

Towards Accountability?
Corruption and the September 2015
Political Reform in Brazil

**Reforma
Política**



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By Clara Clemente Langevin* and Mark S. Langevin, Ph.D.**

This BrazilWorks Briefing Paper explores corruption and political reform in Brazil. The paper begins by recognizing the critical importance of the Petrobras kickback corruption scandal, known as the “Operação Lava Jato (Operation Car Wash)” also known as the “Petrolão,” and placing this corruption scheme within the historical context of corruption and incremental political reform under democracy. We provide a concise analysis of the incremental trajectory of political reform and detail the most important features of the September 2015 reform as responses to the Lava Jato scandal, including the important step taken by the Brazilian Supreme Court to find corporate campaign contributions unconstitutional. This analysis also explores the close interaction between popular mobilizations, congressional obstruction, and successive incremental reforms that have fallen short of deepening the accountability of elected officials. In this sense, the September reform package might be better understood as a tentative step towards deeper campaign finance and accountability reforms aimed at squeezing out “pay to play” or what Power and Taylor (2011) call “cash for policy” forms of corruption in Brazil. We note that successive Brazilian governments and congresses have failed to enact “whistleblower protection” laws that could encourage widespread and more efficient oversight of government procurement contracting. We also agree with Power and Taylor that more can be done to render campaign finance more transparent and to impose stiffer penalties on those elected officials and citizens who corrupt the representational system.

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Towards Accountability? Corruption and the September 2015 Political Reform in Brazil

“We need a political reform, the mother of all reforms”¹

Ricardo Lewandowski, President of the Supreme Court and National Justice Council of Brazil
October 19, 2015

Brazil is adrift in crisis.² The economy is in recession and the Petrobras kickback corruption scandal, known as the “Operação Lava Jato (Operation Car Wash)” or “Petrolão,” has left a ubiquitous stain on Brasilia.³ Federal prosecutors and judges are carrying out a judicial revolution to cleanse the political system of corruption and restore confidence in electoral politics. Recently the Brazilian Supreme Court ruled that corporate campaign contributions are unconstitutional. Heading toward impasse, the Brazilian Congress finally passed and President Dilma enacted a set of modest political reforms on September 29, 2015, but they fall short of closing the accountability gap that plagues Brazilian democracy in the twenty first century.

Brazil’s tumultuous history is marked by abrupt shifts in governmental leadership, coupled with oscillations between radical and incremental institutional change. Both authoritarian and democratic regimes have often stumbled through political reforms and left a legacy and stamped a widely held perception that Brazilian politics are inherently corrupt. According to Power and Taylor,

“Although the transition to democracy in 1985 raised expectations of increased transparency and accountability, each of the five post-authoritarian presidential administrations has been sullied by accusations of corruption ... with important consequences in terms of both the policy-making process and public views of democracy.”⁴

Brazil now faces a deepening economic downturn and structural fiscal deficit, but most eyes are on the Lava Jato corruption scandal. Today, 81 percent of the population reports dissatisfaction with democracy in Brazil.⁵ This increasing discontent with elected government leaders fits into a longer historical pattern stemming from Brazil’s legacy of corruption and chronic inequalities, a legacy now inflamed by the disappointing economy and outrage over the Petrobras kickback scandal.⁶

In response, President Dilma and the President of the House of Deputies, Eduardo Cunha, now fight for their political survival by attempting to quell public dissent through this latest round of incremental political reforms. The recently enacted reform measures may alter candidate and party behavior in

¹ Interamerican Dialogue. Washington, D.C. October 19, 2015.

² Langevin, Mark S. Adrift: Brazil’s Crisis Of Confidence. The Globalist. October 1, 2015 and accessed at: <http://www.theglobalist.com/brazil-crisis-of-confidence-politics/>.

³ See Arruda de Almeida, Monica and Bruce Zagaris. “Political Capture in the Petrobras Corruption Scandal.” Fletcher Forum Journal. Volume 39, Number 2. 2015.

⁴ Power, Timothy and Matthew Powell. Corruption and Democracy in Brazil: The Struggle for Accountability. Notre Dame. University of Notre Dame Press. 2011:1.

⁵ This statistic was revealed by IBOPE in its September 2015 opinion poll and reported by Estadão Dados at: https://infogr.am/democracia_insatisfatoria.

⁶ For a historical reflection of Brazil’s political reform history, see Rabat, Márcio Nuno. “Reforma política: histórico, estágio atual e o lugar da recente proposta do Executivo.” Câmara dos Deputados: Consultoria Legislativa (2009). For an historical and comparative analysis of Brazilian corruption see Timothy J. Power and Matthew M. Taylor. Corruption And Democracy In Brazil: The Struggle for Accountability. University of Notre Dame Press. 2011.

modest ways, but will not replace the fundamental “pay to play” dynamic⁷ that has long corrupted Brazilian political institutions in the past. Since the enactment of the 1988 federal constitution, Brazil’s incremental political reforms have not curbed political corruption. Despite the reform measures enacted in September, many political and civil society leaders, including the President of Brazil’s Supreme Court, Ricardo Lewandowski, openly advocate for a deeper reform process.

This BrazilWorks Briefing Paper examines incremental political reform in Brazil in light of corruption and what Power and Taylor (2011) call the struggle for accountability. The first section explores the evolution of Brazilian democracy and interaction between corruption and political reform processes. The second section analyzes the most recent reform enacted in September of 2015 in light of the Lava Jato corruption scandal and the pay to play mechanism that drives political corruption in Brazil. The last section assesses the importance of the September 2015 reform measures given Brazil’s struggle for governmental accountability and effective political representation and finds that the country faces a critical juncture that could accelerate the reform process through expanding popular mobilizations aimed at specific measures to raise accountability and improve upon the representational system of governance.

Corruption and Incremental Reform

Brazil has carried out a series of modest political reforms since the return to democratic rule in 1985. Combined, these efforts have failed to stem the rising tide of political corruption, especially the “pay to play” or “cash for policy” based kickback mechanisms that finance political parties and candidates while enriching the “brokers.” In 2010 a popular initiative was launched in response to the increasing revelations, investigations and prosecutions of political corruption. Through a popular petition process, guided by Judge Marlon Reis, citizens gathered approximately 1.3 million signatures to submit the “Ficha Limpa” or Clean Slate law to the Brazilian Congress for passage. The measure was passed as Supplementary Law #135, amending the Conditions of Ineligibility Act (Supplementary Law #64 of 1990), to invalidate for a period of 8 years the prospective candidacy of any elected official who has been impeached, or resigned to avoid impeachment, or has been convicted by a decision of a collective judicial body.⁸ According to then President of the Supreme Electoral Tribunal, Richard Lewandowski, and the *Ficha Limpa* law was:

“a victory for all citizens of participatory democracy. This law will have a beneficial impact on the 2012 elections. Political parties will have to select their candidates based on this law. Those that pass this critical filter will be the best that the parties can offer.”⁹

The Clean Slate law prevented hundreds of the most notorious elected politicians from seeking reelection or election to other public offices throughout Brazil. Certainly it has been one of the most effective measures to combat political corruption in Brazil. However, political parties, groups, and

⁷ “Pay-to-play” corruption -- the exchange of campaign contributions and bribes for government contracts and/or passage of particular laws or the implementation of particular public policies that favor the donor.

⁸ Globo. “Ficha Limpa é o quarto projeto de iniciativa popular a se tornar lei.” May 20, 2010 and accessed at: <http://g1.globo.com/especiais/eleicoes-2010/noticia/2010/05/ficha-limpa-e-o-quarto-projeto-de-iniciativa-popular-se-tornar-lei.html>.

⁹ Globo. “Ficha limpa coloca ‘filtro’ na política brasileira, diz presidente do TSE.” Translated from Portuguese to English by authors. February 17, 2012 and accessed at: <http://g1.globo.com/politica/noticia/2012/02/ficha-limpa-coloca-filtro-na-politica-brasileira-diz-presidente-do-tse.html>.

politicians have found ways of circumventing this law through surrogate candidacies that advance their private interests. The Clean Slate law plays a critical, but clearly insufficient role in an overall legal strategy to identify and prosecute play to pay corruption in Brazil. Moreover, it demonstrates that the most effective measures to fight corruption require substantial popular mobilization focused on specific statutory measures for congressional adoption. In sharp contrast to the 2015 mobilizations calling for President Dilma's impeachment, the Clean Slate popular initiative compelled the Brazilian Congress to vote and pass a specific measure that was difficult to openly oppose.

Support for more sweeping political reform has been mounting since the 2005 Mensalão scandal, in which the Partido dos Trabalhadores (PT), the Worker's Party, paid monthly bribes to congressional representatives to obtain sufficient votes to pass important legislation.¹⁰ Public clamor for reform continued to grow after the successful passage of the Clean Slate law in 2010 and propelled congressional reform efforts throughout 2011.

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The 2011 Reform

In early 2011 then President of the Brazilian Senate and former President of the Republic, José Sarney of the **Partido do Movimento da Democracia Brasileira** or PMDB, established a congressional Commission for Political Reform to deliberate and propose statutory changes to reform campaigns, elections, the party system, and the institutional structure of representation. The commission was chaired by then Senator from Rio de Janeiro, Francisco Dornelles of the Partido Progressista (PP), and composed of fifteen senators. Aside from Dornelles, the commission included former presidents Itamar Franco of the Partido Popular Socialista (PPS)-MG) and Fernando Collor of the Partido Trabalhista Brasileiro (PTB)-AL) along with Aécio Neves of the Partido da Social Democracia Brasileira (PSDB)-MG), Demóstenes Torres of Democratas (DEM)-GO), Roberto Requião (PMDB-PR), Luiz Henrique (PMDB-SC), Wellington Dias (PT-PI), Jorge Viana (PT-AC), Pedro Taques (PDT-MT), Antônio Carlos Valadares (Partido Socialista Brasileiro (PSB)-SE), Eduardo Braga (PMDB-AM), Ana Rita Esgario (PT-ES); Vanessa Grazziotin (Partido Comunista do Brasil (PcdoB)-AM); e Lúcia Vânia (PSDB-GO).

The commission identified eleven priority issues for consideration, including: a) election systems; b) campaign and party finance; c) senatorial substitution; d) party affiliation; e) party coalitions; f) mandatory or voluntary voting; g) inaugural dates for executives (president, governors, and mayors); h) performance standards; i) party loyalty and cohesion; j) reelection; and k) independent candidates.¹¹

The Commission for Political Reform proposed several reforms, including:

- 1) Minor changes in the inauguration dates for president, governors, and mayors;

¹⁰ The Economist. What is Brazil's "Mensalão?" November 18, 2013 and accessed at: <http://www.economist.com/blogs/economist-explains/2013/11/economist-explains-14>.

¹¹ Gazeta do Povo. "Sarney Instala Comissão Da Reforma Política." February 22, 2011.

- 2) Restrict the number of alternates to one for all elected congressional representatives and prohibit any family member from occupying an alternate position;
- 3) Prohibit elected officials from switching parties during their terms in office;
- 4) Prohibit mayors from switching their voting residence while in office (to disqualify their candidacies for elections in neighboring jurisdictions);
- 5) Schedule all federal, state and municipal elections on the same day;
- 6) Require a national plebiscite for any changes in Brazil's electoral system.¹²

The Constitution and Justice Committee of the Senate rejected several additional proposals that would have prohibited the reelection of executives, eliminated coalitions for proportional elections (legislatures), established the so called “distritão” system whereby candidates with the largest number of votes would be elected in each states regardless of party lists, and created a single-member, “first past the post” representational system for legislatures, among other proposals.

The commission's package of reforms was rejected by the lower house, kicking off what Fleischer (2011) calls a “ping pong” game of back and forth proposals between the Senate and the Chamber of Deputies. The Chamber of Deputies' counter proposals included several by Henrique Fontana (PT) that sought to erect a public campaign finance system to displace private contributions, a partial closed list of candidates to strengthen party cohesion,¹³ and simplifying the requirements to sponsor popular initiatives such as the Clean Slate law.¹⁴

Fleischer summarizes these reform efforts and concludes that a growing number of

“deputies and senators are challenging the increasingly expensive election campaigns and dependence on contributions from the private sector – especially those considered “off the books” (campaign contributions not officially reported to the TSE). In turn, this support is compensated by rigging the distribution of “political patronage” in favor of these campaign contributors, thereby institutionalizing a mode of corruption characterized by many over invoiced public contracts.”¹⁵

Without a consensus, congressional negotiations over specific measures led to impasse and opened the door to continued obstruction by those who gain the most from the accountability gap.

The June 2013 Popular Mobilizations and Political Reform

Congressional impasse did not quell popular support for good governance and comprehensive political reform. In 2013 President Dilma Rousseff took matters into her own hand and launched another reform effort as a response to the popular mobilizations of June 2013 that challenged her popularity and the government's efficacy.¹⁶ According to Saad-Filho:

¹² Fleischer, David. “Attempts at Political Reform in Brazil: A Never-Ending Story.” Brazil under Dilma Rousseff Task Force. University of Miami. 2011:4.

¹³ The voters would vote on the party and not the individual candidate.

¹⁴ Fleischer (2011:4).

¹⁵ Fleischer (2011:5-6).

¹⁶ The Economist. “The Streets Erupt.” June 18, 2013 and accessed at: <http://www.economist.com/blogs/americasview/2013/06/protests-brazil>.

“The June-July movements have shaken up Brazil’s political system. Their explosive growth, size and extraordinary reach caught everyone – the left, the right, and the government – by surprise.”¹⁷

President Dilma, whose approval rating before these protests was very high, saw her popularity plummet as a direct consequence of these mobilizations. In May of 2013 President Dilma’s approval rating was flying high at 75 percent,¹⁸ but by August of 2015 some 71 percent disapproved of the President’s performance and 66 percent supported her impeachment.¹⁹

In many ways the June 2013 mobilizations were the first signs of a rising tide of broad based opposition to the Workers Party led government amidst rising expectations for better public services and a growing awareness of the devastating impacts of political corruption on government effectiveness and accountability as well as the economy’s performance. The protests began with opposition to public transportation fare increases, but quickly expanded to a broader agenda arising from condemnation of rampant corruption and the need for political reform. President Dilma seized this moment to introduce a proposal to stage a plebiscite to frame a policy and institutional reform process through five specific issue-areas: transportation, corruption, education, healthcare, and political reform. According to President Rousseff, such a plebiscite could play a critical step in formulating a political reform agenda because the general public would be able to freely communicate their opinions on the subject. President Rousseff sought to subdue the growing opposition to her government and the congressional impasse on political reform by transforming popular protest into an organized popular consultation.²⁰ Her effort failed amidst both alternative procedural proposals and congressional obstruction.

In many ways the June 2013 mobilizations were the first signs of a rising tide of broad based opposition to the Workers Party (PT) led government and the pay to play based political system.

The 2014 Elections and Reform Initiatives

Congressional leaders and prominent members of President Dilma’s Worker’s Party did not support the plebiscite initiative. Some countered that Congress should define a popular referendum through which a political reform could be approved by the direct vote of citizens.²¹ Neither the plebiscite nor the proposed referendum on a specific reform package came to fruition. Obstruction prevailed as Brazil’s candidates and political parties prepared for the 2014 elections.

¹⁷ Saad-Filho, Alfredo. Mass Protests under ‘Left Neoliberalism’: Brazil, June-July 2013.” *Critical Sociology*. Vol. 39, No. 5. 2013:658.

¹⁸ Datafolha. “Ótimo ou bom para 35%, aprovação ao governo Dilma fica estável.” May 9, 2015 and accessed at: <http://datafolha.folha.uol.com.br/opiniaopublica/2014/05/1451883-otimo-ou-bom-para-35-aprovacao-ao-governo-dilma-fica-estavel.shtml>.

¹⁹ Datafolha. “Recorde, reprovação a Dilma supera pior momento de Collor.” August 6, 2015 and accessed at: <http://datafolha.folha.uol.com.br/opiniaopublica/2015/08/1665278-recorde-reprovacao-a-dilma-supera-pior-momento-de-collor.shtml>.

²⁰ Pricilla, Mendes. "Dilma Propõe 5 Pactos e Plebiscito Para Constituinte Da Reforma Política." G1. Globo, 24 June 2013.

²¹ Fellet, João. "O Que Muda Se a Reforma Política Ocorrer Por Referendo Ou Plebiscito? - BBC Brasil." BBC Brasil. BBC, 30 Oct. 2014. Web. 21 Sept. 2015.

Immediately following her reelection in October of 2014, President Rousseff reaffirmed her interest in passing political reform and re-launched her plebiscite proposal. Congressional leaders once again repeated their opposition to the president's plan and reaffirmed their proposal for a popular referendum first approved by Congress. Then President of the House of Deputies, Henrique Eduardo Alves (PMDB-RN), blamed the PT for obstructing the congressional plan for reform.²² In the end, the reelected president did not exercise sufficient power within congress to impose her preference for a plebiscite and congressional leaders were insufficiently dedicated to passage of a set of reforms for presidential enactment or popular approval by referendum.²³

Falling Short?

This failure to reform encouraged greater popular mobilization throughout 2015, much of which was focused on moving forward with President Dilma's impeachment, but also served to underscore the growing concern over the legitimacy of the political system and the need to carry out reforms that could address the prevalent pay to play corruption exposed through the Lava Jato investigations and prosecutions.

The succession of modest political reforms and the "ping pong" negotiations between the president and congressional leaders in recent years demonstrate the power of political obstruction within the Brazilian Congress.

Finally in September of 2015 President Dilma enacted modest political reform measures passed by the Congress, preceded by the recent decision of the Brazilian Supreme Court to veto all corporate campaign contributions. It is unlikely that the House of Deputies will overturn her veto. The succession of modest political reforms and the "ping pong" negotiations between the president and congressional leaders in recent years demonstrate the power of political obstruction within the Brazilian Congress. Ironically, many of the more radical reform proposals, aimed at eliminating private money from electoral campaigns, were introduced and advocated by the PT. Today, the PT stands condemned of corruption in the public eye. Its former treasurer, Delúbio Soares, was convicted of campaign finance corruption for the Mensalão scandal that broke in 2005²⁴ and the former PT leader in the House of Deputies, Cândido Vaccarezza, was recently found guilty of pay to play corruption under the Lava Jato prosecutions.²⁵ While the PT has long advocated public financing of elections, many of its national elected officials and party leaders have been convicted or are currently under investigation for campaign finance and other forms of pay to play related corruption. It is reasonable to conclude that the PT's advocacy of public financing for campaigns did not square with its political-legislative practices that pivot on kickback schemes to illegally finance its campaigns and those of its allies in Congress. This critical discrepancy between policy preference and political practice may have

²² Mariana, De Desideno. "Dilma Terá Que Encarar Congresso Para Fazer Reforma Política." Exame. Grupo Abril, 28 Oct. 2014. Web. 18 Sept. 2015.

²³ Fellet, João. "O Que Muda Se a Reforma Política Ocorrer Por Referendo Ou Plebiscito? - BBC Brasil." BBC Brasil. BBC, 30 Oct. 2014. Web. 21 Sept. 2015.

²⁴ Veja. Rede de Escândolos: Delúbio Soares. Accessed at: <http://veja.abril.com.br/infograficos/rede-escandalos/perfil/delubio-soares.shtml>.

²⁵ Ibid. Cândido Vaccarezza and accessed at: <http://veja.abril.com.br/infograficos/rede-escandalos/perfil/candido-vaccarezza.shtml?scrollto=conteudo-rede?scrollto=conteudo-rede>.

played a role in sustaining the legislative ping pong that ultimately resulted in the impasse of 2011 and frustrated President Dilma's successive efforts in 2013 and 2014.

More recent explanations of Brazil's political reforms point to the lack of crisis or calamity to compel legislators' to deepen their commitment to reform to eliminate the pay to play dynamic. Marcus André Melo and Carlos Pereira argue that political reform in Brazil is too shallow or has failed altogether because of the absence of a system shocking political calamity. Writing in September of 2011 they argue that:

*"Electoral reforms are unlikely to succeed given that they have to be proposed and approved by legislators elected under current rules... Electoral reforms usually take place in the wake of an external shock."*²⁶

Employing a comparative perspective, they point to prominent cases of deep reaching political reform in the wake of devastating corruption scandals and political instability. For example, Melo and Pereira highlight Italy's 1993 *Tagentopoli* (bribesville) scandal that led to a national referendum for political reform. After this so called "clean hands" reform, Italy's governing Socialist party could not even muster the minimum required threshold for representation in the parliament. Melo and Pereira argue that recent Brazilian corruption scandals, such as the *Mensalão*, did not constitute a sufficient "shock" to the national political system to propel reform, stir up and sustain escalating popular mobilization, and convince legislators that the system's very survival depended on sweeping reform measures.

Pereira, Rennó and Samuels find that corruption scandals can indirectly discourage corrupt elected officials from seeking reelection or directly dampen their electoral popularity in Brazil, but they also speculate that the most corrupt politicians in Brazil seek reelection to evade prosecution.²⁷ They also find that the notion of "*rouba mas faz*," or he or she steals but will get things done, is still a popular justification for voting for corrupt politicians. Certainly the "Clean Slate" law has partially eliminated the possibility of voting for those politicians who failed to evade prosecution or impeachment for political corruption, but this measure cannot singularly eliminate corrupt practices among elected officials.

The Lava Jato prosecutions and convictions, coupled with concerted efforts to impeach the Brazilian president amidst a deepening economic downturn, call into question whether the current crisis of confidence in government is sufficient to move elected officials and political parties to support institutional reforms designed to eliminate the pay to play kickback mechanism from Brazilian elections and increase accountability between elected officials and the citizens who vote for them. At this point, no one knows what the prosecutors will uncover, but certainly the September 2015 political reform represents all three branches' differentiated efforts to respond to the deepening corruption scandal.

In particular, the timing of the Supreme Court's decision to find corporate campaign contributions unconstitutional cannot be coincidental. Citizens' increasing concern with corruption, popular mobilization against the government, and the Lava Jato scandal's impact on their economic welfare is

²⁶ Melo, Marcus Andre, and Carlos Pereira. "Why New Attempts to Reform Brazil's Electoral System Will Fail." The Brookings Institution. 28 June 2011. Web. 21 Sept. 2011.

²⁷ Pereira, Carlos, Lucio Rennó and David J. Samuels. "Corruption, Campaign Finance, and Reelection," in *Corruption and Democracy in Brazil: The Struggle for Accountability*. Edited by Timothy J. Power and Matthew M. Taylor. University of Notre Dame Press. 2011:80-99.

palpable. Given this critical juncture, do the September 2015 reform measures constitute a promising effort to curb political corruption and render political institutions more accountable in the future?

The September 2015 Political Reforms

In September of 2015 the Brazilian Supreme Court ruled after years of deliberation that private sector and corporate campaign contributions were unconstitutional under the 1988 Federal Constitution.²⁸ This may be the most important act of political reform since the enactment of the Clean Slate law in 2010, both of which were imposed upon elected officials, including the President and Congress. In Congress, both the Senate and House of Deputies passed similar sets of political reforms, but with a significant difference on the corporate campaign donation issue. The Senate approved a reform measure to prohibit such donations and the House passed an amendment that would allow for such contributions, limited and regulated. The President signed the lower house's package of political reform measures, but with the notable veto of the allowance for corporate contributions, thereby avoiding a constitutional showdown with the Supreme Court and setting in motion the complete ban of such campaign contributions for future elections.²⁹

It is not surprising that the Supreme Court ruled that corporate campaign donations are unconstitutional, but it is telling that the House of Deputies were able to galvanize a majority to continue such a practice in light of the Lava Jato corruption scandal and the fact that dozens of its members are currently under criminal investigation for a host of corrupt practices, several related to the Lava Jato scandal. The ban on corporate campaign contributions cannot eliminate political corruption, but this measure signals that the political reform process is moving forward, but without a clear consensus within Congress or majority in the House of Deputies. This measure is an important step, but more needs to be done to force the disclosure of all campaign finance and in kind support, making such information transparent and accessible to the public and prosecutors.

Table 1: The Brazilian Political Reform of 2015 outlines the major changes to laws governing party affiliation, campaign finance and election rules approved by Congress and signed into law by President Dilma on September 28, 2015.

The reform seeks to discourage the common practice of switching parties prior to elections. Article 9 of the new law mandates that candidates cannot change party affiliation within six (6) months prior to their election (rather than the one year period prior to this change); and current officeholders who seek reelection or plan to campaign for another office must register any changes in their party affiliation status thirty (30) days prior to the six-month period-or seven months prior to the election. While this provision will discourage the late hour horse trading among political parties for the adherence of particular candidates and political leaders, it will not eliminate the practice of seeking to maximize votes by switching parties for any given election. In all likelihood, the law simply encourages candidates and parties to begin negotiating affiliation much earlier in any given electoral cycle.

²⁸ Globo. "Supremo proíbe doações de empresas para campanhas eleitorais." September 17, 2015 and accessed at: <http://g1.globo.com/politica/noticia/2015/09/supremo-decide-proibir-doacoes-de-empresas-para-campanhas-eleitorais.html>.

²⁹ Coalização pela reforma política democrática e eleições limpas. "Dilma sanciona reforma política com veto a doações de empresas." September 30, 2015 and accessed at: <http://www.reformapoliticademocratica.org.br/dilma-sanciona-reforma-politica-com-veto-a-doacoes-de-empresas/>.

Table 1: The Brazilian Political Reform of 2015

Party Affiliation	Campaign Finance	Election Rules
<p>Article 9 -Party affiliation must be completed at least six (6) months before election.</p> <p>-Current office holders who wish to run for office in upcoming elections and change their party affiliation must do so 30 days prior to the six-month affiliation period preceding elections.</p>	<p><i>Constitutional Ban and Presidential Veto of corporate campaigns contributions*</i></p> <p>Articles 5 & 6 -Campaign expenditure limits for executive elections (Presidency, Governors, and Mayors) are set at 70% of the highest expenditures in the immediate past election for the first round, and 30% of first round campaign expenditures for second round election campaigns.</p> <p>-Campaign expenditure limits for legislative elections (Federal Senate and House of Deputies, State Senate and Deputies, and City Council) are set at 70% of the highest expenditures in the immediate past election.</p> <p>Article 18 -Failure to comply with the provisions of either Articles 5 or 6 will result in a fine equivalent to 100 percent of the amount over the limit.</p> <p>Article 23-Individual campaign contributions are limited to 10 percent of the past year’s annual gross income.</p>	<p>Article 47 -Reduction of the duration of legal campaign activity from 90 to 45 days.</p> <p>-Reduction of mandatory television radio campaign broadcasts from 45 to 35 days preceding election.</p> <p>-Compulsory Campaign Media Broadcasts: 90% of broadcast time will be divided proportionately to each political party depending on the number of Federal Deputies and 10% will be divided equally among all registered parties.</p>

Source: Diário Oficial da União. 29 de Setembro, 2015. Lei No 13.165, De 29 De Setembro De 2015 and accessed at: <http://folhanobre.com.br/wp-content/uploads/2015/09/Reforma-Pol%C3%ADtica.pdf>.

For example, current PT elected officials and prominent members are announcing affiliation changes in anticipation of the municipal elections in 2016. Marta Suplicy, a longtime PT member who served in President Dilma’s government and was also mayor of São Paulo (2001-2004) recently changed her affiliation to the PMDB, presumably to run for mayor of São Paulo against the PT incumbent. Also, in 2015 some 21 PT mayors have migrated to other parties, including the Mayor of João Pessoa, Luciano Cartaxo.³⁰ However, the PT may also pick up new candidates in the coming six months, especially in states with PT governors. This dynamic will play out among thousands of candidates and nearly all parties competing for mayoral and city council elections to be held on October 7, 2016 (with the second round for mayors scheduled for the 28 of October).

This new measure may intensify negotiations between prospective candidates and parties, but does not address the possibility that these negotiations include *quid pro quo* “side payments” to seal the deal, often provided through pay to play corruption based mechanisms. In terms of the September 2015 reforms, several changes may reshape the mechanisms through which such finance plays a role in party affiliation and candidate behavior, but private money will remain the most prominent feature of campaigns and electoral outcomes for years to come under the new law.

The new reforms ban corporate contributions to campaigns, but it is not clear whether such a ban will diminish and eventually eradicate the corrupting influence of private money in elections. Article 23 of the new reforms allow for private contributions by individual citizens, up to 10 percent of their annual income. Articles 5 and 6 cap candidates’ campaign expenditures at 70 percent of the total *highest*

³⁰ Estado de São Paulo. “PT Age para Barrar ‘êxodo’ de prefeitos e parlamentares.” 26 de Setembro, 2015 lea mais: <http://politica.estadao.com.br/noticias/geral,pt-age-para-barrar-exodo-de-prefeitos-e-parlamentares--imp-,1769379>.

expenditures of the last election cycle (presumably the most expensive campaign then sets the 70 percent standard). For executive races with second rounds, each candidate can spend up to 30 percent of their first round expenditures. Article 18 imposes fines on candidate-violators, but only in the amount surpassing the imposed limits. This article does punish offenders, but it also provides ample opportunities to evade the law since it only requires that excessive donations be “returned” in the form of fines paid to the federal government’s Supreme Election Tribunal, known as the TSE. These new campaign expenditure rules may squeeze out some of the largest campaign contributions, but they do not eliminate the pay to play nature of private campaign contributions’ on elected official behavior. Moreover, it is not clear whether the TSE exercises the organizational capacity to carefully enforce these new campaign finance limits.

The September 2015 reforms also include a number of new measures that reform the electoral process. Article 47 reduces the legal campaign period from 90 to 45 days and the mandatory transmission of campaign advertisements from 45 to 35 days preceding the election. It also sets out a new calculus for distributing compulsory television time for campaign advertisements. None of these measures are designed to curb the pay to play electoral dynamic or increase accountability between election officials and citizens.

Taken together, the September of 2015 political reform measures fall short of addressing the pay to play dynamic that allows private and partisan interests to obtain public policy preferences and government procurement contracts in exchange for campaign contributions and contract based kickbacks. Does the recently enacted reform package, including the ban on corporate campaign contributions, reflect a step toward more far reaching measures that render campaign finance more transparent, increase oversight and supervision of campaign and election laws, and punish violators; or should the recent reform be understood as a minimum effort to quell popular outrage and obstruct the passage of deeper reform measures that systematically hold all elected officials accountable?

Reform or Obstruction?

The Lava Jato corruption scheme and the judicial branch’s relentless efforts to investigate and prosecute those responsible highlight two factors which shape the political reform process in Brazil. First, law enforcement and the judiciary have successfully sought and won convictions based on current law. Second, existing campaign and electoral laws cannot eliminate all forms of pay to play corruption as exposed by Operation Car Wash. Brazil’s representational structure and lackluster congressional oversight of the executive continue to provide ample opportunities to avoid detection of corrupt practices.

The systematic investigation, prosecution and conviction of dozens of business leaders, politicians, and their brokers is stunning given Brazilian political history. By March 2015 the Brazilian Attorney General was investigating 47 current or former federal deputies, senators, and governors under the Lava Jato scheme.³¹ The investigations also spilled over to the electricity sector with the arrest of the former President of Eletronuclear, Othon Luiz Pinheiro da Silva, in July 2015. Executives from many of Brazil’s largest private firms, including Odebrecht e Andrade Gutierrez, are under prosecution for

³¹ Bruna Borges e Leandro Prazeres. “Inquéritos investigarão 47 políticos; lista tem Renan e Cunha; veja nomes.” UOL Notícias Políticas. March 6, 2015 and accessed at: <http://noticias.uol.com.br/politica/ultimas-noticias/2015/03/06/renan-cunha-e-roseana-serao-investigados-na-lava-jato.htm>.

illegal campaign contributions and kickbacks. The Brazilian judiciary is demonstrating independence of the executive and legislative branches by holding elected officials and private sector business leaders accountable to the rule of law. Yet, aggressive investigation and prosecution may not be enough to achieve lasting accountability.

Second, successive PT led administrations and the Brazilian Congress have failed to push forward the types of political-institutional reform that would undermine the extensive pay to play corruption and close the accountability gap between elected officials and the citizens they serve. Also, Brazil has failed to seek passage and enact a whistleblower protection law that shields employees, those of both government and its contractors, from reprisals after denouncing malfeasance and corruption to the proper authorities.³² Moreover, the September reform measure that impose fines of up to 100 percent of campaign expenses above the cap does not truly punish offenders or serve as a compelling deterrent. If debated openly, this feeble reform may serve as the first step toward enacting greater punishment for campaign finance related infractions if popular mobilizations focus on both the causes of and consequences for corrupt practices in Brazil.

We agree with Power and Taylor that,

“The most important force driving the ongoing process of tinkering and incremental adjustment has been the broad societal consensus that corruption – and especially political corruption – is a major problem. This consensus, and the shared interests and values that undergird it, keeps corruption on the public agenda and drives accountability institutions forward in an ongoing process that seems likely to deepen alongside democracy itself.”³³

Towards this end, the Lava Jato corruption scandal provides a critical juncture for accelerating the process of political reform to engender greater transparency in campaign finance with strict oversight and enforcement. It is unlikely that Brazil’s political system will suffer a significant rupture, but more reforms are possible and can build on the incrementalism that hallmarks political reform under democracy in Brazil. Accordingly, José Roberto de Toledo argues that:

“We can take advantage of the rare opportunities opened by congressional deliberations and Supreme Court decisions in order that one step at a time we can reform the rules and laws that regulate the Brazilian political system, article by article, paragraph by paragraph, line by line. We cannot untangle the political knot one thread at a time, but the end of corporate campaign contributions can certainly be the first step.”³⁴

Brazilian citizens can choose to accelerate the reform process to strengthen political accountability and renew their democracy. Operation Car Wash may be the watershed moment, the political clarity that triggers deeper reforms that make Brazil’s representational institutions less suspect and more accountable to the citizens they serve. Certainly, Brazilian political parties and future candidates for high office will need to carefully measure the temperature of the reform movement to decide whether obstruction will be punished by voters next year and how this pressing issue may even determine the outcome of the 2018 presidential and congressional elections.

³² Langevin, Mark. “Whistleblower Legislation in Brazil Já!” BrazilWorks. June 3, 2015 and accessed at: <http://www.brazilworks.net/analysis/1750>.

³³ Power and Taylor, 2011:273.

³⁴ José Roberto de Toledo. “Untying the Political Knot.” Translated from Portuguese to English by the authors. Interesse Nacional. October-December 2015 and accessed at: <http://interessenacional.uol.com.br/index.php/edicoes-revista/desatando-o-no-da-politica/>.

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