



DEMOCRACIA E INFORMAÇÃO: O VOTO NULO NO BRASIL

DEMOCRACY AND INFORMATION: THE NULL VOTE AND ITS MISCONCEPTION IN BRAZIL

Adriana Campos Silva

Doutora em Direito pela Universidade Federal de Minas Gerais (2002) e Mestre em Direito pela Universidade Federal de Minas Gerais (1990). Professora Decana da Área de Direito Constitucional. Professora da Pós-Graduação e da Graduação da Universidade Federal de Minas Gerais.

Polianna Pereira dos Santos

Mestre em Direito Político - UFMG; Especialista em Ciências Penais - IEC - PUC/MG; Assessora do Procurador Regional Eleitoral de Minas Gerais. Professora de Direito na Universidade Presidente Antônio Carlos - UNIPAC/Itabirito e NA Pós-graduação na PUC Minas e na ESA- OAB/MG.

Júlia Rocha de Barcelos

Pós-graduanda em Direito Constitucional pelo Instituto para o Desenvolvimento Democrático (IDDE). Bacharel em Direito pela Universidade Federal de Minas Gerais.

Resumo

Este estudo pretende analisar um equívoco comum, relacionado a votos nulos no Brasil, em razão do qual, eleitores podem acabar se baseando em premissas falsas para fundamentar suas escolhas eleitorais. Utiliza-se de mídias sociais, dados oficiais de eleições e legislação histórica para melhor entender a origem desse equívoco e seus efeitos na legitimidade da democracia. No Brasil é possível que um eleitor se abstenha de votar, vote branco ou nulo, ou vote em um candidato ou partido. Os três primeiros desses comportamentos podem ser definidos como alheamento eleitoral. Nesses casos, o princípio democrático exige que o eleitor esteja ciente dos efeitos potenciais de sua escolha. A informação é, assim, essencial, uma vez que a habilidade de intervir em decisões políticas e a extensão desta habilidade ao maior número de adultos são critérios para a democracia que só podem ser alcançados por meio do entendimento esclarecido.

Palavras-chave: Democracia. Informação. Voto.

Abstract

This study intends to analyze a common misconception regarding null votes in Brazil, by which electors may end up basing themselves on false premises to second their electoral choices. It uses social media, official elections data and historical legislation, in order to better understand the origin of the misconception and its effects on the legitimacy of democracy. In Brazil, it is possible that an elector abstains from voting, votes blank or null, or votes for a candidate or party. The first three of these behaviors are defined here as “electoral indifference”. In these cases, the democratic principle requires that the voter is aware of the potential effects of his choice. Information is therefore essential, for the ability to intervene in political decisions and the extension of that ability to the widest range of adults are criteria for democracy that can only be reached through enlightened understanding.

Key-words: Democracy. Information. Vote .

1. INTRODUCTION

In Brazil voting is compulsory, though free in essence. That is, the citizen must attend to his voting session or justify his absence, but he is free to vote for whoever he wants or not to vote for anyone at all - the blank or null vote. If a citizen abstains to vote and does not attend his session, he must justify himself or pay an electoral fee. If not, he may have some of his political rights restrained. On this study we will work with null votes, blank votes and abstentions under the concept of “electoral indifference” as developed by Paola Novaes Ramos (2009).

The freedom to vote must be connected with the democratic principle of information. It is thus essential that the voter is aware of the potential effects of his choice, so that he does not cast a blank or null vote supported by the false belief that this may result in the elections’ annulment.

Indeed, it has been observed – mostly on social networks – that there is a great misconception about the consequences of the blank and null votes. Such misconception is perceivable even on the speech of electoral authorities, as will be shown. Moreover, on the electoral period, this becomes evident through protest campaigns that encourage people to cast null votes intending to annul the election. In order to exemplify this, we have used mainly “YouTube” videos.

The study also uses official data from 2010 and 2014 elections in Brazil, available on the Superior Electoral Court (Tribunal Superior Eleitoral – TSE), comparing the percentage of electoral indifference, null votes and valid votes. This choice was conditioned by the restricted availability of comparable data from different elections on the official database.

It must be therefore highlighted that our focus is not the motivation for each of those behaviors, but the importance of the aforementioned misconception on the democratic principle of information and the elections' legitimacy.

2. SOCIAL MEDIA AND NULL VOTES

On the 7th of August, 2006, the then president of Brazil's Superior Electoral Court, Minister Marco Aurélio de Mello, took part in an interview for the television program "Roda Viva", in which he discussed elections, politics and corruption. At one point, the interviewer asked him if the story which had been circulating – on how, if there were more null votes than valid votes, the election would be annulled – was true. The minister replied evasively, although he clearly stated that: "if the null and blank votes add up to more than 50%, the elections will no longer subsist"¹ (RODA VIVA, 2006a), which was unfortunately not true.

That being the case, not much time later, on September 6th of the same year, he was interviewed by Folha de São Paulo (2006), and said that the null vote does not have the power to annul an election. In this interview, he did not mention his former mistake, nor is it possible to find the official "Roda Viva" YouTube video, containing the whole interview. The part in which he states that blank and null votes can result in the elections' annulment, however, was published by Caco Rocha on the 3rd of September, 2006, and has been viewed, to the present date, 35,360 times (RODA VIVA, 2006b).

¹ Paulo Markun: *E a história que se circula de que se a gente tiver mais votos nulos do que votos para um candidato a eleição está anulada. É fato?*

Marco Aurélio de Mello: *Nós temos uma regra que advém da Constituição Federal e diz respeito às eleições majoritárias para os cargos de governadores e presidente da República. Aí, o eleito precisa alcançar 50% dos votos válidos. A par dessa regra existe uma outra que é linear, que também repercute nas eleições proporcionais. Se os votos nulos e brancos alcançarem mais de 50%, nós temos a insubsistência de pleito. Mas eu não acredito que isso ocorra. A época é de definição, o eleitor precisa se definir, e não simplesmente projetar no tempo essa definição para uma outra data.*

Contrarily to what the minister said in the first interview, the blank and null votes are both considered invalid in the Country since 1997, and have no effect on the validity of the electoral process. Nonetheless, the minister's affirmation has influenced many citizens, who have then utilized this speech to defend the null vote, as a tool to annul elections. This is the case of the video "Projeto 00 – Voto Nulo, Porque votar?" published two years later (PROJETO 00, 2008).

The misinformation is widely perceivable in YouTube. When one searches the term "null vote" (voto nulo, in Portuguese), one receives, as result, all kinds of information about what it can be, the supposed difference between blank and null votes, and its effects on elections. It is evident that, if even TSE's Minister is confused about it, it cannot be expected that the general population truly understands the institute. That is well exemplified by the video "Polemica do Voto Nulo!", published on June 18th, 2012, by "TV Revolta", which counts 31,873 views (TV REVOLTA, 2012). This video shows the revolt caused by the lack of clear information on the subject. In it, a man says that he contacted the Regional Electoral Court (Tribunal Regional Eleitoral – TRE), but could get no explanation about the null vote. Nonetheless, he defends this type of vote, no matter what it actually means.

Adding to this scenario, a 2008 campaign in favor of the null vote has had 28,230 views, trying to convince people to vote null time and time again, annulling the elections, until there is a "magic" change of candidates (CAMPANHA..., 2008). Even though these videos aren't very recent, they still get new, recent, comments, which show they maintain a certain influence.

In opposition to such misinformed videos, there are those who try to clarify and explain the situation, with correct information, such as the one available in "Timbre Coletivo" (2012), with 286,473 views and "Canal do Otário" (2014), with 287,981 views. Brazil's Ministério Público Federal, in its official YouTube channel, published a video in 2014, which shows common people on the street talking about blank and null votes. It shows that misconceptions regarding those institutes are still very common even nowadays. Therefore, there is a need for such clarifying videos, which truly implement the democratic principle of information.

3. DEMOCRACY AND INFORMATION

Robert A. Dahl develops the concept of a polyarchal democracy – “a modern representative democracy with universal suffrage” (2000, p. 90) – as well as its essential institutions². He describes democracy by identifying the criteria of a democratic process, while observing that, throughout history, the concept and elements necessary for an understanding of democracy have varied widely.

Therefore, with an “ideal democracy” in mind, the author indicates five criteria which a “process for governing an association would have to meet in order to satisfy the requirement that all the members are equally entitled to participate in the association’s decisions about its policies”: effective participation, voting equality, enlightened understanding, control of the agenda³ and inclusion of adults⁴ (DAHL, 2000, p. 37).

The understanding that each individual citizen is at least capable of deciding what is good for himself is a characteristic of democracy, as a guarantee for political equality. In light of that presumption, the policy makers must be guided by those who have a real managing capacity, that is, the community on condition of political equality. In order for this political equality to be effective, it depends greatly on civic virtue, which is cultural, passed down from one generation to the next, and may be acquired through civic education⁵. According to DAHL (2000, p. 185):

(...) one basic criterion for a democratic process is enlightened understanding: within reasonable limits as to time, each member (citizen) must have equal and effective opportunities for learning about relevant alternative policies and their likely consequences.

It is the increase in the alphabetized population as well as the availability of information from alternative and independent sources, i.e., the freedom of expression and manifestation, which makes this leaning possible. (DAHL, 2000, p. 96/97).

² Though we are aware of Joseph Schumpeter’s criticism on this premise, in regards to his critical view on democracy, we do not adopt such conception on this brief study. On the subject, we suggest: Joseph Schumpeter. *Capitalism, socialism and democracy*. 2013.

³ According to the author, control of the agenda on a democratic association must be granted to its members, who “must have the exclusive opportunity to decide how and, if they chose, what matters are to be placed on the agenda” (DAHL, 2000: 38)

⁴ On a democracy, the citizen’s right to interfere on decision making must be given to the greatest possible number of people, without such restrictions as the ones existent on the last century, related to income or education criteria. As stated by Dahl (2000: 38): “all, or at any rate, most adult permanent residents should have the full right of citizens that are implied by the first four criteria”.

⁵ People must be informed in order to make political decisions (vote, monitor policy makers)

Article 1st of Brazil's Republican Constitution of 1988 (Constituição da República Federativa do Brasil – CRFB) states that Brazil is a Democratic State, governed by the Rule of Law, and also declares popular sovereignty⁶. It makes it imperative, therefore, to recognize the power of the people.

On this note, we are reminded of Müller (2003), which analyzes exactly “Who is the people?” who legitimates democracy. The author states that all Constitutions mention the people for a reason:

The term “democracy” does not derive solely etymologically from “people”. Democratic States are called govern of “the people” [“Volks”herrschaften]; they justify themselves claiming that, in the end, the people is the one who governs [“herrscht”]. (MÜLLER, 2003, p. 47)⁷

The author differentiates people from population, alerting to the existence of means to dominate this population (mere number), which would act – including on the choice of its representatives – motivated by the power of suggestion of those who detain power – in great measure, the conventional media.

Taking into account what has been pointed out in this topic, democracy requires that people have access to clear, correct and complete information about all the elements and institutes that are essential for the decision making process. Misinformation about institutes so important as the blank and null votes, therefore, disregards the democratic principle of information.

In this sense, Lombarte (1999, p. 76-80) relates the quality of the democratic regime to the informational quality of its citizens.⁸ Likewise, Dahl (2000, p. 74/78) points out that, based on due information and participation in political life – civic virtue – the citizen has the power to effectively interfere on relevant decision making processes in the society he is in.

For that reason, it is important for the electoral process, that the citizen has the condition to access the information necessary, as well as the knowledge on how to

⁶ *Todo o poder emana do povo, que o exerce por meio de representantes eleitos ou diretamente, nos termos desta Constituição* (BRASIL, 1988).

⁷ *“O termo “democracia” não deriva apenas etimologicamente de “povo”. Estados democráticos chamam-se governos “do povo” [“Volks”herrschaften]; eles se justificam afirmando que em última instância o povo estaria “governando” [“herrscht”].* - Quotations were freely translated by the authors.

⁸ *“La calidad del régimen democrático se halla em relación directamente proporcional a la calidad informativa de sus ciudadanos; y el tratamiento que merece el derecho a comunicar y a recibir información gradúa la intensidad democrática del régimen político.”*

make an electoral decision. It is not sufficient, therefore, to have a theoretical and factual knowledge, but it is also imperative to understand how to make the choice. Considering the vote as one of the objective means for the citizen to make political choices, the understanding of the rules of the game is fundamental. That being so, any misconception regarding blank and null votes affects democracy in a way.

4. UNDERSTANDING THE PROBLEM: ELECTORAL PERIODS AND POPULAR PARTICIPATION

In order to better understand the institutes analyzed in this study, as well as the perceived misconception, it is necessary to make a historical digression. Brazil's first known election dates from 1532, allowing the choice of representatives in the Municipal Chamber (Câmara Municipal) (TRIBUNAL SUPERIOR..., 2013?, p.3). From the "Colonial Elections" until the present moment, many changes in the electoral process took place. At that time, for example, suffrage was very restrict, and exclusively male.

After the Declaration of Independence, in 1822, a Bicameral Parliamentary System was adopted, with regular indirect elections to Senate and Chamber. In an unequal society, however, participation in elections was defined mainly by economic criteria. The first Brazilian Constitution was published in 1824 and, in 1881, Decree n. 3.029, the "Saraiva Law" (Lei Saraiva), instituted the electoral document (título de eleitor), and prohibited the participation of analphabets in the electoral processes (BRASIL, 1881, article 8, II).

With the Proclamation of the Republic, in 1889, and after the 1891 Constitution, the aforementioned economical restriction comes to an end. Nonetheless, the prohibition to the participation of analphabets and beggars remains (BRASIL, 1891, article 70, §1º, I e II). The time between 1889 and 1930 is known as "Old Republic" (República Velha), marked by the great importance of the local powers, with its oligarchies and adulterations to the electoral process⁹, as well as the so-called "Coffee

⁹ There was fraud to the paper ballots utilized at the time, as well as the electoral register, and so the electoral process lacked real credibility. On the subject, the reading of *Coronelismo, enxada e voto*, by Victor Nunes Leal and *Os Donos do Poder*, by Raymundo Faoro, is recommended. Further and

with Milk Politics” (Política Café com Leite), a reference to the intercalation of representatives from the states of São Paulo – a coffee producer – and Minas Gerais, a milk producer (CASTRO, 2013, p. 405).

The 1930’s revolution marks the end of the “Coffee with Milk Politics” and initiates the “Age of Vargas” (Era Vargas). In 1932, the first Electoral Code was sanctioned, creating the Electoral Justice (BRASIL, 1932, articles 5 to 8) and therefore changing the electoral control. The intention was to organize the electoral process and avoid the frauds and manipulations which had defined the First Republic. This project was maintained under the 1934 Constitution, but, through a coup d’état a dictatorship was established: “The New State” (Estado Novo). The 1937 Constitution, known as “Polaca”, was decreed by Vargas (BRASIL, 1937), and “extinguished the Electoral Justice, abolished the existing Political Parties, suspended free elections and established indirect election for President, with a six-year office¹⁰” (TRIBUNAL SUPERIOR..., 2013?, p. 54).

For ten years – between 1935 and 1945 – there were no elections in Brazil. It was only in 1945 that Decree n. 7,586, known as “Agamenon Law” (Lei Agamenon), reestablished the Electoral Justice. The end of the “New State” occurred when Getúlio Vargas was deposed by the Army’s High Command, in October 29th, 1945.

The obligatory vote was instituted in Brazil in 1935 through Law n. 48, which modified the 1932 Electoral Code. Since there were no elections at the time, the rule only applied to the 1945 Elections. The 1946 Constitution maintained the prohibition to the participation of analphabets in the voting process (TRIBUNAL SUPERIOR, 2013?, p. 59). That restricted the participation of 48% of all of the adult population, who could neither read nor write (CANÊDO, 2008, p. 539).

In 1950 a new Electoral Code was instituted by Law 11,164 and, in 1955, Law n. 2,582 created the official voting ballot, with the goal to guarantee the vote’s freedom and sigil. It must be highlighted that the vote’s obligatoriness, as well as the reduction of the voting age (BRASIL, 1945, article 2), aimed to increase popular participation.

In 1964, another coup instituted a new military regime in Brazil, which lasted for 21 years. As a consequence, indirect elections for President, through Congress, were

complementary reading, in order to differentiate the expressions utilized by these authors: *Mandonismo, Coronelismo, Clientelismo: Uma Discussão Conceitual*, by José Murilo de Carvalho

¹⁰ “extinguiu a Justiça Eleitoral, aboliu os partidos políticos existentes, suspendeu as eleições livres e estabeleceu eleição indireta para presidente da República, com mandato de seis anos”

established (BRASIL, 1964, article 2; BRASIL, 1965, article 9) as well as indirect elections for Governors, through the State Assemblies. Also, it was the Governors who named the capitals' Mayors. Institutional Act n. 5, restricted greatly civil rights, and increased the power of the regime.

Following what had been established in Institutional Act n. 1, a new Electoral Code was approved by the Congress in 1965. A gradual "redemocratization" (Redemocratização) started in the end of the 1970's and extended through the 1980's, when a great popular mobilization in favor of direct elections took place. Direct elections for Governors had been reestablished in 1982, but for President they only happened in 1989 (CHAIA, 2010).

The new Constitution was promulgated in 1988, with a great concern towards fundamental rights and wide political participation. It maintains voting obligatory for people between 18 and 70 years old, but allows analphabets to vote optionally, considering that the prohibition to analphabet vote was abolished in 1985 by Constitutional Amendment n. 85. This new Constitution is one of the landmarks of Brazil's third wave of democratization¹¹.

It can be perceived, therefore, that the actual electoral experience of Brazil's citizens is very short and interrupted by periods of dictatorship. Even in the democratic periods, popular participation was considerably restricted.

5. ELECTORAL INDIFFERENCE AND ELECTIONS LEGITIMACY

On this study we will work with the concept of "electoral indifference" as developed by Paola Novaes Ramos (2009), which includes null votes, blank votes and abstentions. According to the author, the category "electoral indifference" is based on three premises. Firstly, politics are practical in nature and based on action, even though motivated by interests or values. As a consequence, both valid votes and electoral indifference are behaviors, not intentions. Lastly, intentions and results are not the same thing: one can want something but achieve something else completely different (RAMOS, 2009, p. 172,173).

¹¹ On the subject, the reading of *The third wave of democratization in Latin America*, by Mainwaring and Hagopian, is suggested.

Electoral indifference can have many motivations. Regarding this subject, the author states that:

The reasons by which an individual does not choose his representatives could be many. There is no consensus in the specialized literature on the causes of this kind of behavior, but it could be said that electoral indifference is a fruit of general states of conscience and political behaviors, which manifest themselves in a specific manner in elections.¹² (RAMOS, 2009, p. 179)

That being said, electoral indifference can originate from (RAMOS, 2009, p.179/183):

- a) alienation, as an absence of social responsibility and commitment;
- b) satisfaction, as a result of the conclusion that the political reality is good;
- c) dissatisfaction, in which the individual does not feel as an integrating part of the political sphere;
- d) apathy, representing inaction, which may derive from different states of conscience, such as: (i) Individual incapacity, when the person is incapable of understanding politics; (ii) Social impotence, in which the person feels that the system does not attribute any power to the isolated citizen; (iii) Indifference to the political and electoral process, when the citizen attributes greater importance to other dimensions of private life;
- e) protest, demonstrating specific dissatisfaction with the system because one rejects: (i) the State and national political community; (ii) the representative system generally and democratic institutional arrangements; (iii) the specific political system; (iv) the conduct of government representatives.

The aforementioned author intends to relate electoral indifference and elections legitimacy, using Luhmann's theory of legitimization through proceeding (autopoiesis)¹³ considering that "once consolidated, the political institutions work by themselves, tending to be self sufficient by the foundations of general legitimacy¹⁴" (RAMOS, 2009, p. 196). Analyzing with detail the thought of liberal authors such as Giovanni Sartori,

¹² *As razões pelas quais o indivíduo não escolhe seus representantes podem ser inúmeras. Não existe consenso na literatura especializada sobre as causas desse tipo de comportamento, mas pode-se dizer que o alheamento eleitoral é fruto de estados de consciência e de comportamentos políticos gerais, que se manifestam de forma específica em eleições.*

¹³ Further and complementary reading: Luhmann. *The autopoiesis of social systems*. 1986.

¹⁴ *Uma vez consolidadas, as instituições políticas andam por si mesmas, tendendo a ser autossuficientes pelos sustentáculos da "legitimidade geral".*

Seymour Lipset, Samuel Huntington, Almond and Verba, and critical authors like Pateman, Macpherson and Bordeau, she concludes that, for both cases, the percentage of electoral indifference does not affect the legitimacy of representative democracy, though it can weaken a specific government.

Highlighting that the electoral indifference is generally a sum of individual, unlinked behaviours, the author points out that:

The conclusion is, at last, that the electoral indifference may actually be a form of political questioning (because it may show dissatisfaction and protest). But it cannot, by itself, qualify as a mean to delegitimize, because it is not a disassembling power of representative democracy (unless it exists in association with other forms of political questioning).¹⁵ (RAMOS, 2009, p. 194).

Taking such conclusion into consideration, it must be analyzed, therefore, how the institute of electoral indifference is approached on national legislation, considering if a misconception on the interpretation of said legislation may affect elections legitimacy.

6. LEGISLATION: THE BLANK AND NULL VOTE

It is important to differ, firstly, the offices which are elected through the majoritarian system (executive offices and Senators) and those elected by the proportional system (other Legislative offices). In the first case, it can be said generally that the ones elected are the ones with the greatest number of votes, whilst in the second case one must calculate an electoral quotient in order to establish proportional representation.

Concerning the offices elected through majoritarian system, Brazil's Constitution distinguishes blank and null votes in order to exclude both of them from being considered on the calculation of the absolute majority in the first round of elections (BRASIL, 1988, article 77, §2). In the second round of elections, the rule states that the one with the greatest number of valid votes will be elected (BRASIL, 1988, article 77, §3). The same rule is applied to the election of governors and mayors

¹⁵ *A conclusão a que se chega é, enfim, que o alheamento eleitoral pode ser, realmente, uma forma de questionamento político (pois pode demonstrar insatisfação e protesto). Mas ele não consegue, por si só, qualificar-se como forma de deslegitimação, pois não é um poder desestruturador da democracia representativa (a não ser que exista associado a outras formas de questionamento político).*

(in cities with more than 200,000 electors) (BRASIL, 1988, articles 28 and 29, II). One can conclude, therefore, that, for these offices, valid votes could be interpreted as votes effectively attributed to the candidates, excluding blank and null votes (JARDIM, 1998, p. 125).

On the other hand, concerning the proportional system, the Constitution is silent when it comes to the effect of blank votes (BRASIL, 1988, article 45). Since the introduction of the proportional system with the 1932 Electoral Code, it was understood that blank votes should be considered to define the electoral quotient (PORTO, 2000, p. 443-445).

In this sense, the 1965 Electoral Code stated, in article's 106 only paragraph, that the blank votes should be considered as valid votes, in the calculation of the electoral quotient. With the promulgation of 1988 Constitution, Brazil's Supreme Court decided that this paragraph was accepted into the new constitutional order, so that, considering the Constitution's silence, the blank votes should still be considered as valid (SUPREMO TRIBUNAL..., 1993).

The Elections' Law, Law n. 9,504, was promulgated in 1997, providing elections' general rules, which must be observed in every sphere¹⁶. Concerning the matter of blank and null votes, articles 2 and 3 confirm the understanding that these should not be considered in the election for Executive offices. However, regarding the offices elected according to the proportional system, the new law revokes the aforementioned article's 106 only paragraph, so that blank votes can no longer be considered on the determination of the electoral quotient (BRASIL, 1997, article 107).

With this modification, there is no difference on the actual effect of the blank vote and the null vote, since both are not considered as valid votes in Brazil's majoritarian and proportional systems. Nonetheless, it is still possible to spot mistakes regarding these institutes, perhaps for lack of actualization¹⁷.

Even though there are no differences on effect of the blank vote and the null vote, they manifest themselves differently in the voting process. When the voting happened through paper ballots, blank votes consisted in a blank ballot deposited in the

¹⁶ Before this law the applicable norms were created before each election.

¹⁷ On the 5th edition of Fávila Ribeiro's Manual of Electoral Law, from the year 2000, the information that blank votes are attributed to candidates in the proportional system, still remains (RIBEIRO, 2000: p. 130).

ballot box, whilst the null vote was any other action – scribbles, writing fake names¹⁸ – by which no real candidate was chosen. Nowadays, with the electronic voting booth, there is a white button, which reads “blank vote”, while the null vote consists in typing a number that does not correspond to any candidate or party.

Taking into consideration specially the paper ballot voting process, one can spot a symbolic difference between the blank and the null vote. The first one could easily be associated with satisfaction or apathy, whereas the second one relates more strongly with dissatisfaction or protest.

7. NULL VOTE: THE MISCONCEPTION

As has already been mentioned, many campaigns in favor of the null vote, intending to annul the electoral process, take place in Brazil in each election. That is because article 224 of the “current” Electoral Code¹⁹ states that new elections must be scheduled if the nullity achieves over half the votes.

The misconception resides, in this case, in what one can identify as “nullity”. This is actually not, as assumed by the null vote campaigns, the elector’s behavior before the electronic voting booth or paper ballot, to vote “null”. In reality, it derives from the verification of eventual fraud in the election process, such as vote buying (SANTOS, 2013).

In this case, if the Electoral Justice – responsible for elections – condemns an elected candidate who had obtained more than half the votes, new elections must take place (supplementary elections). However, a new election will only be scheduled if the final condemnation happens until two years after the office has begun. If not, indirect elections through the legislative house take place (BRASIL, 1988, article 81, §1).

The aforementioned videos make it clear that the citizens try to create a new sense to the null vote because they cannot quite accept that two different institutes, the

¹⁸ In Brazil, in 1959, a rhino in Sao Paulo received an expressive number of votes. While the most voted candidate had obtained no more than 110,000 votes, the rhino, Cacareco, received *circa* 100,000 votes (R7, 2009).

¹⁹ Art. 224. *Se a nulidade atingir a mais de metade dos votos do país nas eleições presidenciais, do Estado nas eleições federais e estaduais ou do município nas eleições municipais, julgar-se-ão prejudicadas as demais votações e o Tribunal marcará dia para nova eleição dentro do prazo de 20 (vinte) a 40 (quarenta) dias.*

blank and null votes, can now (since 1997) have an equal effect on the elections, being considered only for statistical reasons and otherwise discarded.

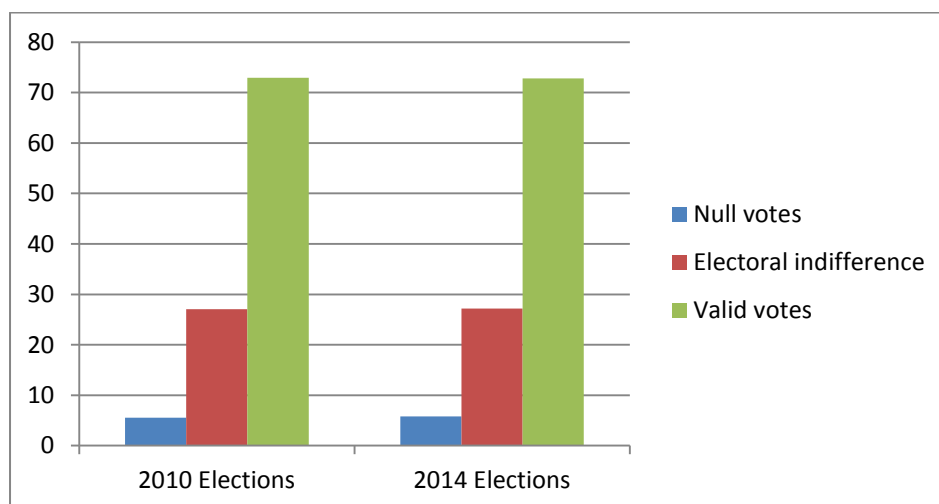
This misconception is, however, completely understandable, given that even between law students the institutes are considered unclear. Since there is already confusion, the fact that the president of the Superior Electoral Court seemed to confuse the institute on national television aggravates the situation.

On that note, citizens may act under this misconception, opting to vote null and adopting the “electoral indifference” under false premises, expecting results which will never be achieved. This only confirms that politics are practical in nature, and the elector’s motivation does not necessarily correspond to the results of his behaviors.

8. NULL VOTE, ELECTORAL INDIFFERENCE AND VALID VOTES: A STATISTIC OVERVIEW

In order to better understand the presented scenario, the Graph below (Graph 1), shows the results of Presidential Elections in Brazil in 2010 and 2014, considering the first round of elections, regarding, null votes, electoral indifference and valid votes.

Graph 1 – Presidential Elections in Brazil in 2010 and 2014 – First Round of Elections



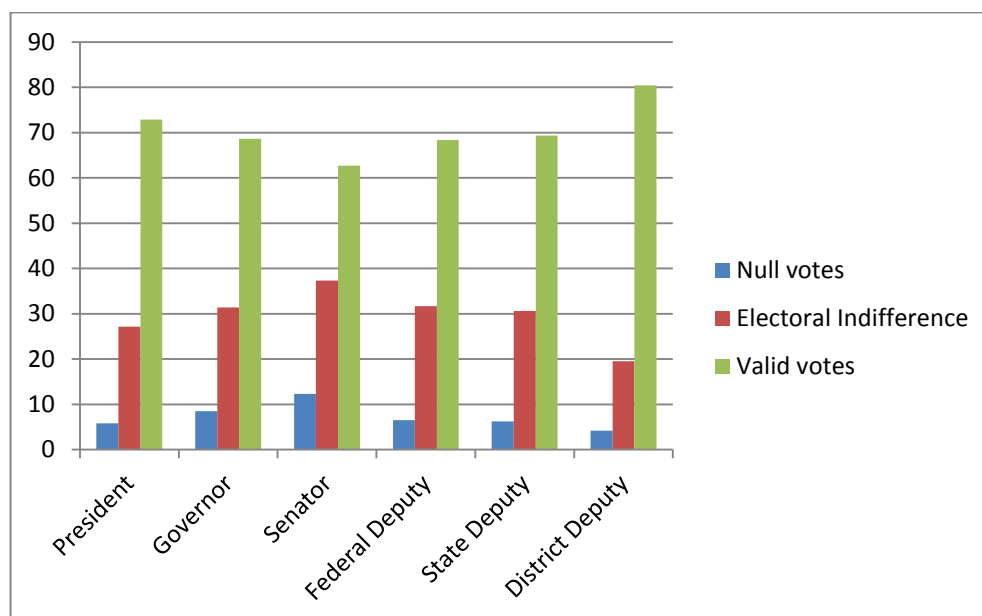
Source of the data: Tribunal Superior Eleitoral (2010, 2014).

In the 2010 Election 5.51% of the votes were null votes, and 27.05% of the electorate’s behavior consisted in electoral indifference (blank votes, null votes and abstentions). In 2014 the null votes reached 5.80% and the electoral indifference

27.17%. The variation between elections is, therefore, very small, and in both of them, the null votes are a small part of the total of electoral indifference.

It is also important to observe the variation of those electoral behaviors, amongst different offices. With this goal, Graph 2, compares, in the 2014 Election, the percentage of null and valid votes, as well as electoral indifference, between all the disputed offices: President, Governor, Senator, Federal Deputy, State Deputy, District Deputy (Presidente, Governador, Senador, Deputado Federal, Deputado Estadual e Deputado Distrital).

Graph 2 – 2014 General Elections – First Round of Elections



Source of the data: Tribunal Superior Eleitoral (2014)

According to the data, electoral indifference represents circa 30% of the electorate, except concerning Senators (37.30%) and District Deputy (19.54%). The null votes, on their turn vary from 4% to 6%, expect in the case of the Senator (12.30%).

Considering both graphics, one can clearly conclude that, though the percentage of electoral indifference is considerable, it is still small in the face of valid votes. Even more striking is how small the percentage of null votes is, no matter how many campaigns in favor of it were elaborated. It is not possible, however, to extract from this data what motivated the electors to adopt a determined behavior.

CONCLUSION

It is undeniable that the vote is an essential form of democratic exercise and, according to the democratic principle of information, each citizen must be prepared to exercise his voting rights adequately, by seeking an enlightened understanding of the electoral process. On that account, it is imperative that the voter has clear information on how his vote can interfere with the elections' result.

That is especially true because politics are practical in nature. An elector, therefore, may erroneously decide to vote null, depending on the type of information he receives. In that sense, information is essential and the role of the media becomes apparent, as it is through the means of communication – such as television, newspapers, magazines and internet, particularly social media – that the citizens educate themselves for their political decisions.

Furthermore, even though data shows that the percentage of null votes in the two last general elections are not high (about 5%), that does not mean that they should be completely disregarded. The electoral indifference, in general, represents a significant percentage (around 30%), which must also be considered.

From this, two main conclusions arise. The first is that, no matter how small the percentage, the analyzed institutes must be considered, for they have a meaning, be it dissatisfaction, protest or even a misconception, amongst others, which cannot be pointed out precisely by this study. The second one is that, even though the percentage of indifference (null vote, blank vote and abstentions) is considerable, it is not capable of delegitimizing the representative democracy, specially having in mind that they refer to individual behaviors, not necessarily organized.

Aside from that, one must consider that opposite to the electoral indifference and its null vote, there are valid votes. These, representing a positive, participative, electoral behavior, should not be overruled by the indifference. A high percentage of electoral indifference could, as has been pointed out, weaken a specific government, but cannot, by itself, delegitimize democracy.

Lastly, it must be highlighted that the matter of legitimacy does not reside exclusively in numbers, but extends to an enlightened participation, through information. In that sense, any misconception such as the ones about the null vote violates the democratic principle of information.

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