following:

$$\text{Votes}_{\text{inc}} = \alpha + \beta_1 f(\text{spending}_{\text{inc}}) + \beta_2 f(\text{spending}_{\text{chal}}) + \beta_3(X) + \varepsilon$$

where  $\text{Votes}_{\text{inc}}$  is the incumbent's share of the two-party vote,  $\text{spending}_{\text{inc}}$  is the total incumbent campaign spending,  $\text{spending}_{\text{chal}}$  is the total challenger campaign spending, and  $X$  represents a set of variables other than campaign spending that are thought to influence candidate election outcomes, such as challenger quality or constituency partisanship (GERBER, 2004).

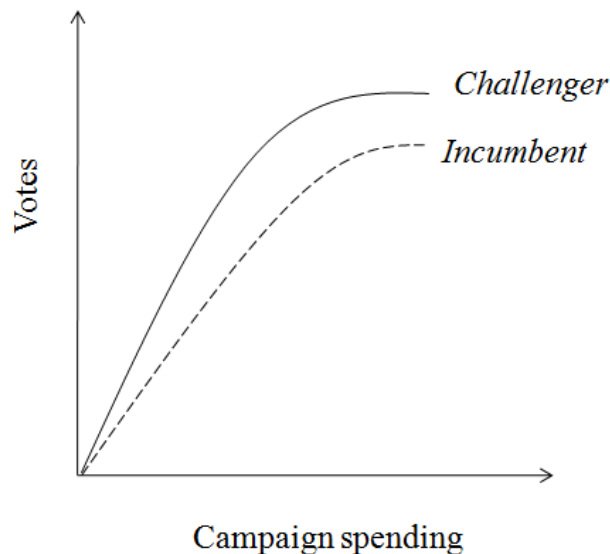
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<sup>4</sup> Jacobson (1985) reviews the empirical literature produced during the mid-1980s.

<sup>5</sup> Regarding functional form, Welch (1974), Jacobson (1976) and Shepard (1977) employed linear models. Welch (1976) used a semi-log model, Lott e Warner (1974) used a log-log model and Silberman and Yochum (1978) employed a quadratic model.

Some scholars examine municipal elections (FLEISCHMANN and STEIN, 1998), subnational legislative (OWENS and OLSON, 1977; GILES and PRITCHARD, 1985; TUCKER and WEBER, 1987; JEWELL and BREAUX, 1988; HUDSON, 2006; BROWN, 2009), state primaries (BREAUX and GIERZYNSKI, 1991; HOGAN, 1999), the Senate elections (GRIER, 1989; GERBER, 1998), gubernatorial races (PATTERSON, 1982; PARTIN, 2002; BARDWELL, 2005) and presidential nomination campaigns (HAYNES, GURIAN and NICHOLS, 1997). On methodological grounds, some pundits employ two-stage least squares (GREEN and KRASNO, 1988), logarithmic transformations (JACOBSON, 1978), computational experiments (HOUSER and STRATMANN, 2008), field experiments (Gerber and Green, 2000; Gerber, 2004) and natural experiments (MILYO, 1998) trying to properly identify the mechanisms that link spending and votes. On theoretical grounds, Gary Jacobson has produced the seminal work on campaign-spending literature<sup>6</sup>. Figure 1 illustrates the Jacobson`s effect.

**Figure 1 - The Jacobson`s effect**



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<sup>6</sup> According to Gerber (2004), “a common critique of Jacobson's findings was that incumbents raise their spending levels in response to strong threats. If the control variables do not fully account for the threat level, candidate spending effects will tend to be biased downward due to a negative correlation between incumbent spending and the regression error” (GERBER, 2004: 542).

Both challengers' and incumbents' spending exert a positive effect on their share of votes and suffer from diminishing returns. However, each extra dollar spent by challengers has a higher impact compared to incumbents spending<sup>7</sup>.

Levitt (1994) argues that campaign spending has an extremely small impact on election outcomes, regardless of who does the spending (LEVITT, 1994: 777). Gerber (1998) points out when the endogeneity of candidate spending levels is properly taken into account, the marginal effects of incumbent and challenger spending are roughly equal (GERBER, 1998: 401). Jacobson (1990) argues that

the OLS regression models reported in most studies are inappropriate for estimating reciprocal relationships; a simultaneous equation system is required. OLS estimates of parameters when the true relationship is reciprocal are biased and inconsistent because endogenous variables (those which have a reciprocal effect on one another), when treated as explanatory variables, are correlated with the error term (JACOBSON, 1978: 470).

Nevertheless, there are controversial findings even among studies that employ two-stage least squares regression. For example, Green and Krasno (1988) reported that incumbent campaign spending coefficients' were positive and statistically significant. On the other side, Jacobson (1978) argued that spending by challengers has a much more substantial effect on the outcome of the election even with simultaneity bias purged from the equation (JACOBSON, 1978: 475). Figure 2 summarizes part of campaign spending literature.

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<sup>7</sup> Normatively, campaign spending limits will favor status quo. According to Jacobson (1978), any reform measure, which decreases spending by the candidates will favor incumbents. This includes limits on campaign contributions from individuals and groups as well as ceilings on total spending by the candidates (JACOBSON, 1978: 489).

**Figure 2 – Literature summary**

<b>Author (year)</b>	<b>Argument</b>
Jacobson (1978); Abromowitz, (1988); Ansolabehere e Gerber, (1994); Gerber (2004)	Incumbent spending is ineffective but that challenger spending produces large gains
Erikson e Palfrey (2000); Green e Krasno (1988); Gerber (1998); Levitt (1994)	Neither incumbent nor challenger spending makes any appreciable difference
Kenny e McBurnett (1994); Goidel e Gross (1994); Green e Krasno (1990)	After controlling for quality of challenger and reciprocal causation, marginal effect of incumbent spending is substantial
Krasno, Green e Cowden (1994)	Incumbent spending is reactive to challenger spending

Despite scholarly efforts, comparative empirical work is still limited and our current understanding about campaign finance outside of the United States is scarce<sup>8</sup>. Thus, this paper aims to advance our existing knowledge on this subject by analyzing campaign finance regulation in a comparative perspective, giving special attention to Brazil and the United States. The focus regards the level of regulation on the sources of campaign contributions.

### **Data and methods**

The research design adopts nested analysis approach, combining descriptive and multivariate statistics with deep case studies and documental analysis (legislation and jurisprudence). According to Lieberman (2005), nested analysis strategy improves the prospects of making valid causal inferences in cross-national and other forms of comparative research by drawing on the distinct strengths of two important approaches (LIEBERMAN, 2005: 435)<sup>9</sup>. The purpose is to take the most of each research technique.

<sup>8</sup> Palda (1973; 1975), Eagles (1993), Carty and Eagles (1999) examine spending and votes in Canada. Johnston (1979) and Johnston, Pattie and Johnston (1989) analyze the England case. Epstein and Franck (2007) study the French elections. Samuels (2001a; 2001b; 2001c) has done pioneer work on campaign spending in Brazil. Fink (2011) estimates the effects of campaign spending in Germany.

<sup>9</sup> To get more information on nested analysis see Lieberman (2005). To a seminal work on the comparative method see Lijphart (1971). To an introduction to case study methodology see Geddes (2003), Landman (2003) and Gerring (2004).

### *The importance of comparison*

Swanson (1971) argues that thinking without comparison is unthinkable. And in the absence of comparison, so is all scientific thought and scientific research (SWANSON, 1971). Lijphart (1971) defines the comparative method as one of the basic methods - the others being the experimental, statistical, and case study methods - of establishing general empirical propositions (LIJPHART, 1971: 682). And what are the advantages of a comparative research design? First, comparison allows one to estimate in what extent concepts can travel to analyze different social realities. Second, comparison permits one examine in what extent observed results can be reached under different institutional designs. Finally, as comparative empirical work on campaign finance is very limited a clear advantage of comparative perspective is to develop our understanding on campaign finance regulation in a broader sense<sup>10</sup>.

### *Case selection*

Why to compare Brazil and the United States? First, most what we know about campaign finance was produced by U.S. scholars or/and is about U.S. institutions. Second, both *Tribunal Superior Eleitoral (TSE)* in Brazil and Federal Election Commission (FEC) in the United States provide open data on campaign finance, including datasets, specific legislation, learning environment, workshops, etc. Therefore, systematic disclosure of information facilitates comparison<sup>11</sup>. Third, a comparative perspective between Brazil and the United States allows to understand how widely different institutional designs regulate

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<sup>10</sup> Zovatto (2005) analyzed campaign finance in 18 Latin American countries. Peixoto (2009) also examines financing of elections in comparative perspective but employed a large sample. Bourdoukan (2010) analyzed campaign finance regulation comparing Brazil and the United Kingdom.

<sup>11</sup> One of main challenges faced not only by scholars but also by policymakers is to properly estimate the effects of electoral rules. This is particularly troublesome when countries do not provide systematic data on elections outcomes. The lack of information undermines our knowledge on how institutions work. In addition, deficient data undercuts comparative perspective research designs, restraining the diffusion of efficient institutional policies. Lastly, lack of data reduces transparency of governmental actions since it is impossible to know in what extent candidates, political parties and institutions are following the rules of the game. Fortunately, this is not the case of Brazil. The *Tribunal Superior Eleitoral* is the institutional equivalent of Federal Election Commission and provides data on different levels of aggregation (national, state and municipal) and for different variables (voters, candidates, parties, etc.). In addition, there is information on both jurisprudence and electoral statutes. See [www.tse.jus.br](http://www.tse.jus.br)

campaign contributions. Figure 3 summarizes some institutional features in a comparative perspective.

**Figure 3 - Institutional design features**

<b>Feature</b>	<b>Brazil</b>	<b>United States</b>
Electoral system	Proportional	Majoritary
Party system	Multiparty	Bipartisan
District magnitude	8-70	1
Buy electioneering communication	No	Yes
Direct corporation contribution	Yes	No

Besides the fundamental differences in their institutional designs (electoral system, party system and district magnitude), Brazil and the United States also differ on two important features regarding campaign finance. First, in Brazil, 9.504/97 federal law prohibits candidates and parties to buy any kind of electioneering communication (television, radio, newspapers, etc.). In the United States, candidates, Political Action Committees, parties and, independent groups can spend resources on electioneering communication<sup>12</sup>. Second, in Brazil, corporations can directly contribute to political candidates. In the United States, corporations contributions cannot flow directly to political campaigns, the procedure is indirect trough PACs<sup>13</sup>.

### *Variables description*

According to King, Keohane and Verba (1994), the most important rule for all data collection is to report how the data were created and how we came to possess them (KING,

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<sup>12</sup> The term electioneering communication means any broadcast, cable, or satellite communication which (I) refers to a clearly identified candidate for Federal office; (II) is made within 60 days before a general, special, or runoff election for the office sought by the candidate; or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate (§434(3)).

<sup>13</sup> In *Citizens United v. Federal Election Commission* (2010), Supreme Court ruled that limitations on independent expenditures were unconstitutional, allowing both corporations and labor unions to spend unlimited amount of money to independently support or attack candidates.



KEOHANE and VERBA, 1994: 51). This is the core of scientific replicability<sup>14</sup>. Thus, it is important to briefly describe how variables were measured. Figure 4 summarizes this information.

**Figure 4 – Variables**

<b>Variable</b>	<b>Description</b>
V <sub>1</sub>	Foreign entities
V <sub>2</sub>	Corporations
V <sub>3</sub>	State contractors
V <sub>4</sub>	Labor unions
V <sub>5</sub>	Anonymous

All variables are dummies. Each one informs if political actors can contribute to electoral campaigns. If contribution is prohibited variable assumes value 1 and zero otherwise. Data were originally collected by the Institute for Democracy and Electoral Assistance (IDEA)<sup>15</sup>.

## **Results**

**Figure 5 - Contributions from foreign entities**

<b>Foreign entities</b>	<b>N</b>	<b>% (valid)</b>
Allowed	73	64.00
Prohibited	41	36.00
<b>Total</b>	<b>114</b>	<b>100.0</b>

Most countries allow contributions from foreign entities (64%). Australia, Austria, Chile, Denmark, Finland, among others, display this institutional feature. However, 41 nations show some prohibition regarding this type of campaign contributions (36%). Argentina, Estonia, France, Israel and Poland are examples of countries that made this

<sup>14</sup> King (1995) argues that *the replication standard does not actually require anyone to replicate the results of an article or book. It only requires sufficient in-formation to be provided-in the article or book or in some other publicly accessible form-so that the results could in principle be replicated* (KING, 1995: 444).

<sup>15</sup> Raw data used here can be download at <http://www.idea.int/parties/finance/db/index.cfm>. A large dataset including variables used in this paper is available at <http://www.qog.pol.gu.se/>

institutional choice. The 9.504/97 Brazilian statute prohibits both parties and candidates to receive, directly or indirectly, contributions or anything of value, including any kind of media support, from foreign entities (24, I, 9.504/97). Similarly, according to the Federal Election Commission, it shall be unlawful for a foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election<sup>16</sup>. It is also illegal to foreign nationals to make contributions or donations to political party committees. Finally, it is unlawful to foreign nationals make independent expenditures or disbursement for electioneering communication (§441e). On substantive grounds, the prohibition of this type of contribution aims to prevent foreign political actors from influencing electoral outcomes.

**Figure 6 - Contributions from corporations**

<b>Corporations</b>	<b>N</b>	<b>% (valid)</b>
Allowed	94	81.70
Prohibited	21	18.30
<b>Total</b>	<b>115</b>	<b>100.0</b>

Regarding contributions from corporations, most countries allow this type of donation (81.70%). Ireland, Italy, Jamaica, Japan, among others, show this institutional feature. Only 18.30% of nations have some express prohibition on corporate campaign contributions. Portugal, Bolivia, Belgium, Hungary, among others, made this institutional choice. In Brazil, corporations can directly contribute to political campaigns up to 2% of their annual gross revenue (81, §1º, 9.504/97). If donations exceeds the legal ceiling, there is a penalty of five times the amount exceeded (81, §2º, 9.504/97). In the United States, Tillman Act (1907) ban direct contributions from corporations. Current legislation makes unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus

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<sup>16</sup> Historically, the ban on political contributions and expenditures by foreign nationals was first enacted in 1966 as part of the amendments to the Foreign Agents Registration Act (FARA). The goal of the FARA was to minimize foreign intervention in U.S. elections by establishing a series of limitations on foreign nationals.

held to select candidates for any political office (§ 441b). Normatively, prohibitions on corporate contributions aim to prevent disproportional influence of corporate sector on policymaking process.

**Figure 7 - Contributions from state contractors**

<b>State contractors</b>	<b>N</b>	<b>% (valid)</b>
Allowed	86	76.10
Prohibited	27	23.90
<b>Total</b>	<b>113</b>	<b>100.0</b>

Most countries allow contributions from state contractors (76.10%). Chile, Singapore, Russia, United Kingdom, among others, share this institutional feature. Only 23.90% countries have express prohibition statutes on state contractors' contributions. Czech Republic, Paraguay, Spain, Burkina Faso, among others, adopted this type of ban. In Brazil, national statute 9.504/97 prohibits contributions from state contractors (81, III, 9.504/97). Similarly, in the United States, contributions from state contractors are unlawful (§ 441c)<sup>17</sup>. On substantive grounds, this type of prohibition aim to prevent exchange of campaign contributions for governmental contracts benefits.

**Figure 8 - Contributions from Labor unions**

<b>Labor unions</b>	<b>N</b>	<b>% (valid)</b>
Allowed	98	85.20
Prohibited	17	14.80
<b>Total</b>	<b>115</b>	<b>100,0</b>

Following the trend of less regulation, most countries allow donations from labor unions (85.20%). Belgium, Czech Republic, Mexico, Bolivia, among others, show this institutional feature. Only 14.80% of the cases prohibit this type of campaign contributions.

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<sup>17</sup> It shall be unlawful for any person who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use (§ 441c).

Guatemala, Portugal, Azerbaijan, Poland, among others, adopted this kind of ban. In Brazil, statute 9.504/97 excludes labor unions from contributing to political campaigns (24, VI, 9.504/97). In the United States, Smith-Connally Act (1943) temporarily prohibited contributions from labor unions. In 1947, Congress enacted Labor Management Relations Act (Taft-Hartley Act) banning labor donations ever since. The current legislation includes Labor contributions in the same section of national banks and corporations (§441b).

**Figure 9 - Anonymous Contributions**

<b>Anonymous</b>	<b>N</b>	<b>% (valid)</b>
Allowed	66	58.40
Prohibited	47	41.60
<b>Total</b>	<b>113</b>	<b>100,0</b>

58.40% of all countries allow anonymous campaign contributions. Paraguay, Iceland, New Zealand, Sweden, among others, show this institutional choice. However, 41.60% of the sample ban this type of contribution. Argentina, France, Belgium, Bulgaria, among others, have this institutional feature. In Brazil, *Tribunal Superior Eleitoral* 23.217/10 resolution made mandatory to both party and candidates to fully disclose information on their campaign sources, indicating both the name and origin of campaign contributions (14, 1º, I, resolution 23.217/10). In the United States, according to the Federal Election Commission, anonymous campaign contributions are permitted up to \$50,00. On substantive grounds, ban on this type of contribution aim to guarantee electoral system transparency.

Finally, we estimate two measures of campaign finance regulation. The first one is just the sum of all above variables. Mathematically, the index varies from 0 to 5 and its interpretation is forward: the higher its magnitude, more regulation on campaign finance system. Value zero means that all contributions are allowed. Value 5 means that all contributions are prohibited. The second measure was based on a principal component analysis (PCA). This technique summarizes shared variance of observed variables in few standardized components. The model reached the following results: a) Kaiser-Meyer-Olkin test of sample adequacy of .751; b) Bartlett test of sphericity significant at .000; and c) 53.11% of cumulative variance. The Pearson correlation between the raw regulation index

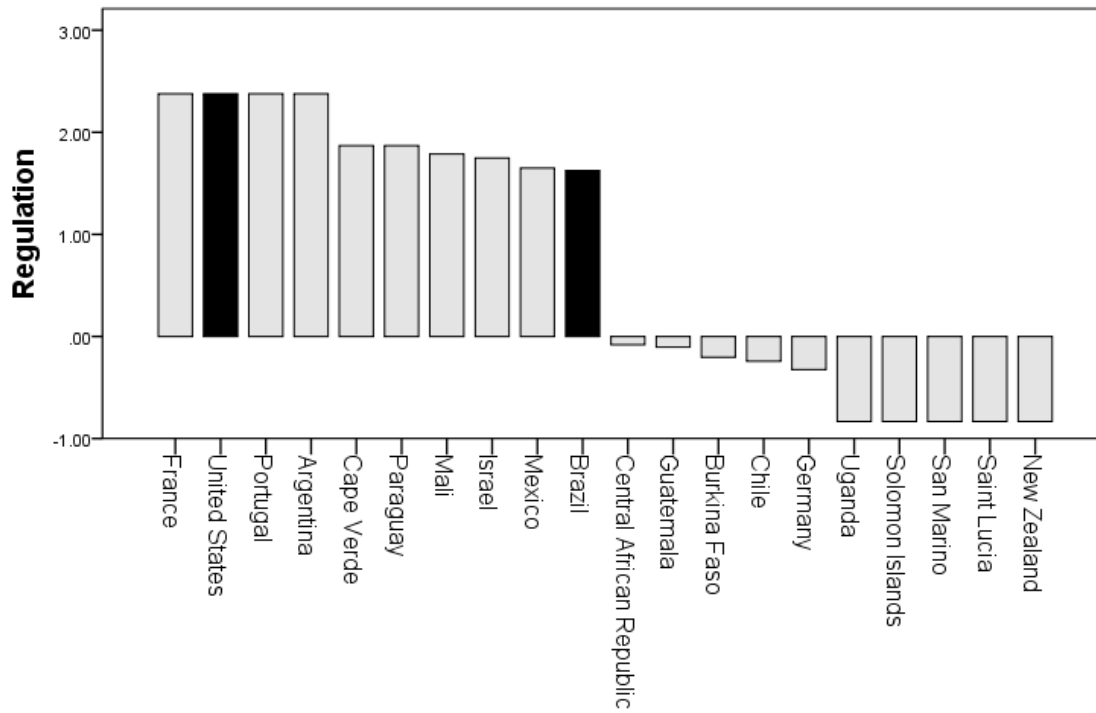
and the standardized measure reached .997 (p-value<.000). On substantive grounds, the strong correlation suggests that both index are measuring the same phenomena. Figure 10 summarizes descriptive statistics.

**Figure 10 - Descriptive statistics**

<b>Regulation Measure</b>	<b>N</b>	<b>min</b>	<b>max</b>	<b>mean</b>	<b>std</b>
Raw	112	0	5	1,36	1,57
Standardized	112	.82	2,39	0	1

On one hand, some countries have very deregulated system, allowing all types of campaign contributions (Austria, Barbados, Denmark, Finland, New Zealand, Norway, among others). On the other hand, some nations display maximum control over campaign contributions sources (Argentina, Estonia, France, Portugal, United States, among others). On average, the raw measure of regulation suggests that 1.36 up to five bans are adopted for most countries. The standard deviation is higher than the mean, suggesting elevated distribution spread. Figure 11 displays regulation index in selected countries.

**Figure 11 - Standardized measure of regulation**



For the standardized measure, the mean is 0 and the standard deviation is 1. As far from the mean in the positive direction, more regulation. As far from the mean on the negative direction, less regulation. While France, United States, Portugal and Argentina display maximum level of regulation, New Zealand, Saint Lucia, San Marino and Solomon Islands show a very deregulated system. Figure 12 presents a comparison between Brazil and United States bans on campaign contributions sources.

**Figure 12 - Ban on campaign contributions**

Sources	Brazil	United States
Foreign entities	X	X
Corporations		X
State contractors	X	X
Labor unions	X	X
Anonymous	X	X

## **Brazil and the United States in a comparative perspective**

This section examines the historical development of campaign finance in Brazil and the United States. The focus regards the level of regulation on the sources of campaign contributions on both statutes and jurisprudence.

### *Campaign finance in Brazil*

According to Backes (2001), despite different statutes on elections, there is no legal document respecting campaign finance during Brazil Empire period (1822-1889). Regarding popular inclusion, legislation was very restrictive since it required a minimum annual income as formal criteria to allow people the right to vote<sup>18</sup>. Therefore, a very limited amount of people were able to participate in the electoral process. 6 National Statute (1889) ban *voto censitário* in Brazil but electoral participation continued limited since legislation prohibited both illiterate people and women the right to vote<sup>19</sup>. During Brazilian Estado Novo (New State, 1930-1945), different institutional changes were adopted: 1) proportional representation for the House of Representatives; 2) creation of Electoral Justice and 3) women right to vote. Despite these innovations, Brazilian 1934 Constitution and further legislation did not address the financing of elections (BACKES, 2001). In short, during two important periods of the Brazilian history -- Empire and New State -- there was no specific legislation regarding campaign finance.

It was during the first democratic period (1946-1964) that campaign finance became an issue. Two elements are important to understand this shift. First, the adoption of direct vote for presidential elections. Second, the increase on electorate size. Regarding regulation, 9.258/46 and 1.164/50 National Statutes established a new Electoral Code. In particular,

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<sup>18</sup> It was called *voto censitário* and required annual income higher than 100.000 Reis to vote for municipal elections - *Assembleias Parochiais* (92, V), 200.000 Reis to vote for the House of Representatives and Senate elections (94, I) and 400.000 Reis to run for an election office (95, I).

<sup>19</sup> Similarly, during a long period only white men white property were permitted to vote in the United States. By the time of Civil War property requirement vanished but color and gender restriction still applied. Color people, women and Native American were excluded. Section 1 of Fifteenth Amendment states that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Nineteenth Amendment defines that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

chapter V defined: a) spending limits (143); b) ban on foreign contributions (144, I) and c) prohibition of public contractors to contribute to political campaigns (144, III)<sup>20</sup>. Statutes 4.740/65 and 5.682/71 are also important to understand the Brazilian campaign finance historical legislation. They ban contributions from corporate sector for the first time. In particular, section 56 of 4.740 statute prohibited political parties to receive, directly or indirectly, any kind of resource from corporations. Section 91 of 5.682 statute also ban contributions from labor unions. Currently, campaign finance in Brazil is mainly based on three different statutes (9.096/95, 9.504/97 and 11.300/06), in addition to *Tribunal Superior Eleitoral* resolutions<sup>21</sup>. Section 23 of 9.504 statute limits individual contributions to 10% of donors annual gross income previous to electoral year. Regarding own resources, political parties should stipulate the maximum amount that each candidate can spend before elections starts (§ 23, 1). In practice, this means that there is no legal ceiling since parties have discretion to set up any limit. Section 81 limits corporate contributions to 2% of donors' annual gross revenue previous to electoral year. What to say about other sources of campaign contributions? Figure 13 summarizes all prohibited sources.

**Figure 13 - Prohibited sources by 9.504/97 statute**

<b>Section</b>	<b>Source</b>
I	Foreign entities
II	Administrative public institutions
III	State contractors
IV	Nonprofit organizations
V	Labor unions
VI	Nonprofit organizations funded by foreign entities
VII	Charitable and religious organizations
VIII	Sports organizations
IX	Nongovernment organization funded by public resources
X	Civil society organizations

<sup>20</sup> Resolution 3.988 (1950) determined that both the *Tribunal Superior Eleitoral (TSE)* and state level agencies (*Tribunais Regionais Eleitorais - TREs*) could investigate claims of illegal electoral activities (BACKES, 2011).

<sup>21</sup> For example, resolution 23.089 (2009) established electoral calendar. Resolution 23.217 (2010) regulates campaign finance receipts and disclosure for candidates and parties committees.



For the purposes of this paper it is important to evaluate how Brazilian campaign finance regulation changed over time. Figure 14 summarizes this information.

**Figure 14 - Campaign finance legislation over time**

Source	1946	1950	1965	1971	1993	1995	1997	2006	2008	2010
Foreign entities	X	X	X	X	X	X	X	X	X	X
Administrative public institutions		X	X	X	X	X	X	X	X	X
State contractors		X	X	X	X	X	X	X	X	X
Corporations			X	X						
Non-profit organizations					X		X	X	X	X
Labor unions				X	X	X	X	X	X	X
Non-profit organizations funded by foreign entities					X		X	X	X	X
Charitable and religious organizations								X	X	X
Sports organizations								X	X	X
Non-government organizations funded by public resources								X	X	X
Civil society organizations								X	X	X

Comparatively, contributions from foreign entities had been ban by all Brazilian campaign finance legislation. Since 1950, administrative public institutions and state contractors also were prohibited from making donations. Regarding corporations contributions, both 1965 and 1971 legislation ban it but posterior statutes make it legal. More recently, new political actors were prohibited from making campaign contributions (charitable and religious organizations, sport organizations, non-government organizations funded by public resources and civil society organizations). On substantive grounds, this means that regulation on campaign finance has increased over time.

### *Campaign finance in the United States<sup>22</sup>*

As Brazil during Empire period, the financing of elections was not a problem during the early days of American politics (CORRADO, 2005; SMITH, 2001). According to Corrado (2005),

in the early days of the republic, campaign funding was rarely a source of public controversy (...) since candidates usually "stood" for election

<sup>22</sup> The most comprehensive compilation of campaign finance regulation in the United States can be download at <http://www.fec.gov/law/feca/feca.pdf>

without engaging in the types of personal politicking or direct solicitation of votes that have come to characterize modern elections (CORRADO, 2005: 07/08).

Smith (2001) points out that most of public offices were not elected and candidates run without opponents. Candidates use their own resources or contributions of family and friends to cover campaign costs. It was with spoils system that campaign finance became an issue in the United States. In particular, Congress enacted the Pendleton Civil Service Act (1883) determining meritocratic criteria to public employees selection process<sup>23</sup>. According to Corrado (2005),

the law restrained the influence of the spoils system in the selection of government workers by creating a class of federal employees who had to qualify for office through competitive examinations. It also prohibited the solicitation of political contributions from those employees, thus protecting them from forced campaign assessments (CORRADO, 2005: 9/10).

In 1904, judge Alton B. Parker, the Democratic presidential nominee, charged Theodore Roosevelt of exchanging political favors for campaign contributions (Corrado, 2005). Parker also alleged that Roosevelt was blackmailing corporation monopolies to raise campaign contributions. According to Smith (2001), more than 73% of all Republican general committee resources in 1904 were based on corporate contributions. Roosevelt denied all charges. However, a joint investigation of two different New York committees revealed that New York Life contributed near to \$ 48,000 for an non-registered account of the Republican National Party Committee in 1904<sup>24</sup>. Since 1890, Nebraska, Missouri, Tennessee and Florida ban corporate contributions to state elections, but after New York Life scandal public opinion demand more regulation. In 1907 Congress enacted Tillman Act. Corrado (2005) argues that it made

unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in connection with any election to any political office." It also made it illegal "for any corporation whatever to make a money contribution in connection with any

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<sup>23</sup> Also in 1883 United Kingdom enacted the Corrupt and Illegal Practices Prevention Act. Among its provisions, it made a crime to exchange votes for any economic benefit. In addition, the act imposed campaign spending limits.

<sup>24</sup> In 1905 message to the Congress president Roosevelt stated that there is no enemy of free government more dangerous and none so insidious as the corruption of the electorate (...) I recommend the enactment of a law directed against bribery and corruption in Federal elections.

election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator (Corrado, 2005: 11).

In 1924, public demand for more regulation arose again after a scandal involving campaign contributions to incumbents candidates in a non-electoral year. Congress passed new amendments to Federal Corrupt Practices Act (1910), requiring that any contribution over \$ 100,00 must be registered under party disclosure documents. In addition, it established new ceilings for spending for both House (\$5,000) and senate elections (\$25,000). This act constituted a landmark on campaign finance until the 1970s<sup>25</sup>.

In 1947, Congress ban Labor unions campaign contributions under Labor Management Relations Act (1947), popular knew as Taft-Hartley Act. In 1971, Congress enacted Federal Election Campaign Act (FECA). According to Smith (2001), it aim to accomplish the following objectives: a) enforce disclosure provisions by adopting specific punishments for law break; b) increase the amount of resources available to public financing of presidential elections; c) establish ceilings on campaign spending and d) decrease the general costs of elections. FECA (1971) assumed that the increasing costs of elections were direct associated with spending on media communications. In particular, the 1974 FECA amendments limited spending on media to no more than \$100,000 or \$.08 multiplied by the voting-age population of the state in a primary election and no more than \$150,000 or \$.12 multiplied by the state's voting-age population in a general election. However, before Congress enacts FECA general costs of 1968 were estimated around \$ 300 million, compared to \$425 million of 1972 elections<sup>26</sup>.

In 1974 Congress enacted amendments to FECA (1971) establishing the most comprehensive regulatory package on campaign finance. Individual limits were defined to \$1,000 and up tp \$25,000 during electoral calendar year. PCAs contributions were also limited to \$5,000. Among different institutional reforms, FECA 1974 amendments

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<sup>25</sup> According to Corrado (2005), *despite the changes, an effective regulatory regime was never established. Though the law imposed clear reporting requirements, it provided for none of the publicity or enforcement mechanisms needed to ensure meaningful disclosure. The law did not specify who would have access to the reports; it did not require that the reports be published; it did not even stipulate the penalties if committees failed to comply. As a result, many candidates did not file regular reports* (CORRADO, 2005: 15).

<sup>26</sup> For example, president Richard Nixon spent more than twice in 1972 compared to 1968. Democrat George McGovern spent more than four times the total spent in 1968.

established the Federal Election Commission (Corrado, 2005). However, in *Buckley v. Valeo*, Supreme Court struck down most FECA provisions ruling that they infringe the First Amendment<sup>27</sup>. Supreme Court ruled that while campaign expenditures by individual candidate is speech and therefore cannot be regulated, campaign contributions do not constitute a form of direct speech and thus could be regulated. The rationale to differentiate expenditures from campaign contributions was to prevent the corruption or appearance of corruption associated with large donations.

a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money (...) the electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive models of communication indispensable instruments of effective political speech (...) being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often one desires on a single tank of gasoline (...) although the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests, its expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions (...) the increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy (...) ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption (*Buckley v. Valeo*, 1976).

In *McConnell v. Federal Election Commission* (2002), Supreme Court upheld the constitutionality of most provisions of Bipartisan Campaign Reform Act (BCRA -- 2002). The Court ruled that the ban on soft money imposed only minimal effects on speech and corporations could not employ their treasury funds to pay or broadcast express advertisements targeted to the candidate's electorate within 30 days of a primary or 60 days

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<sup>27</sup> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; of abridging the freedom of speech, or of the press; of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (Amendment I, U.S. Constitution)

of a general election<sup>28</sup>. In *Federal Election Commission v. Wisconsin Right to Life, Inc.* (2007), Supreme Court held §203 of the BCRA unconstitutional as applied to political advertisements that criticized Wisconsin's senators for participating in a filibuster to block the confirmation of several of President Bush's judicial nominees. According to the FEC, the Supreme Court concluded that these financing restrictions are unconstitutional as applied to these ads because the ads were not express advocacy or its "functional equivalent". More recently, in *Citizens United v. Federal Election Commission* (2010), Supreme Court held that corporate funding of independent political broadcasts in candidate elections cannot be limited because it infringes the First Amendment. In particular, the Court considered that Sections 201 and 203 of Bipartisan Campaign Reform Act (BCRA) were unconstitutional<sup>29</sup>. This decision overturned the prohibition of both corporate and labor free spending to independently support or oppose candidates in national elections.

Although the First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech," §441b's prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy--it is the means to hold officials accountable to the people--political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest (...). It is irrelevant for First Amendment purposes that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." Austin, *supra*, at 660. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech. Under the antidistortion rationale, Congress could also ban political speech of media corporations.

Figure 15 provides a historical overview of regulatory provisions on campaign finance in the United States.

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<sup>28</sup> Section 441i(a) of FEC states that A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

<sup>29</sup> Section 203 of (BCRA) prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate (*Citizens United v. Federal Election Commission*)

**Figure 15 - Historical development of campaign finance regulation**

<b>Regulation (year)</b>	<b>Purpose/provisions</b>
Tillman Act (1907)	Reduce the role of big contributions on federal elections. It make illegal donations from corporations and national banks.
Federal Corrupt Practices Act (1910) (Publicity Act)	Established disclosure provisions and spending ceilings for the House of Representatives elections.
Federal Corrupt Practices (1911) and (1925) amendments	Expanded disclosure provisions in national elections by including Senate seats. Established new ceilings on primary and general elections spending.
Hatch Act (1939) (Clean Politics Act)	Reduce the political influence of federal employees.
Smith-Connally Act (1943) (War Labor Disputes Act)	Temporarily prohibited labor unions contributions.
Labor Management Relations Act (1947) (Taft-Harley Act)	Ban both labor unions donations and independent expenditures.
The Federal Election Campaign Act (1971)	Enforce disclosure provisions; extend public financing of presidential elections; limit contributions and spending; reduce the role of media communications in elections
The Federal Election Campaign Act (1974) (amendments)	Established the Federal Election Commission
Bipartisan Campaign Reform Act (2002)	Ban soft money. Established new ceilings on contributions limits.

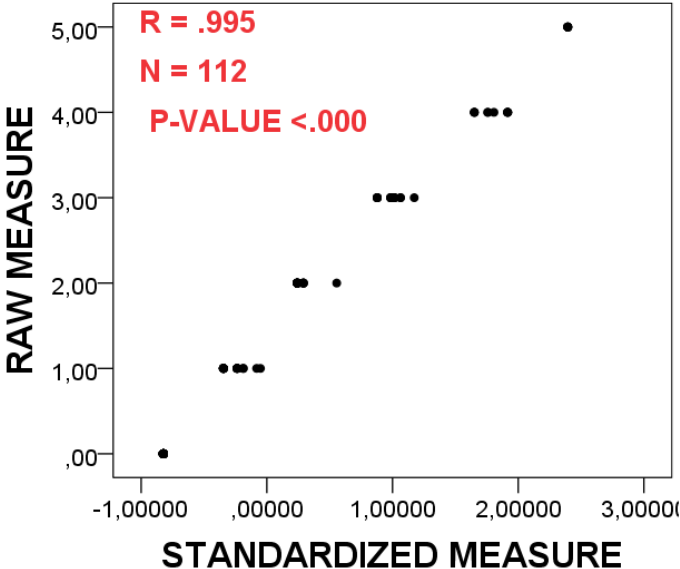
## **Conclusion**

The principal aim of this paper was to analyze campaign finance in a comparative perspective, giving special attention to cases of Brazil and the United States. The results suggest that most countries show low levels of control over campaign contributions. However, both Brazil and the United States display higher levels of regulation on campaign finance sources, despite their widely different institutional designs. On institutional grounds, both Tribunal *Superior Eleitoral (TSE)* and Federal Election Commission (FEC) provide public open data regarding campaign finance and elections outcomes. Assuming that institutional change can benefit from information about other institutional contexts, it is important to understand how different countries regulate the role of money in politics. Comparative perspective allows evaluate which institutional practices seem to be more efficient and which ones are more likely to work on different institutional designs.

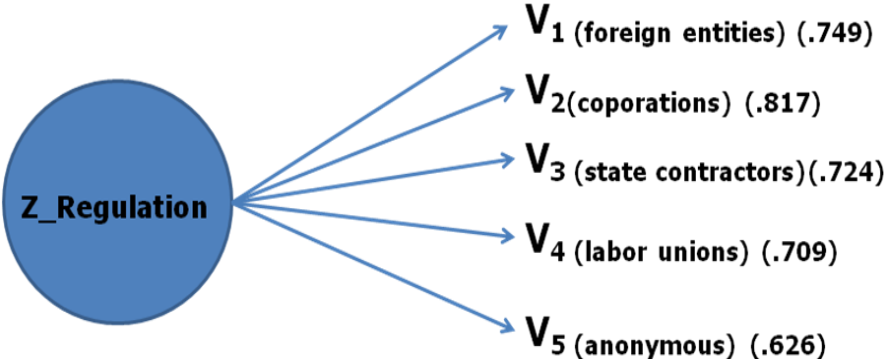
Undeniable, one of main challenges faced not only by scholars but also by policymakers is to properly estimate the effects of electoral rules. This is because any attempt of political reform should be informed by the effects of each institutional choice. This paper aims to advance our current knowledge on campaign finance regulation in general and in both Brazil and in the United States in particular.

**Appendix**

**Figure 16 – Correlation between raw and standardized measure of regulation**



**Figure 17 – Factor loadings of the standardized measure of regulation**



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