

Anti-Money Laundering Law and the Legislative Process Behind it: a Study About the Brazilian Legislative Procedures

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Abstract

This paper intends to analyze in detail the legislative procedures relating to laws that regulate money laundering in Brazil and their future tendencies, exploring the research field called *criminal legislative policy*. The main objective of this paper is to help build this research area in Brazil, as well as to map out some characteristics of the Brazilian legislative process concerning the criminalization of conduct related to the economy (political parties involved, foreign influences, etc.). The first part of the paper is theoretical and explores the concept of legislative policy and the international regulation of money laundering, mainly in Latin America, that could have influenced Brazilian legislation. The last part of the paper is composed of graphs that explore details about the legislative procedure of the two main Brazilian pieces of legislation on money laundering. This part also contains a table with the main active bills that seek to change the current legislation on the matter, as well as a critical analysis. The initial conclusions point to an increase in punishment in the years analyzed, with future trends heading in the same direction. The methodology used is bibliographic, legislative, and documental research.

Keywords: criminal legislative policy; money laundering; international regulation; legislative procedure; criminal law-making policy; economic crimes; Brazilian criminal policy.

A lei de prevenção à lavagem de dinheiro e o processo legislativo por trás dela: um estudo sobre os procedimentos legislativos brasileiros

Resumo

Este artigo pretende analisar detalhadamente os procedimentos legislativos relativos às leis que regulamentam a lavagem de dinheiro no Brasil e suas tendências futuras, explorando o campo de pesquisa denominado "política legislativa penal". O objetivo principal deste artigo é contribuir para a construção dessa área de pesquisa no Brasil, bem como mapear algumas características do processo legislativo brasileiro no que se refere à criminalização de condutas relacionadas à economia (partidos políticos envolvidos, influências estrangeiras etc.). A primeira parte do artigo é teórica e explora o conceito de política legislativa e a regulamentação internacional da lavagem de dinheiro, principalmente na América Latina, que poderiam ter influenciado a legislação brasileira. A última parte do artigo é composta por gráficos que exploram detalhes sobre o processo legislativo das duas principais legislações brasileiras sobre lavagem de dinheiro. Na parte final do artigo, há uma tabela com os principais projetos de lei ativos que buscam alterar a legislação vigente sobre o assunto, além de uma análise crítica. As conclusões iniciais apontam para um aumento da punição nos anos analisados, com tendências futuras que caminham na mesma direção. A metodologia utilizada é a pesquisa bibliográfica, legislativa e documental.

Palavras-chave: política legislativa penal; lavagem de dinheiro; regulamentação internacional; procedimento legislativo; política de elaboração de leis criminais; crimes econômicos; política criminal brasileira.

Ley contra el lavado de dinero y el proceso anterior: un estudio sobre los procedimientos legislativos brasileños

Resumen

Este artículo pretende analizar en detalle los procedimientos legislativos relativos a las leyes que regulan el lavado de dinero en Brasil y sus tendencias futuras, explorando el campo de investigación denominado "política legislativa penal". El objetivo principal de este artículo es contribuir a la construcción de esta área de investigación en Brasil, así como trazar algunas características del proceso legislativo brasileño en relación con la criminalización de conductas relacionadas con la economía (partidos políticos involucrados, influencias extranjeras, etc.). La primera parte del artículo es teórica y explora el concepto de política legislativa y la regulación internacional del lavado de dinero, principalmente en América Latina, que podrían haber influido en la legislación brasileña. La última parte del documento se compone de gráficos que exploran detalles sobre el procedimiento legislativo de las dos principales leyes brasileñas sobre lavado de dinero. En la parte final del trabajo, se presenta una tabla con los principales proyectos de ley activos que buscan cambiar la legislación vigente en la materia, así como un análisis crítico. Las primeras conclusiones apuntan a un aumento de la pena en los años analizados, con tendencias futuras que van en la misma dirección. La metodología utilizada es la investigación bibliográfica, legislativa y documental.

Palabras clave: política legislativa penal; lavado de activos; regulación internacional; procedimiento legislativo; política de elaboración de leyes penales; delitos económicos; política criminal brasileña.

Introduction

This paper stems from the researcher's current research project at the Federal University of Santa Catarina, entitled "Criminal Legislative Policy", intersecting her other field of study, which is economic crimes. The article was written during a research internship on the subject of international regulation of money laundering at the Humboldt University of Berlin, with funding from the DAAD.

This paper aims at analyzing the legislative procedures that resulted in the current criminal legislation on money laundering in Brazil. In this perspective, we will describe and criticize the legislative procedures that resulted in the two following pieces of legislation: (a) Law 9613 of 1998, through which money laundering was first criminalized in Brazil, and (b) Law 12683 of 2012, responsible for carrying out a major reform to Law 9613.

The objectives of this research study are: (a) to help build a research agenda in criminal legislative policy or criminal law-making, something that is still in its early stages in Brazil; (b) to analyze, with the aid of graphs,¹ details about the legislative procedure that lead to the criminalization of money laundering in Brazil; (c) to discuss the tendencies and the future perspectives of criminal legislative policy in the regulation of money laundering, having as a background the knowledge that, in Brazil, the criminalization of the economy has been in a process of expansion in the last years.

The justification of this paper is, first, its connection with the author's research project in the Federal University of Santa Catarina, which is called "Criminal Legislative Policy and Economic Crimes". Second, the intention of developing these research topics in Brazil, mainly legislative policy, which is still quite unexplored, in spite of Brazil being a member of the civil law family, which means that crime definitions are all created by the legislative branch.

Finally, the importance of the discussions about money laundering in Latin America and the expansion of the regulation and the criminalization in this area, often harming fundamental rights, is also a reason for this research study. With the globalization of markets, the criminalization of economy in one country often influences the legislation of the others, especially in light of statements by international organizations, like the Financial Action Task Force (FATF).

The international treaties and conventions signed by Brazil also have a lot of influence on the country's internal legislative changes. However, this point will not be analyzed in detail here due to the scope of this paper.

¹ We'd like to express our appreciation and gratitude to the Brazilian undergrad student Luísa Hoffmann, who, with the aid of a research scholarship from CNPq (Conselho Nacional de Desenvolvimento Científico e Tecnológico), was integral to drawing the graphs used in this paper.

1. Contributions to Criminal Law-Making as a Research Field

As emphasized in the introduction of this paper, we also intend to help further build and develop the research field called criminal legislative policy or criminal law-making policy in Brazil. Academic papers on the legislative branch and its activities regarding the creation of criminal laws are quite rare, which is a problem if we consider that Brazil follows the system known as civil law, meaning the criminalization of conducts is exclusively reserved to the legislative branch (Brazilian Constitution, 1988, Art. 22, I).

Even in Brazilian law schools, the study of criminal sciences is usually focused on the development and critical analysis of dogmatic concepts (Fletcher, 2000), mostly in substantive and procedural criminal law (Díez, 2021). Criminology and criminal policy approaches are almost always regarded as secondary fields of study. This is highly problematic, given that these two disciplines work mainly on the basis of data and empirical analysis.

The lack of interest with which these two fields is met means, in practice, that there is almost no data on the impacts a certain piece of legislation has actually had in reality, meaning little is known about problems there may have been encountered in its implementation or if it has been able to deliver any contribution to solving public security questions often used as justification by the lawmaker.

Criticizing the quality of legislation in the European Union,² Ulrich Karpen exposes the need to develop what he called "scholarship" in jurisprudence:

Legisprudence is scholarship in legislation, and in the form of research, publication of results and teaching in legislation is called upon to improve this deplorable situation. Since the law is the primary and central instrument of government in the democratic and rule-of-law state, legisprudence contributes to "better legislation" as an essential element of better regulation and "better government". (Karpen, 2016, p. 21)

The cited author emphasizes three tendencies that could be observed in all rule-of-law states: "(1) the quantity of legislative output, (2) the belief in the rationalization of legislation³ and its progress, and finally (3) the monitoring of legislation by regulatory impact assessment (RIA), namely by judicial review" (Karpen, 2016, p. 21). In that sense, he further explains how research, publications, and courses (teaching) could contribute to improving the quality of legislation, which is in itself also a political decision.

² See also Corral (2016).

³ "A law has a high level of efficacy (and therefore qualifies on this count) if – when implemented – it comes closest to the legislator's intent. Second, a law is effective if it is implemented, executed, accepted and obeyed by as many addressees as possible. Third, efficiency –is economic rationality, a positive cost-result (input/output) relation. All three principles are facets of proportionality, which is a core element of rule of law". (Karpen, 2013, pp. 173-174).

Using that last idea as a starting point, it is important to establish that the study of legislation must use a theoretical and a practical approach in order to include not only an analysis of the compatibility between the new piece of law and the legal and constitutional systems, but also questions that involve facilities, policy-setting, and implementation issues. The development of what we call legislative policy is particularly important in the field of criminal sciences, in which the term *criminal policy* is often employed in such a sense as to include not only acts by the legislative branch, but also the management done by the executive branch in terms of public security and the very parameters used by the judiciary branch when interpreting and applying criminal laws.

Legislative policy could have a very productive agenda, because, besides the theoretical aspects coming from the science of legislation, it should include ways to control the effects of criminal law, knowing that these pieces of law represent the decisions taken by the legislative branch in the attempt to solve problems in matters of criminality and public security. Establishing the methodology used in impact studies as well as the actors that should take part in this process is also a very important step in order to obtain reliable results. A law that does not contribute to solving the problems that justified its enacting could have its permanence in the legal system put in question, because it could have actually been passed for secondary reasons, for instance, for electioneering purposes or just to give in to media pressure.

Legislative policy could also improve the concept of legislative rationality, which promotes the need for motivation and empirical data gathered through impact studies in the creation of laws that lead to a rise in incarceration rates, putting in question new offenses that have no real basis aside from the pressure exerted by the media and by the typical commonsense rationales, as well as by the aforementioned electioneering interests. Legislative policy could also include the perspective and tendencies of criminalization, which in turn could help to build political movements and scientific contributions able to influence the discussions about and the orientation of these public policies and decisions.

In the view of José Luis Díez Ripollés, a legislative decision that affects social control and, in particular, criminal control, is only rational when it considers the majority of the empirical data about violence that pertains to the social and juridical reality in which it intends to produce effects (Díez, 2019, p. 131).

The research agenda of legislative policy could include a multitude of topics, for instance:⁴ (1) Cross-cutting issues: the discussion about the concept of legislative rationality and its description in criminal law. The content of the principles that lead to and set limits to criminal law and criminal policy; (2) international law-making policy:

⁴ All these topics were suggested by the Criminal Law Making Policy Group of the European Society of Criminology (n. d.).

Compared analysis of political and legal systems of law-making. Criminal law-making in international organizations. Role or influence of international organizations in national criminal reforms; (3) pre-legislative, pre-parliamentary or governmental stage: Regulatory analysis (applicable rules, protocols, or proceedings). Actor analysis: government. Political parties. Lobbies. Media. Public opinion. Experts. Other formal or informal actors that participate in the stage; (4) legislative or parliamentary phase: Regulatory analysis (applicable rules, protocols, or proceedings). Actor analysis: Legislative chambers and their bodies. Government. Political parties. Lobbies. Media. Public opinion. Experts. Other formal or informal actors that participate in the stage; (5) implementation stage: Resources issues (material or personal). Internal communication systems between actors. Implementation control tools. Partial, temporary, or pilot implementation cases; (6) Evaluation stages: Design evaluation. Implementation evaluation. Result evaluation. Impact evaluation (Mader, 2001; Karpen, 2017).⁵ Different perspectives on evaluation: economic, social, legal evaluation (or other).

This paper focuses mainly on the international law-making policy and the legislative or parliamentary phase.

2. Money Laundering Criminalization: Comparative Perspectives and its Possible Influence on Brazilian Regulation

The main Brazilian laws on money laundering, which will be analyzed in this paper, were approved in 1998 and 2012. The first one was proposed in 1996, while the last one, in 2003. As this shows, they were enacted after a drastically different amount of processing time.

It is also interesting to notice how the international environment and changes to the anti-money laundering legislation of other countries within Latin America came to influence Brazil's own perspectives in those regulation processes. Since the 1990s, a lot of countries in this region have passed new laws or tried to improve their existing criminal legislation on money laundering.

As to Latin America specifically, it should be pointed out that Chile approved legislation criminalizing money laundering in 1995 and later on, in 2003, introduced further changes to it. Similarly, Paraguay outlawed money laundering for the first time in 1997, whereas Colombia introduced it as an offense in their Criminal Code in 2000. Furthermore, in 2011, Argentina approved the legal description of money laundering that is still in force today, while Mexico passed legislation on prevention and identification of transactions made with illegal resources a year later, in 2012.

In the United States, the Patriot Act was passed soon after the 9/11 terrorist attack, containing many provisions specifically on money laundering and terrorist financing. This particular piece of legislation has undoubtedly played a decisive part in the toug-

⁵ On this topic: Mader (2001).

hening of other countries' anti-money laundering regulations, including Brazil's, which is easy to understand considering the role that the North American economy and criminal policies have in the entire continent.

It's also noteworthy that organizations like FATF and Grupo de Acción Financiera de Lationamérica (GAFILAT) have had an important role in determining the changes introduced in the course of the last two-and-a-half decades to many countries' legislation on the matter, either by publishing recommendations or by performing evaluations on the effectiveness of money laundering prevention in a specific judicial system. Brazil is also a good example of this, as can be seen in the "Advance Report on Mutual Evaluation of Brazil", published by GAFILAT (2015). This document mentions that the country was evaluated between 2009 and 2014, and, as a means of addressing the problems pointed out in that report, "Brazil has already informed that it was sanctioned in July 2012 by Law 12683/12 covering the legal aspects that emerged as deficiencies in the evaluation report".

The FATF can also impose restrictions and monitor the implementation of the recommended measures in member countries, which has proven to be extremely effective (Weißer, 2021, p. 24).

3. The Legislative Process of the Laws 9613 of 1996 and 12683 of 2012

In the next sections, details of the legislative procedures that led to the enactment of the two major laws on money laundering in Brazil will be explored and discussed. The idea is to analyze different aspects that could have influenced the resulting pieces of legislation, such as processing time, the Commissions that took part in the discussions, the political parties involved, changes proposed to the bill, etc.

Some of the data collected and presented here could also help to understand the future tendencies of the regulation pertaining money laundering and other economic offenses in Brazil.

3.1 Law 9613

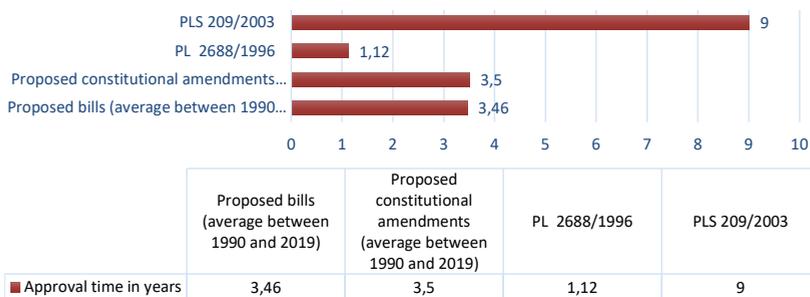
Money laundering as a criminal offense was first introduced in the Brazilian legal system through Law 9613. In this subsection, we will detail some aspects of the legislative procedure that led to the passing of this law. Those aspects will be analyzed with a critical perspective, with the help of criminal legislative policy concepts.

3.1.1 Processing Time of the Bill

The first aspect that must be highlighted is the time a bill needs to become a law. This time can vary significantly depending on different factors: more or less discussion about the criminalization, more or less pressure for its approval, among others. This pressure can be exerted by the people, the media, international organizations, etc.

Comparatively to how long, on average, it usually takes other bills to be approved in Brazil, Law 9613 had a rather quick processing in each legislative house, as can be seen in the following graph:

Graph 1. Data Comparison: Time for Approval of Legislative Bills in Years

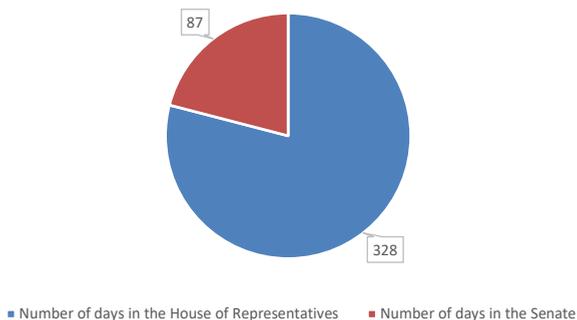


Source: own elaboration with information for JOTA (n. d.).

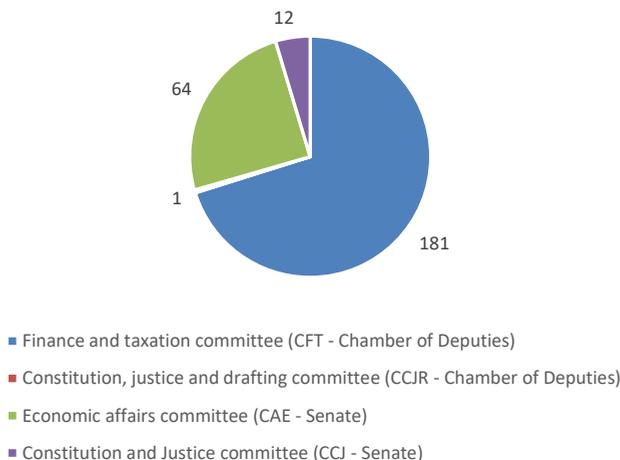
The time it took the initially proposed bill to become Law 9613 was less than half the average processing time recorded for other bills in Brazil. This shows that there was an urgency to criminalize money laundering in the country. Due to the legality principle, the State is not allowed to prosecute and convict someone for a given behavior if this behavior, however objectionable, does not correspond to a legally defined criminal offense. In other words, in Brazil, a crime is only a crime after it has been officially made one by a law and, in the case of money laundering, international pressure certainly had an important role in accelerating this criminalization process.

Analyzing this period with a qualitative perspective, two additional aspects could be highlighted: the time in each legislative house and the time in each commission, which can be seen in the two following graphs:

Graph 2. Processing Time in Each House - PL 2688/1996



Source: own elaboration.

Graph 3.⁶ Time (in Days) in Each Commission

Source: own elaboration.

The bill was first introduced in the House of Representatives.⁷ It spent the majority of its processing time in this House, during which changes to its text were proposed. With regard to the Commissions it was assigned to,⁸ it is important to notice that the bill was kept for a short amount of time with the Commissions that discuss constitutional aspects, which are the Constitution, Justice and Drafting Committee and the Constitution and Justice Committee. In other words, the bill spent significantly more time being studied by the technical Committees.

Public hearings were held only by the Finance and Taxation Commission.

The short time the legal commissions had to analyze the bill could have led to some of the problems later identified in the resulting legal description of the offense. It could also be the reason why many points of incompatibility with the legal system were not noticed at first, which led to the future need for amendments and to controversies

⁶ We were not able to gather information on how much time the bill was with the CCJR, aside from the day of the plenary session. We sent an e-mail to the Senate inquiring them about this matter, but they could not provide us with additional information either.

⁷ At the federal level, the Legislative Branch is exercised by the National Congress, which consists of two chambers: the House of Representatives and the Federal Senate. The lower body is composed of federal representatives, while the upper body is composed of senators. Both houses can propose criminal law bills (Brazilian Federal Constitution, 1988, Arts. 44-ss).

⁸ "The National Congress is composed of two Houses: the House of Representatives and the Federal Senate. Each of these Houses has Parliamentary, Permanent or Temporary Committees, with legislative and supervisory functions, as defined in the Federal Constitution and its Internal Regulations. In fulfilling these two basic functions, of drafting laws and monitoring administrative actions, within the scope of the Executive Branch, the Commissions also promote debates and discussions with the participation of society in general, on all themes or subjects of their interest" (Câmara dos Deputados do Brasil, n. d.a, own translation).

arising in the Courts. The participation of scientists and experts would also have been interesting in that stage in order to avoid similar problems, though it is usually more productive when they are invited with enough time to analyze and discuss the bill.

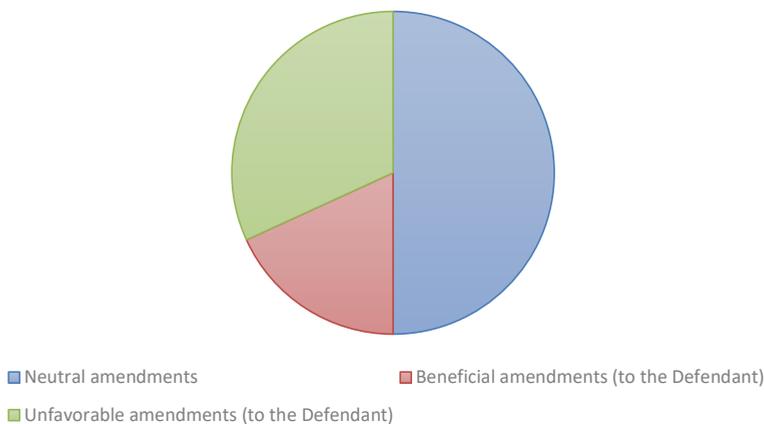
In his studies on the topic of the science of legislation, Joachim Vogel emphasizes the importance of the participation of experts and scholars or scientists, mainly in the case of economic criminal law, because it is precisely in this field that systematic relations of power and complexity could be seen. The legislator and the political public sphere are frequently not aware of all the details involved in regulating those matters (Vogel, 2003, p. 261).

3.1.2 Modifications to the Bill

During the legislative process, the proposed bill often undergoes changes as a result of discussion and deliberation. In the case of the bill that became Law 9613, the number of changes it underwent was not as important as the content of those changes.

The majority of the changes were proposed in the House of Representatives, where the bill was first introduced. By examining the content of those alterations, and observing the situation of the defendant (i.e. more/less sanction, the scope of the offense's legal description and type of asset restrictions) as a parameter, it can be seen that the majority of non-neutral proposals were designed to make the resulting law more punitive, as shown in the following graph:

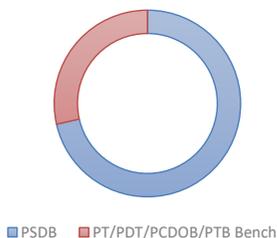
Graph 4. Changes Proposed to the Bill That became Federal Law N. 9613/1998



Source: own elaboration.

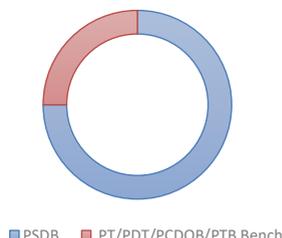
Those alterations were, as is to be expected, proposed by members of different political parties. However, it is possible to notice the major participation of a specific one.

Graph 5. Parties that Proposed Amendments Unfavorable to the Defendant



Source: own elaboration.

Graph 6. Parties that Proposed Amendments Beneficial to the Defendant



Source: own elaboration.

PSDB, a political party that is usually linked to the right wing of the legislative branch in Brazil, proposed the majority of changes, showing a great interest in discussions on the criminal regulation of economy. Also, it should be highlighted that this party has proposed most of the alterations aimed at increasing punishment for money laundering, which contradicts the commonsense belief that left wing parties are the protagonists in the advancing of criminal liability of entrepreneurs or sanctioning of white-collar crimes (Campos & Azevedo, 2020).

3.2 Law 12683

Law 12683 of 2012 introduced many changes to the regulation of money laundering done through Law 9613, giving a new wording to numerous penal and procedural provisions. The main change it introduced was the abolition of the list of crimes that could result in money laundering, which demonstrates a very punitive criminal policy in the field.

As already mentioned, the influence of international organisms in the shaping of this regulation was determinant, most importantly the evaluation by the FATF and the ensuing reports.

In this next section, the same aspects described in the previous section regarding Law 9613 will be analyzed, but now with respect to Law 12683.

3.2.1 Processing Time of the Bill

By examining Graph 1, we were able to conclude that the process Law 12683 underwent was exactly the opposite of that of Law 9613. In other words, it took the bill that later became Law 12683 nine years to be approved. That is almost three times the average processing time for other bills in Brazil.

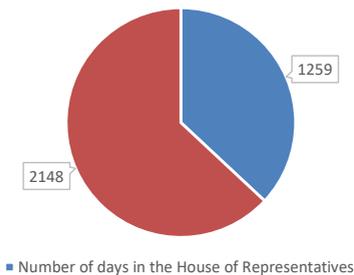
The bill was proposed in 2003, a short period after the United States changed its regulation of the matter, with the enacting of the Patriot Act.

During the nine-years discussion that ensued, the composition of the Parliament was visibly altered. This could have led to changes being made to the initially proposed text — that is, if the political environment in Brazil during those years presented different characteristics in terms of criminal policy. This processing time could also have been used to conduct public hearings, as well as to consult with experts and scientists, carry out empirical studies, or even to include the “Legislative Consultancy” (Câmara dos Deputados do Brasil, n. d.b; Senado Federal do Brasil, n. d.), all of which are instruments of legislative rationality. However, we were unable to find documentation about the occurrence of any such proceedings.

We can therefore conclude that the processing time of the bill in question did not have, in this case, a decisive role in building legislative rationality.

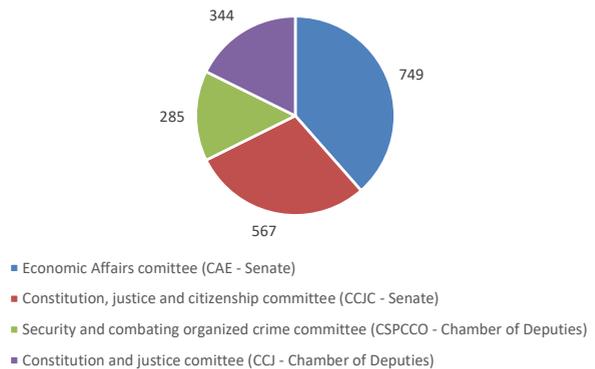
The bill was proposed before the Senate. According to the information shown in the following graphs, for the majority of its processing time, the bill was kept in this House (Graph 7).

Graph 7. Processing Time in Each House - PLS 209/2003



Source: own elaboration.

Graph 8. Time (in Days) in Each Commission



Source: own elaboration

Unlike the legislative process that resulted in the passing of Law 9613, this bill spent a noticeable number of days with the commissions responsible for discussing constitutional aspects. In theory, at least, this could be regarded as positive to relevant discussions, like the impacts a specific new piece of law might have on human rights, and also the analysis of its compatibility with the legal system.

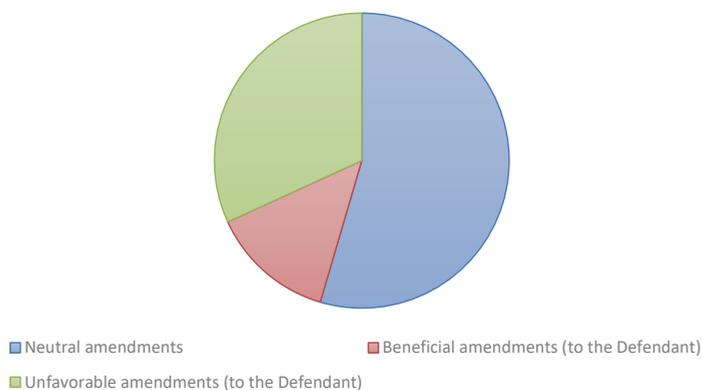
Nevertheless, we did not find documentation relating to any specific procedures (i.e. public hearings) carried out by those commissions that could have been significant as to the deepening of such discussions, as already mentioned.

3.2.2 Modifications to the Bill

We examined the content of the changes introduced to the bill in question during the legislative process, once again using, as a parameter, the situation of the defendant (i.e. more/less sanction, the scope of the offense’s legal description, and type of asset restrictions). From this perspective, it became clear that the majority of non-neutral proposals went in the direction of making the resulting piece of legislation more punitive.

The amount of time it took the bill to be processed did not influence this particular aspect, as both Graph 4 and Graph 10 are very similar. This indicates that the criminal policy with regard to money laundering did not vary significantly in the analyzed years:

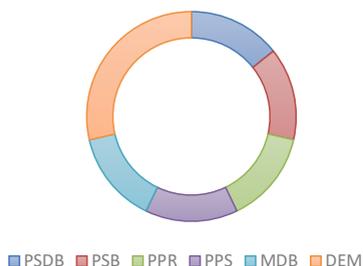
Graph 10. Modifications Introduced in the Legislative Procedure of Bill No. 209/2003



Source: own elaboration.

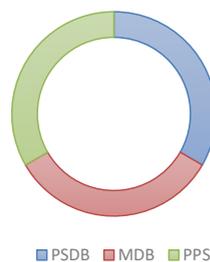
These changes were proposed by members of different political parties. Here, it is not possible to find a predominance of influence exerted by one specific political party:

Graph 11. Parties that Proposed Changes Unfavorable to the Defendant



Source: own elaboration.

Graph 12. Parties that Proposed Changes Beneficial to the Defendant



Source: own elaboration.

In the following section, the data thus far presented will be compiled and further analyzed.

3.3 Data Analysis

From the data collected during our research process it is possible to conclude that the international pressure to pass the first piece of law — i.e., the one that effectively criminalized money laundering in Brazil — probably determined the fast pace of the legislative process that resulted in the enacting of Law 9613. This, however, likely had a negative impact on discussions, especially the legal ones, which can be inferred from the short time the bill spent under the examination of commissions responsible for discussing constitutional aspects.

With respect to the second piece of law analyzed, which was proposed in 2003, a short period after the United States' introduced changes to its own money laundering regulation, we could observe that, at least in terms of how long it took for it to be made into law, the legislative discussions should have been deeper; however, we cannot observe this in terms of use of legislative rationality instruments or even in the results, i.e., the law eventually enacted.

It is also important to emphasize that, while this bill was pending in the legislative branch, evaluations were made by the FATF in Brazil. The results of these evaluations also influenced the new piece of law.

Regarding the changes made to the bill during the legislative process, we noticed that the majority of non-neutral proposals were aimed at toughening criminal law, and this is true in both cases analyzed. This shows that the duration of the legislative process did not influence the outcome concerning this particular aspect. It also shows that the criminal legislative policy in the field of money laundering had a more punitive inclination throughout both periods.

In terms of criminal law prescriptions approved, it should be mentioned that the main change introduced by Law 12683 to Law 9613 was the elimination of the precedent crimes list, which made it possible for virtually any crime to be a predicate offense, including misdemeanors.⁹

This also proves, to a certain extent, that left wing parties cannot be associated with a major criminalization of behaviors related to economy, given that they did not have a noticeable influence in the discussions and proposals that resulted in the toughening up of the money laundering regulation in Brazil.

⁹ Minor criminal offenses, which can, in some cases, be sanctioned only with a fine. They are provided for in Decree-Law 3688 (1941).

4. Bills Currently in Process That Seek to Change Criminal Legislation on Money Laundering in Brazil

After analyzing the legislative procedures that led to the passing of the two main Brazilian pieces of legislation on money laundering, this next and final section is dedicated to mapping the possible future changes or, at least, the main discussions being currently had within the legislative branch on the matter. It is important to mention that a group of experts was recently officially constituted to propose changes in current legislation. However, this commission of experts was dissolved before finishing its work due to the pandemic. (Justiça em Foco, 2021).

4.1 The Content of the Bills

In order to determine how many bills are currently being processed in the Brazilian Congress, we performed a search in the websites of the House of Representatives and of the Senate. By using the words "*lavagem*" (laundering) and "*lavagem de dinheiro*" (money laundering), and disregarding bills that have been shelved or those that have an exclusively formal or administrative nature — in other words, focusing on bills that have a criminal law and criminal procedural law content —, we were able to find¹⁰ 13 bills, as can be seen in the following table:

Table 1. Bills on Money Laundering in Brazil

Bill	Author and Political Party	Changes
PLS 5236/2020	Senator Marcos do Val (PODEMOS/ES)	Amends the Criminal Code and Law No. 9613/1998 (Money Laundering Law) to make the crimes of passive corruption, active corruption, and money laundering not subject to the statute of limitations.
PL 4516/2020	Senator Arolde de Oliveira (PSD/RJ)	Amends Law No. 9613/1998 to subject individuals or legal entities that provide legal services or legal advice to the money laundering control and prevention mechanism.
PL 4536/2021	Senator Alessandro Vieira (CIDADANIA/SE)	Establishes the National Network of Technology Laboratories against Money Laundering (Rede-Lab) and defines its objectives, principles, guidelines, coordination, responsibilities, and funding sources

¹⁰ The search was done in 29.01.2022.

Bill	Author and Political Party	Changes
PL 4636/2020	Senator Alessandro Vieira (CIDADANIA/SE), Senator Alvaro Dias (PODEMOS/PR), Senator Oriovisto Guimarães (PODEMOS/PR), Senator Eduardo Girão (PODEMOS/CE), Senator Soraya Thronicke (PSL/MS), Senator Fabiano Contarato (REDE/ES), Senator Jorge Kajuru (CIDADANIA/GO), Senator Lasier Martins (PODEMOS/RS), Senator Mara Gabrilli (PSDB/SP), Senator Rodrigo Cunha (PSDB/AL), Senator Leila Barros (PSB/DF), Senator Major Olimpio (PSL/SP)	Adds item XIX to the sole paragraph of art. 9 of Law No. 9613, of March 3, 1998, to expand the list of entities subject to money laundering control, including political parties.
PLS 379/2018	Senator Cristovam Buarque (CIDADANIA/DF)	Amends Law No. 9613, of March 3, 1998 to determine that political parties are subject to the same rules aimed at preventing and combating money laundering applied to companies and banks.
PLS 74/2016	Senator Reguffe (S/Partido/DF)	Adds art. 2-A to Law No. 9613, of March 3, 1998, making the crime of money laundering non-bailable and not subject to provisional release.
PLS 299/2018	Senator Rudson Leite (PV/RR)	Amends art. 318 of the Criminal Procedure Code and art. 117 of the Criminal Execution Law to prohibit the granting of house arrest to those indicted, accused or convicted of embezzlement, passive corruption or corruption, money laundering, crimes against the financial system or against the tax order, the economy and consumption
PL 2153/2019	Senator Marcos do Val (CIDADANIA/ES)	Determines to the Executive, Legislative and Judiciary Powers the disclosure of a plan of guidelines and a report on preventive and repressive actions aimed at fighting corruption and money laundering crimes, and amends Law No. 1079 as a crime of responsibility the non-fulfillment of this obligation within the term.

Bill	Author and Political Party	Changes
PLS 438/2018	Senador Airton Sandoval (MDB/SP)	Amends item XIV of art. 9 of Law No. 9613, of March 3, 1998, to subject individuals or legal entities that provide, even if occasionally, advisory, consulting, accounting, auditing, counseling, or assistance services of any nature, as well as other professional activities individually, in association or cooperatively, to the money laundering control and prevention mechanism.
PLS 297/2015	Senator Randolfe Rodrigues (PSOL/AP)	Amends arts. 109, 110, 112, 114, 115, 116, and 117 of the Penal Code, which provide for the criminal statute of limitations, to, among other changes, increase the statute of limitations by 1/3 in the case of money laundering.
PEC 89/2019	Senator Lasier Martins (PODE/RS) (1 ^o signatário), Senadora Juíza Selma (PSL/MT), Senadora Leila Barros (PSB/DF), Senator Alessandro Vieira (CIDADANIA/SE), Senator Alvaro Dias (PODE/PR), Senator Antonio Anastasia (PSDB/MG), Senator Arolde de Oliveira (PSD/RJ), Senator Rose de Freitas (PODE/ES), Senator Carlos Viana (PSD/MG), Senator Chico Rodrigues (DEM/RR), Senator Confúcio Moura (MDB/RO), Senator Dário Berger (MDB/SC), Senator Eduardo Girão (PODE/CE), Senator Elmano Férrer (PODE/PI), Senator Flávio Bolsonaro (PSL/RJ), Senator Jorge Kajuru (PSB/GO), Senator Lucas Barreto (PSD/AP), Senator Luis Carlos Heinze (PP/RS), Senator Luiz do Carmo (MDB/GO), Senator Major Olimpio (PSL/SP), Senator Nelsinho Trad (PSD/MS), Senator Oriovisto Guimarães (PODE/PR), Senator Otto Alencar (PSD/BA), Senator Paulo Paim (PT/RS), Senator Plínio Valério (PSDB/AM), Senator Randolfe Rodrigues (REDE/AP), Senator Reguffe (S/Partido/DF), Senator Rodrigo Cunha (PSDB/AL), Senator Romário (PODE/RJ), Senator Styvenson Valentim (PODE/RN), Senator Tasso Jereissati (PSDB/CE)	Modifies art. 84 of the Federal Constitution, to prohibit pardon and commutation of sentences in specific situations, among them, in crimes of laundering or concealment of assets, rights, and values

Bill	Author and Political Party	Changes
PL 2303/2015	Aureo Lidio Moreira Ribeiro - SD/RJ	Provides for the provider of virtual asset services; and amends the Criminal Code and Laws No. 7492/1986, and 9613/1998 to include the virtual asset service provider in the list of institutions subject to its provisions
PL 3683/2020	Senator Angelo Coronel (PSD/BA)	Changes the criminal, electoral and administrative improbity legislation to increase penalties and sanctions for already existing offenses and other illegal conducts, and to create new ones, especially when practiced through the internet. As for the Money Laundering Law, it modifies it to add that those who do so through information and communication technologies or subversion of terms and policy for the use of internet applications incur in the same penalty as those defined for the crime of money laundering.

Source: own elaboration.

As can be seen, all the bills seek to increase, in different ways, the sentences, toughening the persecution procedure, extinguishing rights, increasing the applicable penalties,¹¹ or widening the description of the offense or the list of companies that must be submitted to prevention and control systems against money laundering.

Confronting the contents of this table with the information depicted in the graphics, we can observe the prevalence of a punitive perspective in the criminal legislative policy regarding money laundering in Brazil, which spans over the last twenty or thirty years, with no signs of change in future tendencies.

Conclusions

This paper intended to analyze in detail the legislative processes that led to the enacting of the two main laws that provide for the offense of money laundering in Brazil. For this purpose, we gathered data through research and compiled it in graphs, while also relating them to international regulations and criminal policy in effect in Brazil in the last 20 or 30 years.

¹¹ In the context of the Brazilian legal system, every offense must also describe, aside from the criminal conduct subject to punishment, the minimum and the maximum sentence that could be imposed.

We also tried to map future tendencies in the discussions that are being currently held by the legislative branch concerning future alterations to money laundering criminal legislation.

As a result, we demonstrated that differences in how long it took each law to be passed did not have a noticeable effect on their legal content. Also, taking as a parameter the situation of the defendant, it was possible to see that the Brazilian criminal legislative policy in the field of money laundering had a clear punitive inclination.

Looking at existing bills, this tendency does not appear to be likely to change in the future. It is also possible to notice the influence of international regulation on the Brazilian legislative branch, not only because of the reports compiled by organizations such as the FATF, but also due to the simultaneity of changes in the legislation on money laundering in several Latin American countries.

The goal of this research study was not, by any means, to exhaust every aspect of the subject, nor to put an end to the discussions on the matter, but rather to help build and advance the field of criminal legislative policy in Brazil. Our intention was, thus, to gather and present data that could lead to further investigation or influence public decision-making in matters of public security policy, criminalization, white collar crimes, money laundering, and legislative rationality.

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