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GOOD ADMINISTRATION: THE PRINCIPLE OF TRANSPARENCY AND ITS USE BY THE INTERNATIONAL CIVIL SOCIETY

BOA ADMINISTRAÇÃO: O PRINCÍPIO DA TRANSPARÊNCIA E SEU EXERCÍCIO PELA SOCIEDADE CIVIL INTERNACIONAL

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ABSTRACT: The principle of transparency is one of the cornerstones in governance debate. It orients more creditable practices for the making of public policies and draws citizens' attention to the combat of corruption. In addition, less opaque relations in public-private businesses may strengthen the confidence of investors and tend to deconstruct asymmetric relations in long-running scenarios. Nonetheless, it is important to bring to the fore in that debate the birth of a transversal rationality that has forged civil society in the international community beyond the national borders. More and more, civil actors on social media networks organise debates and opinions from local platforms to elaborate worldwide topics. The aim of the present article is to suggest transparency as a local response born inside States and conceived by the civil society to confront abuses of global economic powers. Comparative analyses on constitutions and domestic legislations related to transparency usually show how asymmetric can be the perception of private investments and public sectors; the former mostly seen as virtuous and the latter vicious.

KEYWORDS: Governance. Good Administration. Transparency. Comparative Public Law. Civil Society.

RESUMO: O princípio da transparência é uma das pedras angulares do debate sobre governança. Orienta práticas mais confiantes para a elaboração de políticas públicas e alerta cidadãos para o combate à corrupção. Além disso, as relações menos opacas nas empresas público-privadas podem fortalecer a confiança de investidores e tendem a desconstruir relações assimétricas em cenários de longo prazo. No entanto, é importante trazer à tona nesse debate o nascimento de uma racionalidade transversal que tem forjado uma sociedade civil na comunidade internacional para além das fronteiras nacionais. Cada vez mais, atores civis em redes sociais organizam debates e opiniões desde plataformas locais para elaborar temas mundiais. O objetivo do presente artigo é sugerir a transparência como uma resposta local nascida dentro dos Estados e concebida pela sociedade civil para enfrentar os abusos dos poderes econômicos globais. Análises comparativas sobre constituições e legislações nacionais relacionadas à transparência geralmente mostram quão pode ser assimétrica a percepção de investimentos privados e setores públicos; o primeiro visto como virtuoso e o último vicioso.

PALAVRAS-CHAVE: Governança. Boa Administração. Transparência. Direito Público Comparado. Sociedade Civil.

INTRODUCTION: TRANSPARENCY FOR PUBLIC-PRIVATE RELATIONSHIPS

A guideline published by the *Economic and Social Commission for Asia and the Pacific*, United Nations Programme for socioeconomic and sustainable development, calls the attention to the importance of urban actors for the exercise of good governance and its definition.¹ It is important to include the private sector in the debate of transgovernmental policies, but also provide States mechanisms of control to avoid the political disputes with economic benefits only for private enterprises distorting global market relations through the deformation of governance policies.² Initially, we assume as important the transparent relations between State and economic powers with a political orientation to impede and predict corruption nonetheless. Therefore, accountability, responsiveness and efficiency in public-private partnership must work for both governments and private companies.

However, there is another component that leads us in the question of how solving conflicts involving private interests in the public affairs or vice-versa. We suggest two categories of public-private relations to further the argument. On the one hand, the understanding that State and public affairs cannot be a partnership of the economic elites for the making of politics. In a nutshell, money is condemnable in political institutions, because the social morality has created a long tradition that does not accept such marriage pointing the government as the most probeable entity to carry the burden of the general interest. On the other hand, we have States that assume an intimate institutional relationship with the economic powers, but the relations are clearly regulated and defined by interposable limits. If the powers, public or private, exceed in their transparent conjugal bonds, the punishment for the spurious practices are classified as criminal evidences against the social order and the private enterprise punishable financially. Along the present article, cases of corruption in Spain, Brazil, Iceland and United States will illustrate these two categories.³

Before initiating our discussion on transparency nonetheless, it is urgent a more precise definition of what can be considered corruption. For example, whether a bar of chocolate among other supermarket items

1 Available at: <<http://www.unescap.org/sites/default/files/good-governance.pdf>>.

2 KAL RAUSTIALA. 2002. "The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law". *Virginia Journal of International Law*, 43 (1): 25.

3 KUHNER, T. K. 2017. "Plutocracy and Partyocracy: the Corruption of Liberal and Social Democracies", in Cerrillo-i-Martínez, A. & Ponce, J., Preventing Corruption and Promoting Good Government and Public Integrity. Brussels: Bruylant.

bought with public money should be considered a crime as the case of the Swedish social-democrat leader Mona Sahlin known as “Toblerone Affair” in the 1990s.⁴ Or if the private interest must be considered central in the process of State public affair co-optation such as the fact involving the National Property Board of Sweden and the forest industry Company Holmen with prominent figures such as the Finnish Nordea’s chairman Björn Walhroos, Lars G. Josefsson when he was the CEO of the multinational energy company Vattenfall and the former governor of Östergötland.⁵ In order to overcome that imprecision for language on corruption, we use the category of misconduct hereon divided into three realms. The first one touches the meta-ethics which is devoted to the study of moral judgment (legitimacy or acceptancy of practices in the public eye); normative ethics or simply the “right” or “wrong”, “licit” or “illicit”, counted in binary; and applied ethics in specific cases that though formally legal, they cause perverse consequences for the general interest since individual pursuits tend to maximize their benefits regardless of public or private enterprises.⁶ These three dimensions for the definition of corruption appeared in the field of International Political Theory igniting a peruse of transnational themes including justice, war and security, cooperation, peace, distribution of resources in global scale, universal human rights, political freedom, and responsibility on public interest, but mainly examining whether State corruption has been an isolated phenomenon without any external influence.⁷

It is also quintessential, for our preliminary issues on governance and transparency, how some authors have investigated the absence of the State in private enterprises observing that the misconduct in human relations does not depend necessarily on public lawful practices. Social norms creating benefits for some and disadvantages for others are also present in private business.⁸ It is also noticed in some cases that

4 Available at: <<https://www.thelocal.se/20101102/29984>>.

5 Available at: <<http://nordic.businessinsider.com/swedens-former-finance-minister-suspected-of-corruption-in-hunting-scandal-2017-1/>>.

6 HEALD, David. 2006. “Varieties of Transparency”, in Hood, Christopher and David Heald (eds.), *Transparency – The Key to Better Governance?* Oxford: Oxford University Press.

7 BEITZ, C. 1979. “Bounded Morality: Justice and the State in World Politics”, *International Organization*, 33 (3): 405-424. On the lack of transparency in public-private partnerships in Scandinavia and Australia with empirical data, read Greve, Carsten and Graeme Hodge. 2011. “Transparency in Public-Private Partnerships: Some Lessons from Scandinavia and Australia”, paper presented at the 1st Global Conference on Transparency Research Rutgers University, 19-20 May, Newark.

8 MICK MOORE. 1989. “The Fruits and Fallacies of Neoliberalism: the Case of Irrigation Policy”. *World Development*, 17 (11): 1733-1750.

external agents around the public sphere tend to coopt or influence State's behaviour, public administrations, law courts and legislatures much before the formal relations with public institutions.⁹ For all these possible scenarios, transparency may work as a tool to put forward a political agenda in which synergies between State and society give room to developmental issues with the help of private investments assuming all actors are suspect when they touch money.¹⁰ It is reasonable to think corruption is beyond public sector, but it is somewhat of a mistake to assume corruption in private companies is a side-effect behaviour caused by State agents. In the following section, we will show the public-private interests in conflict and how public institutions respond differently to misconduct either concentrating the task of combating corruption in State's hands or sharing the burden with the public eye as an instrument of perception to protect the general interest.

1 PRIVATISING THE CAPITAL: TRANSPARENCY AS A LEGAL EVIDENCE FOR STATE INSTITUTIONS

The present section analyses four cases we classify as forms of corruption in which the public power is captured by private enterprises. Spain and Brazil are close to the category that State policies for transparency must be public, protect private money and not share the burden of probity in public affairs since governments are expected to have the absolute control of public contracts. It is a class of transparency that connects governance to public opinion constantly moving from meta to normative ethics, i.e., between a moral judgment moulding the public perception and the strict interpretation of legal codes.¹¹ In that circumstance, the

9 ALEXY, R. 2016. "Justicia como Corrección", in *La Institucionalización de la Justicia*. Granada Comares.

10 "In May 1992, a Grameen Bank-type rotating credit association was begun in the environs of Ho Chi Minh City. Participation was limited to poor households, and 95 percent of the participants were women. They used the loans for working capital in petty trading ventures (e.g., selling vegetables) or to buy equipment for craft production (e.g., sewing machines). The loans had a substantial impact on the women's income earning capacity, and the reported repayment rate on the loans was an astonishing 100 percent". See Peter Evans. 1996. "Government Action, Social Capital, and Development: Reviewing the Evidence on Synergy", *World Development*, 24 (6): 1119-1132.

11 However, there seems to be a global crisis in using meta-ethics and normative ethics as two parameters to combat or avoid corruption since judicial actions trespassing that frontier may constitute practices of the "State of exception" to refer to Carl Schmitt's theology and its critical review on the theme by Giorgio Agamben. So, the more justices use international analogies to harmonise the dimension of applied ethics, the more cases come to light promoting confidence in the realm of public-private businesses through a "judicial comparative transparency". See the debate on law for jurists and morality in community proposed by Ronald Dworkin in the book *Justice for Hedgehogs*, chapter 19 on Law. Up to a certain extent, if public morality can adjust law for the author, we suggest the use of a transnational

role of applied ethics takes into consideration the two previous aspects of ethics, but going further using international analogies for specific cases to standardise effective protocols of governance. Iceland and United States have represented the three-dimensions of global ethics in two cases after the 2008 financial crisis, i.e., the public *res* depends on private capital and regulation does not exempt private corrupters in paying literally the price for their illicit actions. In that case, we derive energies from public and private conflicts to distributive justice in John Rawls' words meaning capital and natural resources should be accessed equally with the support of democratic States limiting the excesses caused by private greed.¹²

SPAIN

Among a myriad of private contracts for urban infrastructure signed between public administrations and companies in the contemporaneous Spain, seven out of ten euros end up in the hands of the top ten biggest companies of construction in the country.¹³ The groups of ACS, ACCIONA Servicios Urbanos, FCC, FERROVIAL and SACYR were the biggest companies contracted by public administrations for urban services, city projects and means of transportation. The Fundación Civio has announced how opaque is the control of these private agents once the Uniones Temporales de Empresas play non-transparent roles with reference to the general interest.¹⁴ Civil society must have power and mechanisms as a counter-power to impede abuses of elected governments while running

morality on transparency and governance from international law freely expressed by the States in agreements, documents and governance to adequate global private sectors in areas such as financial market, property and trade.

- 12 RAWLS, John. 1999. "Distributive Shares", in *A Theory of Justice*. Cambridge: Harvard University Press. Robert Keohane and other authors have approximate assumptions on regimes, international law and private interests in global order for regimes. See Goldstein, Judith, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter. 2000. "Introduction: Legalization and World Politics", *International Organization*, 54 (3): 385–89.
- 13 See the *Spanish Official Gazette*, «BOE» núm. 89, de 13 de abril de 2010, páginas 38932 a 38932 (1 pág.), about contracts, prices and public money in "Acuerdo de la Dirección General de la Sociedad Estatal de Infraestructuras del Transporte Terrestre, Sociedad Anónima (SEITT) por la que se hace pública información relativa a diversos contratos de obra licitados por la Sociedad; «BOE» núm. 44, de 20 de febrero de 2003, páginas 1349 a 1350 (2 págs), Resolución del Ayuntamiento de Las Rozas de Madrid por la que se hace público las adjudicaciones efectuadas en el año 2001; «BOE» núm. 267, de 4 de noviembre de 2016, páginas 67621 a 67622 (2 págs), Anuncio del Ayuntamiento de Madrid por el que se hace pública la formalización del contrato de gestión del servicio público, modalidad concesión, de contenerización, recogida y transporte de residuos en la ciudad de Madrid.
- 14 Fundación Civio [on-line]. ¿Quién cobra la obra? [Accessed on 17 January 2016]. Available at: <http://www.civio.es/dev/wp-content/uploads/2016/11/NP_QuienCobraLaobra_20161116.pdf>.

the general interest as a system of favouritism interchanges.¹⁵ Executive powers must also be attentive to the relation budget-public debt in real proportions in order to avoid insolvency since they do not have to spend more than it is collected from taxes. However, State contracts with private companies are not only the single source of irregularities, opacity and corruption.

The speculative rating firms have also the power to construct the images of cities based on investments which are measured mainly by the political facet governments assume. The case of Barcelona shows us the effect of a transparent administration and the positive externalities for private sectors as we can see in Moody's Report: "The Baa2 rating reflects the city's good budgetary management and solid financial fundamentals in recent years, which have ensured a high self-financing capacity and, as a result, a limited debt burden. This is mainly reflected in high gross operating balances (20% of operating revenue on average for 2010-14) and moderate debt levels (41% of operating revenue in 2014). The rating also reflects Barcelona's good liquidity position, with abundant cash on hand and limited debt obligations".¹⁶ Is the capacity of private companies interested in positive marginal returns a sort of corruption? In Warsaw, Poland, public debt clock is a very eloquent sign in the public eye for a topic that the citizenship understood as a very useful tool for transparency impeding the monopoly of the information in the hands of the rating firms.¹⁷ It also means the public eye considers or at least suspects of both State and private initiatives.

BRAZIL

In Brazil, Odebrecht, OAS, Andrade Gutierrez and UTC are of the constructors involved in scandals of corruption with politicians financing their campaigns to pass federal acts in the National Congress. The companies have also implemented in their departments special sectors to adjust their accountabilities to systems of bribery. Their corruptive actions affect city interests and international investments forging also an oligopolistic construction market with overvalued public contracts. The case of Petrobras is relevant for the understanding of how the public

15 ELIZABETH BURLESON. 2010. "Non-State Actor Access and Influence in International Legal and Policy Negotiations", Proceedings of the Annual Meeting (American Society of International Law), 104 (1): 325-328.

16 See also the complete report. Available at: <https://www.moody.com/research/Moodys-changes-outlook-on-ratings-of-14-Spanish-sub-sovereigns--PR_343979>.

17 Read W. MIGLIARI. 2016. "São Paulo, Warsaw and Landlocked Areas: from Functionality to Proto-right to the City", *Studia Iuridica*, 63 (1): 175-194.

opinion turned on State, but alleviating the private sector was involved in the scandal. Because of that blurring limit of what is corruption, that is to say, only the State or public administrations are demonized, we miss the point observing critically the level of involvement of the private capital in the public life. As the City of Barcelona, for instance, the degree of investment by international financial agencies such as the Fitch Ratings given to the São Paulo Municipality dictates the areas the public money will be invested. So, the core of general interest operates regarding what is convenient for the private good. The city was awarded with AA+ in national level and BBB- in global scale for what is commonly said “good payer”.¹⁸ What does that mean? Low credit risk and high financial responsibility in the public fiscal accounts for future investors. Is that relation of influential investors a sort of corruption relying on a perverse public debt system? The Brazilian *modus operandi* for corruption goes beyond the private sector interfering directly in the economy, but it has also to do with the public debt system and oligopoly of the means of communication.¹⁹ The cases of corruption during the 2014 World Cup were also emblematic and in the perception of the Brazilian citizenship, but they did not generate financial consequences for the Swiss institution.²⁰

Three hot topics about São Paulo State must be commented. The first one is about a case of corruption related to catering contracts for State schools. Some civil servants and politicians produced the appearance of open-free competition to hire food suppliers, but in fact members of the São Paulo State government took part of a fraud in which they accepted bribes from the Cooperative Orgânica Familiar (COAF) to benefit the private company. The other one refers to a giant infrastructure project called Rodoanel. The investment was defended as a way to promote the integration of massive highways from different parts of Brazil creating a ring around the centre of São Paulo Municipality to alleviate the traffic jam. Both scandals were not object of preventive actions like public hearings, participative audits, open-governments practices to check the authenticity in the competition, accessible data on internet about the contract and an efficient criminal justice seizing the private patrimony in case of evident fraud as a manner to compensate the general interest. The third case is about the low-quality services to keep the penitentiary system for

18 Available at: <<http://www.capital.sp.gov.br/portal/noticia/7250#ad-image-0>>.

19 SOUZA, Jessé. 2015. *A Tólice da Inteligência Brasileira*. São Paulo: Leya. Read also Souza, Jessé. 2016. *A Radiografia do Golpe*. São Paulo: Casa da Palavra-Ley.

20 Francisco Gabriel Ruiz Sosa. 2014. “The Paradox of the Order and Progress in Brazil: the Demonstrations before, during and after the 2014 World Cup”, *Desbordes Revista de Investigaciones de la Escuela de Ciencias Sociales, Artes y Humanidades*, 5 (1): 91-96.

adolescents who are seriously involved in torts, drug dealing and other crimes. The project Fundação Casa consumes a mine of gold every year and its administration by the private sector very opaque.²¹

ICELAND

Based upon the international magnitude of bank finances affecting economic, social and cultural rights, the Supreme Court of Iceland convicted bankers for market manipulation and fraud. In October 2016, the Icelandic Supreme Court decided in the *Kaupthing* case that nine bank officials were involved in criminal actions during the Icelandic banking crisis of 2008. After investigation, it was proved the Kaupthing Bank used to buy its own stock with the intention of keeping the market value shares artificially high. The court's diligences also found in the Case No. 498/2015, October 2016, that the Kaupthing officials, ranging from a board member, the CEO of the Luxembourg branch, and a member of the loan committee to traders, were operating internationally in risky financial markets manipulating capital data. Eight of them were sent to prison. Although the Court did not decide through an exhaustive interpretation of the law, the practices were seen as abusive even under the argument of the defendant the money invested in shares had come formally from the private savings of the accused.

Following the previous Icelandic leading case, Kaupthing officials let Sheikh Mohammed Bin Khalifa Bin Hamad Al-Thani of Qatar buy shares in the Kaupthing Bank using the capital that he had loaned from the institution. A practice of leverage morally condemned, but not illegal at the time of the transactions. However, Mr. Björk Thorarinsdottir, who was intimately linked to the loan committee, ended up in prison for economic abuse of power. Mr. Magnus Gudmundsson, who was the former CEO of the bank, had an additional penalty beyond the one he had already been sentenced for his previous links with Al-Thani. Mr. Hreidar Mar Sigurdsson, who had been convicted and sentenced to five and a half years in prison for contributing to Al-Thani's financial crimes, was convicted to more half year in prison. His total conviction summed up six years in prison. Mr. Gudmundsson had already been condemned for four and a

21 The legal diploma 911/2002 Complementary Act of the State of São Paulo concentrates the power of investigation in cases of irregularity. The 34/2012 São Paulo State Constitutional Amendment reinforces that control. Available at: <<https://www4.tce.sp.gov.br/6524-conjurcom-oab-sp-diz-ser-urgente-criacao-cpi-para-investigar-escandalo-merenda>>, <http://portal3.tcu.gov.br/portal/page/portal/TCU/imprensa/noticias/repositorio_noticias/Acordo%20com%20Minist%C3%A9rio%20P%C3%ABlico%20para%20obras%20no%20Ordoanel%20de%20S and <http://www.conjur.com.br/2015-jan-12/perspectiva-caixa-preta-fundacao-casa>>.

half years in prison as a result of his participation in the Al-Thani case. The Kaupthing officials were sentenced for fraud and crimes attempting to fair market by the Icelandic Supreme Court according to the General Penal Code. The Icelandic Securities Act, No. 19, passed in 1940, *which was amended in 2013*, and the Act on Securities Transactions, No. 18/2007, Iceland Ministry of Industries.²²

UNITED STATES

Washington Mutual, Inc. was a savings bank holding firm, but also the former owners of Washington Mutual Bank. It was the largest savings and loan association until its collapse in 2008 mortgage global crisis. The US Office of Thrift Supervision (OTS) acquired the Washington Mutual Bank from the Washington Mutual, Inc. reallocating it in the Federal Deposit Insurance Corporation (FDIC). After that, caused by a withdrawal around 9% of all deposits in a time a little longer than a week, the FDIC started selling the banking subsidiaries discounting the unsecured debt and equity claims to JPMorgan Chase. The operation was called Project West to regain the confidence of the investors. The most interesting part of that case has to do with the way the U.S. federal authorities dealt with the irresponsibility of the mortgage system interpreting the global crisis as a corrupted system in the sense intermediate speculative investors broke the rule of creating infinite net of products such as derivatives, unpayable credits secured by real properties and high interest rates. The cases of Kaupthing and Washington Mutual, Inc. are illustrative of how the capital is privatized when private owners menace the public or general interest with property speculative markets. It is important to observe transparency is used not only against public powers, but as a legal evidence of corruption against bankers. The Judgment 111/1983, *Rumasa Bank v. Spain*, was a very interesting example close to what happened in Iceland and United States. The provision 14 of the 1954 Expropriation Act paved the path for a fair trial since the plaintiffs of the *recurso de amparo* said the Spanish Government was respecting the rule of law.²³ It is important to notice

22 Available at: <<http://www.loc.gov/law/foreign-news/article/iceland-supreme-court-convicts-bankers-in-market-manipulation-and-fraud-case/>>. The recent biggest scandals of corruption in Spanish and Brazilian societies, respectively, Barcena's Case and Minha Casa, Minha Vida Programme, are intimately linked to housing issues, construction of State infrastructure and private-public relationships in property issues. See the following articles to check the social impact of these cases. Available at: <<http://bit.ly/1n8GzQy> and <http://glo.bo/26nS9yj>>.

23 Ley de Expropiación Forzosa de 1954.

the parliamentary dimension is prominent even in technical issues.²⁴ The Spanish Constitutional Court affirmed any kind of control on *potestas* should be oriented by the principles of reasonableness, connecting factor and transparency.²⁵ The governmental decision in expropriating the Rumasa Bank was taken inside technical limits as the Spanish Bank Bulletin corroborated.

2 GOVERNANCE AND LOW COMPLIANCE IN PRIVATE SECTORS FOR TRANSPARENCY

BARCELONA

The legal and institutional mechanisms of transparency designed for the City of Barcelona is intriguing. The locals may dispose of three documents in which transparency leads to participative administration. The first one is the Municipal Chart of Barcelona. In its Preamble, it calls the attention to an open-government defending citizenry participation as a principle. The second document is known *Normes Reguladores de Participació Ciutadana de 2002*. The Article 4 mentions the access of information as a tool for the municipal management while the Article 5 makes explicit the right to participation. The Article 7 affirms the right to the citizenry participation and the 8 supports citizens' association. The Article 26 is about the need for the public hearings and the Articles 22 to 25 establish all the rules for the assemblies.²⁶ Conflicts will count on community cooperation in order to be solved relying on the Article 31. The other text named *Normes Reguladores del Funcionament dels Districtes*

24 The Royal Decree 2/1983 instrument was converted into Decree Act 7/1983 with the support of the Spanish General Courts: “[...] en un procedimiento legislativo que tiene su origen en un Decreto Ley se culmina con una Ley que sustituye – con los efectos retroactivos inherentes a su objeto – al Decreto-Ley”. Judgment 111/1983. As follows: “El Gobierno, ciertamente, ostenta el poder de actuación en el espacio que es inherente a la acción política; se trata de actuaciones jurídicamente discrecionales, dentro de los límites constitucionales, mediante unos conceptos que si bien no son inmunes al control jurisdiccional, rechazan – por la propia función que compete al Tribunal – toda injerencia en la decisión política, que correspondiendo a la elección y responsabilidad del Gobierno, tiene el control, también desde la dimensión política, además de los otros contenidos plenos del control, del Congreso”. Op. cit.

25 The Judgment 111/1983 also mentions: “Es claro que el ejercicio de esta potestad de control implica que dicha definición sea explícita y razonada y que exista una conexión de sentido entre la situación definida y las medidas que en el Decreto-Ley se adoptan”; or even “Según el Banco de España la situación del Grupo comprendido en la medida ordenada por el Decreto-Ley en cuestión reclamaba una acción pública inmediata; el informe analiza las medidas o alternativas de acción posible y entre ellas, con una insinuada preferencia, la de toma de control del Grupo como conjunto ante el riesgo que se anuda a las otras alternativas o ante su inoperatividad. Dentro de este análisis, el Gobierno optó por la alternativa del control global a través de una expropiación, ordenada por el Decreto-Ley impugnado”.

26 Available at: <http://governobert.bcn.cat/sites/default/files/norm_reg_part.pdf>.

de 2009 refers to the functioning of the Barcelona districts. The Article 1 defines municipal districts shall pursue the principle of participative citizenship as a tool to correct unbalanced policies. This provision is a very important one to correct the excess of investments in some urban zones in detriment of others. The Article 4 highlights the importance of competences for participative citizenship creating strong relations between public administrations and citizens, transparency and access to information, the collective groups or individuals subject to effects of the decision-making process. The Article 13.8 insists on close relations evolving the president of the District Board and citizenship. The Article 17.6 and 25.1, letter “n”, defend open dialogue with all actors. The Article 10.6, letter “f”, affirms the District Board shall emit a perceptive bulletin on any petition from individual or collective demands. The Article 32.1 predicts the creation of commissions for consultancy with the help of citizenship and all Government Commissions must be open to citizens as it says the Article 33.5. The Article 34.1 tells us that ordinary work of the District Board and its intentions for plans of actions shall not affect the interests of the citizenship. All sessions are open to people as seen in the Article 35.2 and all citizens are allowed to intervene in the meetings based upon the Article 38. According to the Article 39.3, public hearings are part of a participative citizenship. The Article 40 says Citizenry District Board is the maximum representative organism for the scope of the document in which entities and associations are also included.

SPAIN AND CATALONIA

The 1978 Spanish Constitution says in its Article 9.2 public powers shall remove all obstacles that impede the exercise of citizenship and its participation in social, political and economic issues. The Provision 105 affirms a Spanish Act will regulate public hearings and the access to documents except those ones considered under the scrutiny of State security. The 19/2013 Spanish Act on Transparency and Good Government (SATGG) affirms the access to information through technologies in its Article 10 in different matters. Control of public administrations’ practices, statistics, public budget, juridical information and other issues evolving institutional organisation of domestic institutions are some of the topics under the umbrella of a concept called active publicity.²⁷ Apart some exceptions based upon the principle of national security and military defense provided for the Article 14, we find constitutional mechanisms

²⁷ The Article 5 of the Act sets the stage for the making of publicity practices. It opens the Chapter offering a corollary of principles that converge expectations of good administration on international grounds.

The Articles 6 to 9 bring details to a myriad of possibilities in making less opaque administrative life.

in the Article 12 such as citizenship participation and “open-archive” with strategic legal policies: “Todas las personas tienen derecho a acceder a la información pública, en los términos previstos en el artículo 105.b) de la Constitución Española, desarrollados por esta Ley”.

One of the challenges yet to be overcome by good government’s idea, different from the construct of good administration, relies on the concentration of power. As we see in the Article 36.2, the 19/2013 SATGG, the Commission for Transparency and Good Government predicts just one representative called “people’s defender” or ombudsman. Although the name, that mandate is constituted by election and creates competences to represent citizenship not power of investigation in public-private contracts.²⁸ According to the Article 39.1, all the legal apparatus that may complement and guide the 19/2013 SATGG does not include transversal participation of civil society with interrogatory powers.²⁹ So, expedients of any supposed malfunction shall be diligently conducted by relative secrecy meeting other principles such as the presumption of innocence, *in dubio pro reo* and non-arbitrariness. It is a top-down system in which lack of confidence is not part of accountability or responsiveness exercise in public affairs, but a moral shame. The Article 137.1 of the 30/1992 Act on the Juridical Regime for Public Administrations, which is mentioned by the Article 39.1 of the 19/2013 SATGG, defends the procedures related to sanctions will respect the presumption of no administrative responsibility till it is proved the opposite. The historical and institutional ambiguities of what we put in perspective as a legal good governance is a trace of a very traditional hierarchy in law.³⁰

28 The president of the Commission is designated by Real Decree, i.e., the executive power in office. One senator and one parliamentary representative meet political reasons that are not necessarily the interests of a general citizenship over a specific political agenda of one party.

29 The article received a complex set of enacted legislation against corruption or “bad” government. See the following letters from the Article 39.1, SATGG: “a) Las disposiciones de la Ley 47/2003, de 26 de noviembre, General Presupuestaria, que le sean de aplicación. Anualmente elaborará un anteproyecto de presupuesto con la estructura que establezca el Ministerio de Hacienda y Administraciones Públicas para su elevación al Gobierno y su posterior integración en los Presupuestos Generales del Estado. b) El Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el Texto Refundido de la Ley de Contratos del Sector Público. c) La Ley 33/2003, de 3 de noviembre, del Patrimonio de las Administraciones Públicas, y, en lo no previsto en ella, por el Derecho privado en sus adquisiciones patrimoniales. d) La Ley 7/2007, de 12 de abril, del Estatuto Básico del Empleado Público, y las demás normas aplicables al personal funcionario de la Administración General del Estado, en materia de medios personales. e) La Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, y por la normativa que le sea de aplicación, en lo no dispuesto por esta Ley, cuando desarrolle sus funciones públicas”.

30 Henríquez Salido, y María do Carmo. 2014. “La Fórmula in Dubio en la Jurisprudencia Actual”, *Revista de Llengua i Dret*, 62 (1): 5-22

SÃO PAULO

The 16.050/2014 São Paulo Urban Planning Act is a refined and advanced norm devoted to the principles we pointed out before as a multilevel transparent tool. It is a legal apparatus for a broad range of matters such as environment, green protected areas, common space, education, municipal health system, sports, urban land of cultural interest and landscape. The Article 290 of the norm defends the refinement of public mechanisms and comptrollers about the use of natural resources. That provision is inserted in the urban planning act as a manner to establish environment, green and commons areas as a matter of public interest. Citizenship, participation and transparency are crucial in that sense. The Article 390 says strategic actions and democratic management are needed for social policies in municipal jurisdiction. The Part I affirms the idea of fortifying participative administration and civil society control on social policies in the field of social assistance. Municipal boards divided into sectors such as protective ones for the defense of children and adolescents. Elderly people and organisations for a better quality of life are some of the other boards with participative authorities. Part II makes explicit transparency and collective participation as two mechanisms for managing the monetary funds related to social assistance, elderly people policies, child and adolescent care. The Article 317 uses the same formula about control, participation and transparency in urban land of cultural interest and landscape. The Part II of that provision says the board in these matters shall be created on the principle of equity with representative of public power and civil society to follow, assess and pass plans, policies and studies related to the topics of the *caput*. The § 1 defends also public audits with social participation from representative groups of society.

So, why are these practices prone to good administration than good governance? Mainly for the fact they invert the actor of control in public policies, the power of police and access to information. Citizenship, civil society and collectives are the actors able to interact as any other public agent or official with public matters. The question is why do we need public servers then? The public employees are mediators of a complex task to be conducted. Available information, the executive responsibility in making transparent data beforehand and full access of information for individuals conform the constructs of a democratic public administration. The Article 322 of the 16.050/2014 São Paulo Urban Planning Act corroborates multilevel transparency in municipal system for urban issues.³¹ Much before the approval of the norm in question, the municipality incentivised civil

31 Civil society participation was formalised by the Planning Act on the 30 of June 2014 when the Municipal Parliament passed the norm. It started being valid on the 31 of July 2014. However, there were meetings happening before August.

society to be part of public hearings.³² The following chart shows that during the year of 2014 there were 12 events between June-July. Local openness in the public administration was important also to influence the decision-making process in the Municipal Parliament.³³ The open topics of these formal public hearings were many. Sports, housing, health, infrastructure, social assistance and urban mobility.³⁴

BRAZIL AND SÃO PAULO

The 1988 Brazilian Constitution mentions public administrations shall pursue the principle of publicity as we see in its Article 37, *caput*. That command was reaffirmed by the Constitutional Amendment N° 199/1999. The Federal Act 8.666/1993, Article 3, says the same principle must be taken into consideration in case all entities of the federation make contracts. Isonomy, sustainability, impersonal interests and legal certainty are also legal principles defended by the document. The logic of best price for the highest quality in public contracts have some exceptions that do not make easier clear calculations for the common citizen.³⁵ Public administrations may buy hardware and services connected to information prioritising national sellers. In that sense, there is an extensive conflict of interest between society and public powers misbalancing the control of the criteria since the technical pieces of information tend to be infinite. The notion of accountability and transparency in public contracts are evoked to avoid any deviation of common interest. It is necessary to analyse the mechanisms offered by the Brazilian legal system to check whether there is or not legal application of multilevel transparent mechanisms against corruption.

In Brazil, accountability tends to put in practice more the power of police in higher institutions than the notion of a multilevel transparency in

32 We understand public hearings as meetings, election for representatives of any kind and debates of any topic not necessarily a decision-making assembly.

33 Along 2014, there were 1 meeting in March, 1 in April, 4 in June, 1 in July, 5 other meetings in August, 1 more in October and 1 meeting in December. In 2015, 1 in February and the last one in April. Available at: <http://planejasampa.prefeitura.sp.gov.br/biblioteca/atas/>.

34 Available at: <http://planejasampa.prefeitura.sp.gov.br/biblioteca/atas/>.

35 The Federal Act 8.248/1991 converts the notion of best offer relying on the aspect of coherence into an opaque practice. Public administrations must contract those products and services considered the best one, but preferably items suitable to the Brazilian legislation and serving national interests. Under that logic, it is hard for citizenship to have any idea if there is in fact an effective practice to meet the expectations of a good administration in all federative levels.

which citizenship participation should be the main important value.³⁶ That top-down relation is tense once the Federal Government is constitutionally able to intervene in States' and Municipal's administrations. The Article 34 of the 1988 Federal Constitution, VII, letter "d", obliges lower federal entities in explaining how monetary funds are used. Up to a certain extent, it may seem an effective measure pro-transparency, however, the true effect is a massive concentration of numbers and data in few hands. So, opacity gains exponentially the terrain of secrecy. The Fiscal Responsibility Act N° 101/2000, Articles 1 and 48, did not include citizenship for the control of public administrative actions and transparency. After Luiz Ignacio Lula da Silva's election for presidency that non-participative agenda changed radically with the Capiberibe Act N° 131/2009 in which forms of popular participation, open-government principles and public hearings were included in the new text. Any citizen, political party, association or union may evoke the principle of transparency to demand public accountability using the webpage "Portal da Transparência".³⁷ Reading the Provisions 48-A, 73-A and 73-B of the Capiberibe Act N° 131/2009 it is notable positive effects that promoted low-cost checks and balances, accessible means of communication for public opinion follow-ups and individual controllers of the Brazilian public administrations. That legal apparatus puts forward a more transversal system of law in which the right to access of information and practices of good administration are present.

However, all these gains in terms of citizenship participation and more collective forms of public administrative control are at risk. After Dilma Rousseff's process of impeachment, a series of attacks proceeded against open-government principles. The interim government of Michel Temer, who was in the position of Vice-President, assumed the control of the Brazilian Federation with the impediment of Dilma Rousseff's mandate, extinguishing the body that controlled the abuses against the Brazilian State executive power. Public hearings, audits and policy accountabilities under the responsibility of the Comptroller General's Office ceased with the signature of the Provisional Measure 726/2016, Article 1, III. The same text created in its Article 3, I, the Ministry of

36 The principle of transparency is only referred explicitly in its Article 216-A, IX, but curiously in matters evolving culture. The Constitutional Amendment N° 71, 2012, reinforces the vote of the constituency during the 1980s. Transparency and the obligation of sharing information are the two tasks expected to be conducted by the public federal powers in the National System of Culture. Rouanet 8.313 Act, Article 4, § 1, National Programme for Culture Support, says the Ministry of Culture shall control the funds for artistic projects, but there are not tools of citizenship participation nor transparent agendas imposed for the highest board in the matter.

37 Available at: <<http://www.transparencia.sp.gov.br/>>.

Transparency, Monitoring and Control. Many of the new ministers were formally accused or involved in cases of corruption. The Transparency International Organisation showed its preoccupation with these events and claimed Brazil had to face a deep political reform to get back civil society's trust.³⁸ During the first two weeks of the new government, a ministry was discovered in a secret audio conspiring against the anti-corruption operation called "Car Wash".³⁹ His voice was recorded by a politician who is under the accusation of trying to impede justice investigating the names evolved in Petrobras scandal.

The idea of good administration for the Brazilian public administrations is not ripe yet, although it is notable the Federal Act for Transparency 12.527/2011. The Article 01, parts I and II, says all federative competences, public and partially public, which we may understand as public-private companies or contracts, are subject to the act. Public funds invested in projects run by private actors are also object of scrutiny under the same legal text as it is found in the Article 2. The Article 3, parts I and II, mentions the principle of publicity as general rule and secrecy as exception for the access of information. That rationale is interpreted as a part of fundamental rights corollary regardless of any petition or motion. Public enterprises are supposed to be born under transparent practices. The Article 3, part IV, refers to the social control of the public administration. In few words, the Federal Act for Transparency is an attempt of multilevel legal tools and social custom for open-government and anti-opaque actions. Yet some difficulties such as different stages of what means transparency for each entity of the federation, it is mandatory the access to information through clear and objective language according to the Article 5: "É dever do Estado garantir o direito de acesso à informação, que será franqueada, mediante procedimentos objetivos e ágeis, de forma transparente, clara e em linguagem de fácil compreensão".⁴⁰ The federal text on transparency talks about the right to information and suppose the acts of publicity do not need to be motivated as we see in the Articles 7 and 8. The § 2 of the Article 8 obliges all actors of the federation use internet to make available all numbers, data and contracts. Once more, all public administrative competences are expected to be committed to an agenda based upon horizontal control of information. It means all opaque

38 Available at: <http://www.transparency.org/news/feature/brazils_corruption_clean_up>.

39 The ex-Minister Fabiano Silveira criticised the Operação Lava-Jato and resigned after a massive demand for more coherence by the Brazilian society in the supposed new government against corruption.

40 The Complementary Act N° 846/1998 regulates transparency in specific areas. Health, culture, sports, observation and rights of the physically and mentally disabled, children and adolescent's rights, environmental issues and financial investments, competition and development.

forms of administration managing data, numbers and contracts with limited access create a rigid hierarchy for transparent practices. Excess of formalities to motivate public powers and lists of those actors who are or not permitted to pose questions on public issues make more difficult the collective participation in critical topics in which money, power and responsibilities are present.⁴¹ The Article 10, caput and § 1, demands the identification of the citizen or the company in those administrative petitions generated by non-available information. If the public competence did not meet the principle of publicity in any issue, the interested part must fill in forms with personal information. This corroborates the opposite of an invisible individual for public administration and the principle of isonomy. Information related to fundamental rights cannot be denied as the Article 21 defends. The responsibilities predicted in the Article 32 include licit conduct of the public employee and good faith in all procedures described by the Federal Act for Transparency. If any fault or fraud is detected, the official or public agent will face administrative process as it is expressed in the Article 33. Only military servers are subject to penal sanctions, other offenders suffer from warnings, fines, anti-ethical declarations and interdiction.⁴²

3 TRANSPARENCY THROUGH PARTICIPATION AS A TRANSNATIONAL PRINCIPLE: INTERNATIONAL FRAMEWORK AND THE BEGINNING OF PRIVATE RESPONSIBILITY

COUNCIL OF EUROPE

Transparency through participative processes are mostly present in the literature on local and good governance. Nonetheless, when we analyse supranational documents that had been formulated to guide public administrations with harmonised practices, it is the principle of good administration that has translated effectively such challenges closer to civil society. The Recommendation CM/Rec(2007)7 on good administration, which was elaborated by the Committee of Ministers, Council of Europe, suggests that the member States through the Articles 8 and 10, respectively, internalize rules for the participation of privates in public decisions with more transparent practices in public administrations.⁴³ The role of the citizenship

⁴¹ In cases related to federal public administration, the Article 20 of the Federal Act for Transparency says the principle of subsidiarity shall be used relying on the 9.784/1999 Act.

⁴² The Article 32, § 1, Part I.

⁴³ SOLE, Juli Ponce. 2011. "EU Law, Global Law and the Right to Good administration", in Chiti, Edoardo and Bernardo Giorgio Matarella (eds.), *Global Administrative Law and EU Administrative Law. Relationships, Legal Issues and Comparisons*. Berlin: Springer.

is indispensable in some realities since the culture of the public is generally concentrated in few hands, top-down experiments without contestation and the discretionary power sometimes not used for the general interest.

EUROPEAN UNION

The *White Paper for European Governance* (2001), Section II, is another example of good administration very similar to what is currently defined as good governance. The document calls the attention to openness, participation, accountability, effectiveness and coherence in public themes.⁴⁴ Along the text, we also check the presence of public hearings, the notion of civil society dialogue with elected authorities and consultation practices. The minimum agenda of that soft law document is supposed to be all over national territories of the member States in European Union. Nevertheless, a political stage that probably spills over European Union paves the path to other countries as well. One of first reason for that relies on the notion of avoiding asymmetry of information related to public administrations and governments. A second one is based on worldwide civil society participation, State commitment for democratic principles and public hearings involving mainly the working class.⁴⁵ Organizations such as *Technology for Transparency* and *Transparency International* were founded having as some of their cornerstones the creation of an international community to combat opaqueness regarding the general interest.

Other important transnational document is the *European Charter of Fundamental Rights* (2007) as a legal apparatus as any other regional treaty. The Article 41 mentions in concrete the right to good administration and contains other citizens' rights. The same Article, point 1, averts procedures and affairs must be handled in reasonable time. The letters "a", "b" and "c" of Article 41 defend that every individual, respectively, has the right to be heard, to have access to personal files and to demand the reasons on which procedures related to the evolved in public expedients are based upon. The Article 42 reinforces the right of access to documents from public administrations and the provision 44 refers to the right of petition to the European Parliament. The *Treaty*

44 Public participation is explicitly defined in the White Paper for European Governance as well: "Such consultation helps the Commission and the other Institutions to arbitrate between competing claims and priorities and assists in developing a longer term policy perspective. Participation is not about institutionalising protest. It is about more effective policy shaping based on early consultation and past experience". Available at: <http://europa.eu/rapid/press-release_DOC-01-10_en.htm>.

45 Cheol-Sung Lee. 2007. "Labor Unions and Good Governance: a Cross-National, Comparative Analysis", *American Sociological Review*, 72 (4): 585-609.

on the *Functioning of the European Union* (2007), Article 6, letter “g”, mentions administrative cooperation. The idea of a cooperative public administration seems to point out the principle of reciprocity, the understanding of archives should be relatively open if they are related to public affairs in the zone and up to a certain extent it commands practices of multilevel transparency. There is also an international goal to support healthy administrative measures to guarantee national or local supervision of democratic legal systems. The Article 15 affirms that “In order to promote good governance and ensure the participation of civil society, the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible”. The Provision 63, letter “b”, says: “to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security”.⁴⁶ The Article 74 highlights the need for administrative cooperation in freedom, security and justice matters among member States of the European Union. Once more, citizenship is in the core of what is defined by us as a multilevel transparent practice and necessarily linked to less opaque public expedients since policies shall be oriented by the defense of fundamental rights. In January 2017, the European Commission opened a public consultation term for all those citizens, civil society associations and public administrations among other groups of interests through the European One Health Action Plan against Antimicrobial Resistance on public health and food safety as an example of synergies between EU institutions, governments in all levels and individuals.⁴⁷

MERCOSUR

A legal transnational diploma is also seen out of the European regional context.⁴⁸ The task of harmonising legislation is predicted by the *Tratado de Asunción* (1991) in its Article 1. The *Protocol of Ouro Preto* (1994) in its Articles 28, 29 and 30 advanced in questions of representation for civil demands. Yet a non-binding procedure, the voice of privates could be directed to the organism of MERCOSUR. Democratic principles were

46 Available at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>>.

47 Available at: <https://ec.europa.eu/health/amr/consultations/consultation_20170123_amr-new-action-plan_en>

48 Article 4, unique paragraph, 1988 Brazilian Federal Constitution, affirms the Brazilian society assumes Latin-American integration as a value and corroborates the idea of solid bonds among South-Americans.

reassured by the *Protocol of Ushuaia* (1998) in its Article 1 and the following provisions.⁴⁹ But the civil participation and practices close to transparent governments started being institutionalised by the MERCOSUR's actions after the *Protocolo Constitutivo del Parlamento de MERCOSUR* (2005). The Article 2.4 affirms the right to civil participation and representation in the organism. In the point 5 of the same provision, values related to citizenship and collective consciousness' construction are mentioned. The Article 3.2 says the principle of transparency is important to right of access to information and the decision-making process. Trust and citizenry participation are stimulated by transparent practices among member States. According to the Article 4.9, the MERCOSUR Parliament is in charge of organising public meetings, but that competence implies also the obligation of assembling civil society for the regional discussions. With the intention of avoiding conflicts among public competences, the Article 4.14 affirms there must be the harmonisation of national and regional legal design for the pursuance of parliamentary tasks. That aspect is similar to the multilevel transparent practice that we pointed out previously as a trace of good administration. The MERCOSUR's agenda seems to be aware of the tensions created by hierarchical and top-down institutional models of governance. The Parliament's activities tend to be more open and democratic, but mainly central as a political basis for the administrative task. It does have to do with the political debate and citizenship participation the elements for a sophisticated legal design in which the values agreed in citizenry forums in different levels will define relatively low pressure in domestic administrations. The Article 19 avers the qualified and ample participative model for parliamentary acts since that political body is able to enact studies on specific topics, projects and anti-projects for norms, declarations and recommendations among others. Re-stating the provision, if the political exercise of the MERCOSUR Parliament does not comply with civil society, the organism de-characterises its own existence. So, private sector and capital are objects of transparent practices.

49 Available at: <<http://www.mercosur.int/innovaportal/v/4054/2/innova.front/textos-fundacionales>>. Argentina, Paraguay and Uruguay are part of the origins in the regional agreement in question. Bolivia and Venezuela are State-observers. Yet there is a democratic binding notion to guarantee the good functioning of the public administrations in MERCOSUR, the South-American reality still suffers from instability. In 2012, the President elected Fernando Lugo was taken office by Senate votes after a countryside confront in which some people died. Lugo' support for the land cause in his biography was considered a real motif for his removal. The President elected Dilma Rousseff in 2014 for a second-round mandate suffered a process of impeachment for misbalancing public budget. The doubt persisted in a fragile accusation of the executive Brazilian representative based upon the 1950 Act for Government Budget Equilibrium and the Article 37, paragraph 4, Brazilian Federal Constitution of 1988.

INTERNATIONAL ORGANIZATION

The United Nations Convention against Corruption (2003) is a recent transnational effort made against despicable practices in public administrations. In its Article 5 it is affirmed all States shall make domestic efforts in their legal systems to promote anti-corruption policies and practices: “Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability”.⁵⁰ The Article 7, 1 (a), defends transparency as a principle that must be applied to public sectors as well. The point 3 of the same provision points out the importance of non-opaque also in the legislative process: “Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”. At that point, it seems to be clear how the private capital has an influence on the making of politics. The Articles 9, 10 and the letter “a” of the 12.2 refer, respectively, to transparency in public finances, the need for public reports and cooperative links between private firms and law enforcement agencies. The judiciary power is a key-partner in that journey. The Article 13.1 calls the attention to citizenry participation and non-governmental organisations as some of the key-actors for anti-corruption practices: “promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”.⁵¹

IBEROAMERICAN CODE OF GOOD GOVERNANCE

In 2006, the *Centro Latinoamericano de Administración para el Desarrollo* (CLAD), including Brazil, Spain and other Latin-American

50 Available at: <https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf>.

51 Available at: <https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf>.

countries, agreed in making a code for public administrations based upon common principles, democratic binding rules for democratic practices, standards of ethics in governments and provide the means for the implementation of the *Iberoamerican Code of Good Government*. With reference to the mandatory criteria for public governance, the point 25 of the document affirms that the member States must support the participation of citizenship and peoples to formulate, adopt and evaluate public policies: “Fomentarán la participación de los ciudadanos y los pueblos en la formulación, implantación y evaluación de las políticas públicas, en condiciones de igualdad y razonabilidad”. Among the values and principles public administrations are committed to and oriented by the concept of good governance, we find impartiality, transparency and gender among many others: “Los valores que guiarán la acción del buen gobierno son, especialmente: Objetividad, tolerancia, integridad, responsabilidad, credibilidad, imparcialidad, dedicación al servicio, transparencia, ejemplaridad, austeridad, accesibilidad, eficacia, igualdad de género y protección de la diversidad étnica y cultural, así como del medio ambiente”. Furthermore, if there is any suspicion of preferential treatment affecting the general interest promoted by private clients, the executive power is expected to be away from personal, familiar, corporative, clientelist or any other spurious relation against citizenship: “Perseguirá siempre la satisfacción de los intereses generales de los ciudadanos y los pueblos, y sus decisiones y actuaciones se fundamentarán en consideraciones objetivas orientadas hacia el interés común, al margen de cualquier otro factor que exprese posiciones personales, familiares, corporativas, clientelares o cualesquiera otras que puedan colisionar con este principio”. It is also a relevant information that the Preamble of the *Código Iberoamericano de Buen Gobierno* conceives principles and practices relying on governmental mandates in which the public scrutiny in their actions are easily publicised: “Un Gobierno que dificulte el escrutinio público sobre su toma de decisiones”.⁵²

4 CONCLUSION: INCLUDING CIVIL ACTORS FOR MORE TRANSPARENCY IN THE PUBLIC EYE

Occupy Wall Street movements proved the liberal cause-effect assumption between legal arrangements and politics was not enough

52 *Centro Latinoamericano de Administración para el Desarrollo* [on-line]. Código Iberoamericano de Buen Gobierno. Establece las obligaciones y principios que se tomaron mediante el consenso de Montevideo, de fecha de junio de 2006 en el que se detallan las reglas vinculadas: a) a la naturaleza del gobierno; b) a la ética gubernamental; y c) a la gestión pública. [Accessed on 29 May 2017]. Available at: <<http://unpan1.un.org/intradoc/groups/public/documents/ICAP/UNPAN027945.pdf>>.

to predict how States or powerful companies behave. The rallies made evident international financial markets violated the values of integrity, responsiveness and, when not the law, the legality condemning many people to indignity. As Robert Cox defended during the 1990s, labour is one of the central keys for globalisation as an alive spectrum from the Cold War still defining the world order nowadays. At the Zuccotti Park and at the Broadway entrance, protesters held signs saying that “I won’t believe a corporation is a person until Texas hangs one” or “Licensed social work with no job, no health care and thousands of \$ in student debt”. Relatives took their children outdoor to send the message “Kindergartner against greed”. There was also an ex-soldier holding a sign “WWII vet and still occupying” making a military tactics pun of territory reconnaissance that was about to escalate to a world war level.⁵³ These demands are basically unified by social impoverishment, scarcity of qualified jobs and concentration of wealth. Regardless other values and cultural differences, money and richness as the result of how much effort individuals make to achieve them were seen in this movement as childish fable. The public opinion also understood that the irresponsibility or even the irresponsiveness of large companies were not personal, but systematically entangled by spurious alliances between the governmental practices and the money barony. It looks like we are having a different experience in the organization of the working class in the sense the political party model exists with different forms of assemblies and platforms.⁵⁴ The financial crisis represented a turning point for international labour organisation in which the costs must be transnationally socialised⁵⁵

A systemic overview leading to the construction of an international alternative seems to be global, transparent and participative in which individuals use their own views on facts to express their own subjectivity.⁵⁶ We would say there is a sort of transversal reason with the support of the social media claiming transparency as a moral principle organising the social, legal and political global order.⁵⁷ It is not a vertical top-down or bottom-up worldwide relation stemming from the formalities of democracy,

53 SCHERER, M. 2011. “Introduction: Taking it to the Streets”, in Time (Ed.), What is Occupy? Inside the Global Movement. New York: Time Books. Read also Rawlings, N. 2011. “First Days of a Revolution”, in Time (Ed.), What is Occupy? Inside the Global Movement. New York: Time Books.

54 CASTELLS, M. 1983. *The City and the Grassroots*. Berkeley: California University Press.

55 COX, R. 1996. *Approaches to World Order*. Cambridge: Cambridge University Press.

56 REUS-SMIT, C. 2005. “Constructivism”, in Burchill, S. & et al. (Eds.), *Theories of International Relations*. London: Palgrave Macmillan.

57 NEVES, M. 2013. “From Structural Couplings to Transversal Rationality”, in *Transstitutionalism*. Oxford: Hart Publishing. About the backgrounds on transversal reason [das Konzept der transversalen

but a transversal set of principles legitimised by rational demands to impede low-paid jobs and precarious jobs combined with the growing polarization of incomes.⁵⁸ It seems to be complex discourses and narratives constructed and overlapped by different geographical points, but with a common thread running through indignation, exclusion and disappointment with institutions. In Spain, as it happened in United States, the 15-M had already echoed the grassroots movements' clamour following the same patterns of collective contestation, but mainly suggesting political and economic powers had to coalesce into the acceptance of participative democracy as a value.⁵⁹ Therefore, individuals should be more engaged in massive transparent and participative practices to "re-order" the global power, but not prone to coalesce into market nor hierarchy.⁶⁰ In other words, social platforms and civil society may be a third-party actor to help the construction of more investigative tools of transparency. Moreover, the notion of influence from affluent companies can be studied with the lens of accountability and responsiveness by these actors in order to create a democratic understanding of very sensitive topics such as public debt, bank credit and financial markets that depend more and more on public affairs.

The section on transparency from an international perspective shows us how transnational organisms with plural actors tend to accept the power of participation from civil society. The formulation, implementation and the capacity of assessment of public policies are part of instruments for good governance or administration. The task of combating illicit practices and corruption is not solely the burden of the State. As we showed, the United Nations Convention against Corruption (2003) pointed out how important it is to observe the conflictual relations between political parties and public affairs. The section on local governments and how the formalities on transparency create obstacles for participative practices. Another aspect had to do with the legal emphasis on transparency as a portrait of documents, data and public action that must be available for the public eye not an instrument to judge in favour or against actors based on their conduct. The cases of Spain, Brazil, Iceland and United States have in common the privileges private enterprises take from the public contracts despite only the two-latter cases had non-exhaustive legal or

vernunft], read Welsch, W. 2013. "Reason and Transition: on the Concept of Transversal Reason", Scholarly Publications. Available at: <<https://ecommons.cornell.edu/handle/1813/54>>.

58 COX, R. W. 2000. "Thinking about Civilizations", *Review of International Studies*, 26 (5): 217–234.

59 BROWN, C. 1999. "History Ends, Worlds Collide", *Review of International Studies*, 25 (5): 41–57.

60 POWELL, W. 1990. "Neither Market Nor Hierarchy: Network Forms of Organization", *Research in Organizational Behavior*, 12 (1): 295–336.

formal elements to be judged. When the abuse of the economic power was understood as a clear method of making money in Iceland and United States, the public authorities stayed at the side of the international public opinion. Therefore, transparency has reached two objectives. One of them was less opaque relations in public-private relations as an effective means of judgment with the support of abstract principles, i.e., accountability and responsiveness. The other one derives from a transversal rationality which is simply the comprehension of facts or events not necessarily determined by pure geographical or national frontiers. It is a phenomenon that has chased the international capital corruption not the States as we saw in Occupy Wall Street and 15-M.

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