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ACCESS TO ELECTORAL RIGHTS

BRAZIL

Fernando Limongi

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Access to Electoral Rights

Brazil

Fernando Limongi

1. Introduction

The 1988 Constitution was the final step in a long and convoluted transition from authoritarian rule in Brazil. Against all odds and expectations, democracy proved to be stable and capable of promoting policies toward poverty alleviation and inequality reduction.

Brazil is currently a democracy with one of the largest electorates in the world (roughly 142 million registered voters), only behind India, USA, and Indonesia, which is renowned for its efficiency in organising the electoral process.¹ Due to an electronic voting system fully adopted in 2002, results are known within hours of polls' closing.

The current situation is at odds with the political history of the country, which was characterized by suffrage restrictions and electoral violence. Illiterates were barred from the vote from the proclamation of the Republic (1889) up to as late as 1985. In a country where public education lagged behind, this essentially meant a variant of the suffrage restriction based upon income.² De facto, the poor had no legal right to vote. True, the restriction could be easily circumvented, but not by the poor themselves. Members of the elite and their political agents had the means to enroll the poor and take them to vote³ and indeed, this was a widespread practice. In a sense, the usual distinction between active and passive citizenship tended to be reversed in Brazil. Candidates manipulated the composition of the electorate and, by and large, were elected by the voters they had themselves enrolled. The representative government took an inverted form. The candidates picked the electorate.⁴

Thus, the fact that since 1988 Brazil has had seven sequential competitive elections at the federal level, with high rates of participation is something to be praised. Yet, there is a long way to go until fully equal political participation is guaranteed. Formally, all adult Brazilians may vote but the conditions under which different groups participate vary significantly. Even though most Brazilians could easily enroll and turn out to vote, a high proportion of them (around 30%) were not able to understand and complete the voting ballot in the 1994 general elections; they simply do not have the capacity to write their preferences.

¹ See 'Introducing Electronic Voting: Essential considerations' available at <http://www.idea.int/publications/introducing-electronic-voting/>. See also <http://aceproject.org/ace-en/focus/e-voting/countries>.

² For a general and authoritative overview of the evolution of citizenship in Brazil consult De Carvalho (2001).

³ The classic account of early elections in Brazil is Leal (2012).

⁴ This is the main object of Leal (2012). For a recent treatment of the issue, see Limongi (2012)

The introduction of the electronic vote has contributed to alleviate the visible part of this problem.⁵

In absolute terms, the number of Brazilians living abroad may be considered significant. Yet, as will be shown, the electoral weight of expatriates is not considerable. Brazilians living abroad may vote as long as they enroll in the Brazilian embassies or consulates in their current country of residence. Few enroll and fewer still turn out to vote. Diaspora voting is limited to presidential elections. In the 2014 election, for a total electorate of 142,822,046 voters, only 354,184 of these were registered abroad. Turn out numbers were respectively 111,193,747 and 89,977.⁶ As far as public opinion is concerned, voting rights of the diaspora is not a politically salient issue. There is no pressure toward a reinterpretation of the rigid and strict territorial lines of representation. Representation is attached to place of residence and there is no international or living abroad district.

The size of the immigrant population in Brazil is modest, although it has grown recently. Immigrant populations are mostly concentrated in certain geographical areas. Whereas foreigners (apart from Portuguese nationals)⁷ cannot vote, there is no strong organised movement pressuring for an extension of immigrant political rights. In order to vote, immigrants must acquire Brazilian citizenship after living in the country for an extended period.

2. Historical Background

Brazil is the only Latin American country to adopt a monarchical regime after achieving its independency. It was a conscious option made by the country's political elite to avoid a republican government. The 1824 Constitution reserved considerable power for the emperor.⁸ Elections followed a two-tier indirect system. The right to vote was linked to income and gender. Only free male adults (over 25 years) with an annual net income of 100,000 reis had the right to vote in local elections. To be granted the right to vote at regional and national levels, the income requirement doubled; it quadrupled for obtaining candidacy rights.

These restrictions were not effective, particularly because inflation turned the income requirement close to irrelevant. Contemporaries, not without complaints, recognised that it was as if Brazil had universal (male) suffrage. Further, one must consider that in an illiterate society, there were no documents. Income proofs were based upon viva-voice testimony made in the electoral assemblies.⁹

The poor did vote during the monarchical regime (Graham 1994: 109). The rate of participation at the local elections reached something around 40% of the adult male free population. In this sense, one might argue that the country was more democratic than most European countries at that time. But to take part in elections is not everything. Participation was highly constrained. The poor did vote because elites were able to manipulate the

⁵ Also see Fujiwara 2015; Gingerich 2013; Hidalgo 2010; Limongi, Cheibub & Figueiredo 2015. For further information on the citizenship law of Brazil, please consult P. Jeronimo (2016). Report on Citizenship Law: Brazil. EUDO Citizenship Report 2016/01. Florence: EUI. <http://cadmus.eui.eu/handle/1814/38885>.

⁶ Data from public sources available at <http://www.tse.jus.br/eleicoes/estatisticas/repositorio-de-dados-eleitorais-resultado-2014>.

⁷ See section 3.1.3. for further details.

⁸ For a concise and authoritative history of Brazil see Fausto (2001).

⁹ These issues are treated at length in Limongi (2014).

composition of the lists of those allowed to vote. The criteria used to recognise the right to vote was arbitrary and placed in the hands of local elites.

During the monarchical period, income restrictions also regulated the right to be a candidate. The restrictions over passive political rights were more stringent and effective than those referring to active ones. A member of the Lower House was required to register an annual income of at least 4,000,000 reis, while a member of the Upper House had to be at least 40 years old and have an annual income of at least 800,000 reis.

At the close of the Empire in 1881, an electoral reform abolished indirect elections and, without changing the Constitution, raised the barriers to political participation. The electorate was drastically reduced through a simple trick: income had to be proved with written documents. The avowed objective was to reduce corruption and governmental interference in the production of the electoral roll. However, as one might expect, the reform did not reach its objective and instead, the electorate shrank while corruption and manipulation continued to be rampant. All the reform accomplished was to change the method by which the elite controlled elections.

The advent of the Republic in 1889 did not change the overall picture (Carvalho 1999). Suffrage remained restricted although literacy replaced income as the main requirement for obtaining the right to vote. If applied, this restriction would have barred most adults from actually voting as Brazil was a country of illiterates and only members of the elite attended schools. But low rates of literacy cannot explain the limited and highly restricted political participation that characterised the First Republic (1889-1930) period. Legal barriers were easily circumvented and controlled by local landowners. They had the means, through open manipulation of the enrollment process, to influence the composition of the electorate. However, in the end, red tape and bureaucratic control over the handling of the necessary documents were the real barriers to political participation. The poor and illiterate did vote, but under the tight control of a patron. Manipulation and fraud was the norm for the whole period and this was common knowledge among the elite.¹⁰

During the First Republic, the country attracted a great deal of foreigners, mainly from Italy and Germany. At the close of this period, a large group of Japanese settled in the country. The vast majority of the foreign population came to work at the coffee plantations. Germans were the exception, since they tend to settled in small farms in the south part of the country. In the state of São Paulo, most landowners did enroll their workers and controlled their political participation, irrespective of their nationality.

A period of political instability followed the fall of the First Republic. Getulio Vargas ruled for 15 years, first as the head of the provisional government from 1930-1934, as a constitutionally elected president between 1934 and 1937 (the Second Republic) and, finally, as a dictator from 1937-1945. This last period, known as *Estado Novo*, is the only period in the whole of the history of post-Independence Brazil during which elections were completely suspended.

The Third Republic (1945-1964) is the first democratic period of the country. Elections became truly competitive and more inclusive. Women received the right to vote and the legal age to acquire political rights lowered to 18 years. However, the illiterate had no right to vote and public education continued to be dismal. Yet, if we consider the whole period, as the 1964 population was 1.8 times greater than the 1945, the electorate was three times greater for the same period. Essential to this transformation were a series of electoral reforms that include the creation of the Electoral Justice (*Justiça Eleitoral*), mandatory voting and the introduction of proportional representation (Limongi, Cheibub, & Figueiredo 2015).

¹⁰ For a discussion of these issues, see Limongi (2012)

The creation of the Electoral Justice meant that all phases of the electoral process, from voter enrollment, election supervision and proclamation of the results were taken out of the hands of politicians. More precisely, the government lost the capacity to manipulate and influence the electoral process.¹¹ During the Third Republic, the Electoral Justice gained institutional autonomy and reinforced its key position as the guardian of the electoral process.¹²

The 1964 military coup marked the advent of an authoritarian regime that lasted up to 1985. The military controlled the presidency and interfered in the whole political process. However, the electoral calendar though was not suspended and, paradoxically, the autonomy of the Electoral Justice was preserved and, in a sense, reinforced, since it was entirely isolated from pressure from political parties.

At the dawn of the military regime, practically all Brazilians were entitled to vote. The so-called New Republic (1985-1989) completed universal suffrage as it reformed the constitution to extend the right to vote to the illiterate, a decision the 1988 Constitution kept. Nowadays, all adult Brazilians have the right to vote and around 80 per cent of those registered do turn out to vote. However, residency requirements and the absence of an in-transit vote have historically lowered voter turnout. Recent reforms and new methods of registration were devised to face this problem.

Democracy asks universal suffrage. However the right must become actual, that is, the right has to extend to the possibility of enrolling and turning out to vote. These conditions are met in Brazil: voting is mandatory, all Brazilians register to vote and the vast majority do turn out to vote. Yet, these are only prerequisites of a democratic polity. A whole set of other conditions are necessary for true democratic political participation. In this sense, Brazil still has a long way to go. In 2010, 20 per cent of the electorate had no formal education whatsoever and 50 per cent had only between one and eight years of school attendance. Access to education is only one dimension of the huge cumulative inequalities that characterise the country. It is an open question whether democracy in the political realm will alter this scenario.

3. Active electoral rights in Brazil

3.1 Eligibility: who has active electoral rights?

Electoral rights in Brazil are outlined in the 1988 Constitution.¹³ According to the Constitution, only Brazilian citizens have electoral rights [article 14]. Registration is voluntary for Brazilians sixteen or seventeen years old and mandatory for those eighteen years or older [article 14]. In order to register, one must go to the nearest office of the Electoral Justice, the entity in charge of organising the electoral process, where one must provide a birth certificate or official id card and documents proving residence in the office jurisdiction. The registration process is easily done. For those for whom registration is

¹¹ For an account of this period, see Limongi (2015).

¹² This and the following paragraphs draw heavily from the growing autonomy of the Electoral Justice is discussed in Limongi et al. (2015).

¹³ An English version of the 1988 Constitution is available at <http://english.tse.jus.br/arquivos/federal-constitution>. Without further specification, all references to articles in the text below refer to the 1988 Constitution.

mandatory, proof of registration is demanded on several practical occasions, for instance when applying for a public job, or applying for a passport. In fact, as voting is also mandatory, proof of registration is not enough. One must provide proof that he or she has voted in the most recent elections. A fine applies to those who fail to turn out to vote and who did not justify their absence.¹⁴

In Brazil, elections are frequent. Voters go to the polls regularly at a two year interval. The electoral calendar groups elections according to their respective districts, distinguishing between local and general (state plus national) elections. Brazilians vote for a mayor and councilors (*Vereadores*) in local elections. In the general elections, the voter casts five votes: for President, for Governor, for Senator and for Representatives at the National Lower House (*Câmara dos Deputados*) and at the State Assembly (*Assembleia Legislativa*). All elected officials have a four year mandate, except senators for whom the mandate lasts eight years. There is no state or local variation regarding any aspect of the electoral legislation. Local elections, for instance, happen on the same day in the whole country.

Brazilians also vote in referendums and plebiscites, although these are little used constitutional resources. Both consults are also under the authority of the Electoral Justice, and the requisites to vote in these specific events are the same as those that apply for regular elections. Present in the constitution [article 14], these instruments are regulated by federal Law 9.709/88,¹⁵ which determines that these consults have to be approved by the National Congress. This law also grants rights to political parties and non-partisan organisations to put forth their ideas on the matter. Furthermore, any alteration of a municipality or state territory, as well as the creation of a new state or municipality, must be put to plebiscite for the electors directly affected by the measure.

After the approval of the present constitution, there has been only one plebiscite and one referendum at the national level. Both of these took place in non-election years. The 1993 plebiscite revolved around the form of government, i.e., if the country should abandon the pure presidential regime and move toward some sort of parliamentary regime. The population rejected the change and confirmed the 1988 Constitution option. The 2005 referendum asked voters whether they accepted or declined the prohibition of fire arms commercialisation. Those against the ban carried the day.

3.1.1 Citizen residents

Nationality and age are the main criteria regulating political rights in Brazil. Brazilians are those born in the country ‘even if of foreign parents, provided that they are not at the service of their country’ and those born abroad of a Brazilian father or a Brazilian mother. With regard to the latter, if the parents were abroad at the service of the country, nationality is granted as if he or she were born in Brazil. If the parents were abroad for other reasons, then one would have to be registered with a competent Brazilian authority or come to reside in Brazil and opt for the Brazilian nationality at any time after eighteen years of age.

According to the 1988 constitution [article 14], registration and voting are mandatory for all Brazilians over eighteen years of age. However, registration and voting are optional for the illiterate, for those over seventy years and for those over sixteen and under eighteen years of age. The same article of the Constitution asserts that ‘foreigners cannot register as

¹⁴ It should be noted that the fines are not that high and non-voters are frequently pardoned by specific laws. Thus, voting is mandatory but one can easily circumvent or ignore it.

¹⁵ The complete text of the law may be found at http://www.planalto.gov.br/ccivil_03/leis/19709.htm.

voters'. As of 2000, Portuguese nationals are an exception to this rule, because the Treaty of Friendship, Cooperation and Assistance grants political rights to the Portuguese in Brazil on grounds of reciprocity.¹⁶

From the advent of the Republic (1889) up to 1985, the illiterate could not legally vote in Brazil. Since the number of illiterate adults has been considerable and concentrated on the poorer strata of the population, the restriction was politically relevant. Yet, the law never established literacy tests or asked for proofs of any sort. Thus, the restriction was easily circumvented. However, despite the fact that the constitution was routinely circumvented, it is telling that the illiterate only gained the *right* to vote as late as 1985. Moreover, it should be noted that whereas the 1988 Constitution has confirmed the 1985 Act, it did so adding that for the illiterate vote is optional.

Although the illiterate were allowed to vote, they had to write their preferences on the official ballot. Hence the extension of the franchise to the illiterate resulted in increasing rates of invalid votes in the proportional elections, i.e. the elections for City Councils (*Câmara de Vereadores*), the Lower House (*Câmara dos Deputados*) and State Legislatures (*Assembleia Legislativas*). As Hidalgo (2010) has observed, the illiterate remained *de facto* disenfranchised. Yet, it should be noted that for the majoritarian elections (President, Senator, Governor and Mayor), the rates of invalid votes were not that high. In this, the design of the ballot mattered. For the majoritarian elections, all the voter had to do was to tick his or here preferred option. For the proportional representation, given that the country adopts the open list system, the ballot could not list all candidates. Thus, in the PR elections, the voter received a blank paper. Therefore the combination of high rates of illiteracy and cumbersome ballots led to a *de facto* restriction of the suffrage to the illiterate poor in the PR elections. The introduction of the electronic vote, which began in 1998 and was completed in the 2002 election, has made casting a valid vote considerably easier for the illiterate. Indeed, one may argue that the illiterate were only truly and fully enfranchised in 2002.

According to the constitutional text [article 15] 'disenfranchisement of political rights is forbidden'. Yet, political rights may be suspended under specific circumstances, such as final cancellation of naturalisation, absolute civil incapacity, a final criminal sentence, for as long as its effects last, and, finally, due to administrative dishonest practices¹⁷. That is to say, political rights may be lost or suspended by precise and identified judicial sentences.

Those with mental disabilities are not automatically denied the right vote. To lose his or her political rights one has to be formally declared incapable by a judicial sentence.

As of criminal offenses, the Constitution is clear: rights are suspended only as long as one is sentenced and, moreover, only if the conviction is final. Once the sentence is completed, one recovers one's political rights. In principle, as long as one has the possibility to appeal against the sentence, one's political rights are not suspended. Since most of the imprisoned are yet to hear a final sentence, their political rights have not officially been suspended and they should be allowed to vote. However, in practice, the way elections are organised, precludes detainees' political participation as a ballot would have to be taken to the prisons. There have been localised efforts to do this, but their effects have been negligible. Despite not having lost the right to vote, the fact is that almost all of the imprisoned population does not vote.

Conscripts during their period of compulsory military service do not vote [Art 14, Paragraph 2 of the 1988 Constitution]. This restriction is temporary and affects only males,

¹⁶ See section 3.1.3. for further details.

¹⁷ This paragraph of the Constitution has been regulated by the Complementary Law 135/2010, known as the Clean Record Law. See below for the meaning and consequences of this law. The complete text of the law may be found at http://www.planalto.gov.br/ccivil_03/leis/LCP/Lcp135.htm.

since women do not join the army as conscripts. This is the only case of this class of restriction in the whole constitutional text. The explanation for this exclusion is quite simple: conscripts must obey the orders of their superiors. Previous constitutional texts, as for instance the 1945 one, denied political rights for most members of the military forces. Previous constitutional texts extended this logic to specified members of the church and even to some type of employees.

The Brazilian Constitution is not clear with regard to voting rights of indigenous peoples. The issue has been defined by the Superior Electoral Court and the right to vote of indigenous peoples was recognised. Unlike in the case of Brazilian citizens, the legal obligation of voting registration is not mandatory for the indigenous population, even if the individual is eighteen years or older.¹⁸ The Superior Electoral Court has also decided that it consists an unconstitutional limitation of political rights to demand that indigenous people prove their fluency in Portuguese.¹⁹

3.1.2 Non-resident citizens

The 1965 Electoral Code (Law 4737/65)²⁰ promulgated during the military regime (1964-1985) was the first Brazilian electoral law to extend the right to vote to Brazilians living abroad (Calderón Chelius & Calderón Chelius 2003). Article 7 of the 1965 Electoral Code distinguished residents from those living abroad. For the latter, registration and voting was voluntary and, according to the same law [article 255], voting limited to the presidential elections. Since during the military regime presidents were not popularly elected, this provision had no practical effect. To vote, non-resident citizens would have to await re-democratization and the return to direct presidential elections.

Thus, the 1989 presidential election was the first one in which Brazilians living abroad voted. Few did so at that opportunity: 18,492 Brazilians registered at the embassies and consulates spread around the world to cast their vote in the first presidential election after 29 years.²¹ Practical matters, as well as limited time to register, may have been a factor in this first experience with voting abroad. As will be shown below, the overall picture has remained the same in the subsequent elections and non-resident political participation pales when compared with resident participation.

It should be stressed that with regard political rights and duties, the 1988 Constitution and subsequent electoral laws do not specify or distinguish residents from non-resident citizens. That means that mandatory registration and voting applies for all Brazilian citizens, no matter where they reside. For those living abroad voting is mandatory but restricted to the presidential election. The rationale for this limitation follows the territorial basis of political representation. The right to vote is linked to the right to influence decisions that affect the voters' community. In this sense those living abroad are treated the same way as the voter living in state X, say São Paulo, with regard to the election in state Y, say Bahia. He or she is considered as a stranger, a foreigner, without any meaningful right to influence community decisions. However, this problem could be easily circumvented. Brazilians living abroad could be allowed to choose the district to which they want to belong and vote. After all, some

¹⁸ See Administrative Procedure in The Superior Electoral Court/Ac.-TSE n. 180681/2011. The full text may be consulted in <http://www.tse.jus.br/legislacao/codigo-eleitoral/normas-editadas-pelo-tse>.

¹⁹ See TSE, Resolution n. 23274/2010. For the full text, see <http://www.tse.jus.br/legislacao/codigo-eleitoral/normas-editadas-pelo-tse>.

²⁰ The text of the law may be found at http://www.planalto.gov.br/ccivil_03/leis/L4737.htm

²¹ The resident electorate reached 82,056,226.

voters living in São Paulo keep their enrollment in Bahia in order to continue voting in elections for the latter state. It should be noted that to let those living abroad decide the district in which he or she wants to vote would be a feasible solution for state wide elections (there are 27 states), but somewhat cumbersome for local elections (there are more than 6 thousand municipalities).

For the Electoral Justice, the close link between residence and voting is connected to its concern with avoiding fraud. Proxy voting, multiple enrollment and the manipulation of residence requirements were common practices during the First Republic. The Electoral Justice mandate is to impose strict rules concerning enrollment and voting. The secrecy of the vote is also a concern. Special ballots and in-transit voting are seen as ways through which the secrecy of the vote could be violated.

Thus, without being the object of public debates or political pressure, diaspora voting has been limited to the presidential elections. To extend this right to other disputes has not been raised or brought to public attention by any politically relevant group. The creation of an international district or anything of the sort does not figure in the public agenda either.

In order to vote abroad, one must register at the embassy or consulate that has jurisdiction over the place one lives. With regard to documentation, there is no meaningful difference to those of Brazilian residents and the documents and formalities are the same. Yet, given the sparse network of embassies and consulates, distances from residence may make enrollment and voting a complex matter for some emigrants.

As Chelius & Chelius (2003: 99) observe in Brazil, ‘as in most countries, diaspora voting is characterised by a low number of participants’. The statistics show that from the universe of potential voters, registration is minimal, turnout even smaller and the number of potential voters is not easily defined. Official estimates of the non-resident Brazilian population are hard to come by, the most authoritative calculations put these numbers around 1.6 million as of 2000 (Patarra et al. 1995). A recent survey by the Ministry of Foreigners’ Affairs revised these numbers to 3 million.²² In absolute terms, this is a considerable number. Turning to the political arena and to the political participation of the non-resident, one has to consider that not all non-residents may become voters and that this population is highly dispersed. According to the same official source, the largest concentration of Brazilians abroad is found in the United States, where 1.3 million Brazilians live. Japan is the second largest recipient of Brazilians emigrants with no more than 180,000 residents. It is worth noting that Japan surpassed Portugal, which due to historical and cultural reasons, is a traditional destination of Brazilians in Europe. The numbers of non-residents registered to vote reached 354,184 for the last general election held in 2014. This number pales in comparison to the size of the resident electorate of 142,467,862.

Turnout rates among non-residents is considerably lower than the ones verified within the country: 40% of non-residents able to vote did so in the 2014 elections. Most probably, high costs of dislocation explain the low turnout rates among non-residents despite the fact that the network of electoral precincts outside the country is impressive. In the 2014 presidential election, there were places to vote spread through 118 different countries. Inspection of the turnout rates, however, show that in most precincts, few registered voters show up. In more than 30 locations, no one voted. New York recorded the largest number of voters at 8,524.

²² <http://www.brasileirosnomundo.itamaraty.gov.br/a-comunidade/estimativas-populacionais-das-comunidades/estimativas-populacionais-brasileiras-mundo-2014/Estimativas-RCN2014.pdf>.

3.1.3 Non-citizen residents

The Constitution states clearly that political rights are linked to Brazilian citizenship. In fact, the text asserts the automatic link between Brazilian citizenship and nationality, denying foreigners the right to vote. The constitution first states that suffrage is universal and registration and voting mandatory, only to make exception for foreigners in the next paragraph. The text is clear and direct: ‘Foreigners cannot register as voters’. Thus, there is no possibility foreigners residing in Brazil could vote for any type of office. Portuguese nationals are an exception since, according to the 1998 Constitution (article 14, paragraph 1), they may obtain the rights inherent to Brazilians if Brazilians receive equal treatment under Portuguese statutes.²³ Reciprocity of political rights for Portuguese citizens in Brazil has been obtained with the signing of the Treaty of Friendship, Cooperation and Consultation in 2000.²⁴ Article 17 (paragraph 1) of the Treaty establishes that a Portuguese (Brazilian) may request political rights in Brazil (Portugal) after three years of continuous residence in the country. If granted, this status allows its holders the immediate full exercise of political rights, on a par with Brazilian citizens, with the exception of the access to the offices of President of the Republic, President of Parliament, Prime-Minister, president of any of the supreme courts and access to service in the Armed Forces and in the diplomatic corps. However, the exercise of political rights in one country suspends them in the other (article 17, paragraph 3), and Portuguese nationals exercising electoral rights in Brazil therefore waive their political rights in their country of origin.²⁵

Since registration is a pre-condition to run for office, it follows that foreigners cannot be candidates as well. Recently, there have been some attempts to bring this subject to the attention of public opinion. Some NGOs related to immigrants have advanced the idea that foreigners should be allowed to vote in local elections. Other than these localised debates, no serious discussion of the subject has occurred. Nowadays, Brazil does not attract a large amount of migrants. Official estimates indicate that the number of foreigners residing in Brazil is small, around 650,000, less than 1% of the total population of the country (Patarra et al. 1995: 28).

Through a process of naturalisation, a foreigner living in Brazil obtains the right to vote and to run for election.²⁶ The presidency is the only office for which a naturalised

²³ Brazilians legally resident in Portugal may have one of three legal statuses (or combine two of these): 1) the equality status that can be requested at any time by Brazilians who are habitually resident in Portugal and that excludes political rights; 2) equality of political rights status on grounds of reciprocity, granted to Brazilians who have been habitually resident in Portugal for at least three years, which allows its holders the immediate full exercise of political rights, on a par with Portuguese citizens, with the exception of the access to the offices of President of the Republic, President of Parliament, Prime-Minister, president of any of the supreme courts and access to service in the Armed Forces and in the diplomatic corps; 3) legal residence status applicable to all foreigners originating from a Portuguese speaking country on grounds of reciprocity, i.e. Brazilians who do not obtain an equality of political rights status, even if they hold the general equality status, are only entitled to vote and be elected in local elections, after two and four years respectively.

²⁴ Tratado de Amizade, Cooperação e Consulta, entre a República Federativa do Brasil e a República Portuguesa, celebrado em Porto Seguro em 22 de abril de 2000. The full text of the law may be found at http://www.planalto.gov.br/ccivil_03/decreto/2001/D3927.htm

²⁵ Given that the Portuguese citizens can naturalise in Brazil after one year, and that the Status of Equality requires three years of residence and a waiver of political rights in Portugal, few Portuguese opt for the Status of Equality.

²⁶ For further information on the citizenship law of Brazil, please consult P. Jeronimo (2016). ‘Report on Citizenship Law: Brazil. EUDO Citizenship Report’ 2016/01. Florence: EUI. <http://cadmus.eui.eu/handle/1814/38885>.

Brazilian cannot run. Other than that, there are no differences between born and naturalised Brazilians. In fact, the Constitution states that the law may not establish distinctions between born and naturalised Brazilians other than those listed in the Constitution itself. With regard to political rights, the only meaningful restriction refers to the presidential office.

The requirements for the naturalisation process are mainly related to uninterrupted residency and good moral repute. For individuals from Portuguese speaking countries the residency requirement is negligible: one year is enough. For all other nationalities, the residence requirement is fifteen uninterrupted years. Foreigners who wish to be naturalised must meet the following additional requirements (Federal Statute n° 6.815/80):²⁷ (1) have full legal capacity (be older than 18 years old, plenitude of mental capacity, to not be prodigal, or have reduced judgment by drunkenness or drug abuse); (2) be registered as a permanent resident in Brazil; living permanently and continuously in Brazil for at least 4 years before the naturalisation request (this term can be reduced if the foreigner has a Brazilian child or spouse, is the child of a Brazilian, has provided relevant services to Brazil, is of outstanding professional, scientific or artistic capacity, is the owner of property, industry or is a shareholder; and the term requirement can be dismissed if the foreigner is married to an active Brazilian diplomat for more than five years, is employed in a Brazilian Diplomatic Mission or Consular office for more than ten unremitting years, or is from a Portuguese speaking country); (3) read and write in Portuguese, considering the conditions of the naturalised citizen; (4) be employed or with sufficient economic conditions to support his/her own self and family; (5) have good behaviour, as assessed by the Ministry of Justice; (5) have no criminal record in Brazil or abroad (this includes investigations, indictments or convictions) for crimes with terms of imprisonment longer than a year; and; (6) good health (no good health proof is required for foreigners living in Brazil for more than two years)²⁸.

3.2 Registration Procedures: Becoming a voter

The Electoral Justice, created in 1932, is the institution in charge of the organisation of the whole electoral process. Voters must register at the Electoral Justice to obtain their voting id (*Título Eleitoral*) so that they may exercise their right to participate in the political process. Registration is a relatively simple operation. Nowadays, for those for whom voting is mandatory (those older than eighteen and younger than seventy) the rate of registration is close to 100% (Limongi, Figueiredo & Cheibub 2015). Registration rates are much lower for those between sixteen and seventeen years old, i.e. those for whom registration and voting is voluntary. According to statistics produced by the Electoral Justice, just one out three of these potential voters registered.

According to the law, citizens should vote where they reside. This means that in order to register, the citizen has to present a document that attests that he or she resides in the region under the specific territorial jurisdiction of the Electoral Justice office. Thus, for the local and state elections, one has the right to vote only in the municipality and state in which he or she is registered. If the voter moves, he or she will have to change his or her registration card. For local and state elections there is no in-transit voting. Thus, voters who are traveling or residing elsewhere than the place in which they have registered cannot vote. But since voting is mandatory, these individuals must justify why they failed to vote. This is not a

²⁷ The full text of the law may be found at http://www.planalto.gov.br/ccivil_03/leis/L6815.htm.

²⁸ Non-naturalised foreigners have their permanence in Brazil regulated by the Federal Statute 6.815/80, the normative resolutions of the National Council of Immigration and by the Ministry of Justice decree n° 04/2015.

complex operation and a considerable part of the electorate does justify why they did not turn out to vote. Many of these justifications are presented in special sections on the day of the election.

Although proof of residence is a requirement for voting (and to be a candidate in the election), legal civil residence and electoral residence do not need to be the same. The Electoral Justice follows lax and flexible rules regarding proof of residence. In other words, the voter has some leeway to choose his political residence. For reasons that will be detailed below, this flexibility is very important for politicians.

The 2014 election was the first one in which voters could vote for president in other precincts than the one in which he or she was registered. But this possibility was extended only for those voters that had registered recently using biometric technology and could be exercised only under previous notification. Under this highly controlled situation, the Supreme Electoral Tribunal (TSE) could be sure that the voter cast only one vote.

The new biometric registration method started to be adopted in 2008. As of the 2014 election, 15% of the electorate has been registered according to this method. The TSE plans to have it extended to all voters in the next elections, although no precise date was defined to conclude this process.

It should be stressed that the TSE's mission is closely linked to eliminating electoral fraud, which is why the Electoral Justice was created in the first place. Manipulations and fraud were rampant during the Empire (1822-1889) and the First Republic (1889-1930), thus the TSE is truly obsessed with enrollment procedures, the granting of the secrecy of the vote and fair counting of the votes cast. In order to maintain fair standards of voting, the TSE has made several advances, such as the adoption of the electronic vote and biometric registration.

3.3 Casting a vote

To cast a vote is a relatively easy process. Polling places are well distributed in the territory so that distance from residence is not a problem for most voters. This is certainly the case for those living in urban areas, although for rural residents, the distances between residence and polling place may be considerable. However, the Tribunal has as one of its missions to make voting easy for all voters.

Nowadays, all Brazilians in all elections cast electronic votes. Paper ballots were used for the last time in the 2000 local elections. The E-Vote was first introduced in the 1998 general elections and then only partially. The E-Vote simplified the act of voting as all one has to do is type the candidate number on a keyboard. The name and the picture of the chosen candidates appear in a screen and the voter confirms his or her options. In a general election, a voter casts five different votes. In a local election, voters have to make two choices. The voting machine has a preprogrammed sequence. Voters may make mistakes, for instance, one may think that one has vote for the presidency when in fact one has voted for the House. This is a real possibility and there are indications that it does happen (Zucco & Nicolau 2015).

As mentioned before, the main effect of the E-Vote has been the decline of spoiled ballots. The proportion of spoiled votes in the 1994 election for the House of Representatives was greater than 45%. In other words, almost half of voters did not express a valid preference. In the 1998 general election voters living in the larger cities voted using the E-Vote. Given that the adoption was partial, one can compare outcome with and without the e-vote. Places in which voters used the new technology presented smaller (much smaller, it should be said) rates of spoiled ballots. Hidalgo (2010) and Fujiwara (2010) proved that the E-vote was responsible for the change and that a large part of spoiled ballots were due to the difficulties the paper ballot represented for voters with a low level of education. Thus,

Hidalgo concludes, the adoption of the E-vote enfranchised the less educated voters, arguing that 30% or so of the total electorate were enfranchised by the new method.

4. Passive electoral rights: becoming a candidate

One has to be a voter to be a candidate but, as one would expect, not all voters may become a candidate.²⁹ The 1988 Constitution [article, paragraph 3] stipulates that illiterates cannot be candidates. Yet, after a polemical case in which the most popular candidate to the Lower House in 2010 declared that he was illiterate only to rephrase and qualify his statement after learning the consequences, the Tribunal relaxed the constitutional requirement, ruling that a candidate need no more than a rudimentary capacity to read and write (Resolução/TSE nº 17.902). Given this interpretation, the constitutional restriction has lost most of its practical consequences.

Members of the Armed Forces must either to take a leave or be discharged in order to present become a candidate for election. Restrictions also apply for members of the Judiciary and Public Prosecution. According to article 95 of the 1988 Constitution, members of the Judiciary are forbidden to ‘engage in political or party activities’. This means they cannot become candidates as long as they are members of the judiciary. Article 128 of the Constitution establishes the same for members of Public Prosecution Office.

To become a candidate one must be a member of a political party for at least one year. There are no independent (no partisan) candidatures. In fact, parties and not the individual candidates are responsible for registering the slates of candidates to all offices in the Electoral Tribunal. Party slates are the ones approved by a formal party meeting (a convention) organised according to the electoral law. The Tribunal may refuse to accept the party slate if the procedures prescribed by the law are not met. That is to say, there are several steps and procedures leading to a legal candidacy that are regulated by a law.

The party lists on the PR elections shall contain a minimum of 30% and a maximum of 70% of candidates of each sex [article 10 (3) of Law 9.504/1997]. Concretely, that means that the party list cannot have less than 30% of women. Yet, the law has loopholes so that a party may circumvent its application. For instance, the 70-30 percentage refers to the total *potential* candidacies and not to the actual list. That is to say, a party may justify that it has not found enough minority candidates, leaving the reserved slots open. In other words, if the party presents a list of 10 candidates, 7 of them may be men and zero women. According to the law, that would be a legitimate list³⁰.

Candidates may only run for offices for the districts in which they reside. This means that those willing to be a candidate must join a party and be registered as a voter in the district of the respective election one year before the election. The electoral law establishes a series of documents the candidates must provide to the Electoral Tribunal to support their candidacy, among them their income declarations to the fiscal authority. These documents are made public, so that citizens may scrutinize politicians’ income across time.

Given the one year district residence requirement, professional politicians may pick and choose the district for which they will run. Some such cases have been contested by opponents. The Tribunal has taken a liberal stand on the issue ruling that political residence is

²⁹ From this pre-condition one may conclude that resident non-citizens cannot be a candidate.

³⁰ For a discussion of the issue, see Araújo & ALVES (2007) and Speck & Mancuso (2014).

a matter of choice. Candidates and voters are free to move, as long as one is able to prove that one has a known and fixed address. The idea that residence implies long and established roots in the political community was repealed. However, the residence requirement does rule out the possibility of a candidature of a non-resident citizen. One must reside in the district for which one is running for office. Thus, if one is registered as non-resident voter in a particular district, one cannot be a candidate in that district.

Article 14 of the Constitution establishes different minimum age requirements for each office: thirty-five years for President and Vice-President of the Republic and Senator; thirty years for Governor and Vice-Governor of a state and of the Federal District; twenty-one years for Federal Deputy, State or District Deputy, Mayor, or Deputy-Mayor; eighteen years for City Councilor. The age requirement has to be met at the day of taking office. As already mentioned, the President and the Vice-President must be natal Brazilians.

The 1988 Constitution original text established a one term limit for all executive office holders (President, Governor and Mayor). In 1997, Congress approved a Constitutional Amendment (EC 16) allowing standing presidents, governors and mayors to run for re-election. That is to say, according to the current text, one may serve in an executive office for two terms. Relatives and spouses of those who have held an executive office may not subsequently run for the same office.

The Complementary Law 435 approved in 2010, known as the Clean Record Law (Lei da Ficha Limpa) extended the class of crimes and the types of sentences that render a citizen ineligible for elected office. The law is the outcome of a popular petition –one of the few cases of a successful popular petition after the promulgation of the 1988 Constitution – signed by more than one million voters orchestrated by the Movement to Combat Electoral Corruption. As Glickhouse & Leme observe, the basic aim of the law is to ‘impede candidates from running for public office for eight years if they have been convicted for a serious crime, loss of their political positions due to corruption, or resigned to avoid impeachment’ (Glickhouse & Leme, 2014).³¹ The law applies even if a conviction is pending a decision by a higher court. Only in 2012, after a series of stalemates and reversals of previous decisions, did the Supreme Court (Supremo Tribunal Federal –STF) arrive at a final decision, ruling the act constitutional. The law was thus applied for the first time in the 2012 local elections. Brazil’s attorney general’s office is highly committed to the enforcement of this law. In the last general election, more than five hundred candidates were barred from standing for election through the application of the Clean Record Law.

5. Conclusion

In 2014, a little over one hundred and forty million Brazilians went to the polls to elect a president for the 7th consecutive and uninterrupted time. The large majority of the adult population had no difficulties in registering and voting. Elections took place without violence or disputes about the legitimacy of their results. The electoral process in all its manifold and complex stages, from registration of voters to the swearing in of those elected, was not subject to major legal disputes. This was the first election in which the Clean Record Law was applied and many candidates convicted in corruption scandals were barred from

³¹ ‘Explainer: Brazil’s ‘Clean Record’ Law’, *American Society /Council of the Americas*, at: <http://www.as-coa.org/articles/explainer-brazils-clean-record-law> [accessed on 11 March 2016].

standing. This law –an outcome of a popular initiative—represents a great step to increase popular control over politicians' behaviour and acts.

Brazilian electoral history is marked by manipulation, violence and coercion. For more than one hundred years, elections were under strict control of the elites. The right to vote was highly regulated. The poor (1823-1889) and/or the illiterate (1889-1985) could not legally vote for most of the history of the country. However, the law was not strictly observed and some poor/illiterate did vote, but they did so under the strict control of their superiors. In fact, the traditional distinction between active and passive citizenship was inverted. Candidates were the active part. As several analysts point out, representative government was inverted (Leal, 2012). The government de facto chose the voters. This scenario began to change in 1945 with the democratisation of the country. Electoral reform, including the creation of the Electoral Justice and the adoption of secret and mandatory voting, played a key role in this transformation. Politicians lost control over the voter registration process and the counting of votes. Urbanisation also contributed to democratisation as the percentage of voters living under the control of landowners shrank.

Today, Brazil is one of the largest democracies in the world. To become a voter and to vote is a simple process. However, these are only the preconditions for political participation and one may say that Brazil scores well on this account in that the formal and bureaucratic pre-conditions for participation are met. But, given the resilience of the many inequalities that characterise the country, Brazil has a long way to go to reach true full political participation. Inequality through illiteracy is a case in point. Until recently, almost one half of the electorate struggled to express their political preferences because the ballot was an obstacle. Although this case has been addressed, the road ahead is long.

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