

The (in) effectiveness of electoral indifference as contesting behavior**A (in) eficácia do alheamento eleitoral como comportamento contestador**

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ABSTRACT

This study, from the area of Political Law, aims to analyze the impact on electoral legitimacy of blank votes, null votes and abstentions, understood here as electoral indifference practices, in the conception of Paola Naves Ramos (2009), to whom specific groups try to rebel against the political system through any kind of boycott. Usually these people adopt non-participation behavior. In the light of the theory of civil disobedience, considering episodes in Belo Horizonte (Minas Gerais) and São Paulo (São Paulo), the analysis uses the hypothetical-inductive method, elaborated by Karl Popper (1993), according to whom credible hypotheses allow the knowledge of results that can be extended to all universe in question. Along this path, the result is that electoral indifference does not cause impact on the electoral legitimacy, because, as demonstrated in the conclusion, the rebellion practiced by the non-attendance at the polls is within the rules of the game and has low effect, restricted to a symbolic impact, without further damage to the legitimacy of the elected candidates.

Keywords: Elections, Democracy, Electoral indifference, Civil disobedience, Legitimacy.

RESUMO

O presente estudo, área de Direito Político, tem como objetivo analisar o impacto na legitimidade das eleições dos votos em branco, votos nulos e abstenções, ora compreendidas como práticas de alheamento eleitoral, na concepção de Paola Naves Ramos (2009), para quem grupos específicos tentam se insurgir contra o sistema político por meio do boicote eleitoral, adotando práticas de não-participação. À luz da teoria da desobediência civil, considerando episódios em Belo Horizonte (Minas Gerais) e São Paulo (São Paulo), a análise utiliza-se do método hipotético-indutivo, elaborado por Karl Popper (1993), segundo o qual hipóteses verossímeis permitem o conhecimento de resultados extensíveis a todo o universo em questão. Por este percurso, apresenta-se o resultado de que o alheamento eleitoral não causa impacto à legitimidade das eleições, porque, conforme se demonstra na

conclusão, a revolta praticada pelo não comparecimento às urnas está dentro das regras do jogo e tem um efeito que pode causar impacto, no máximo, simbólico, sem repercutir em maiores danos à legitimidade dos candidatos eleitos.

Palavras-chave: Eleições, Democracia, Alheamento eleitoral, Desobediência civil, Legitimidade.

1 INTRODUCTION

The present study is based on the research carried out by Ramos (2009, p. 17) that considers the species blank votes, null votes and abstentions together as a category named “electoral indifference”. According to the author, this category aims to build a generalization based on the result of non-participatory actions (2009, p. 17), although each of the three phenomena (blank votes, null votes and abstentions) may have different motivations. This is an extremely relevant subject, essential in a wide debate in Brazil.

Preliminarily, it should be clarified that the expression electoral indifference is not restricted to the understanding of political participation as a sole electoral issue, being certain that this (electoral issue) represents one of the innumerable variables of that one (political participation). Through the perception of electoral indifference, we will thus build the starting point to analyze concrete electoral situations (RAMOS, 2009, p. 172).

Elections 2016 renewed, once again, the trend of disconnection between the electorate and the current representative system. As an example, based on the data from the Electoral Justice, some figures referring to voters behavior in the last campaign are cited.

In the capital of the state of São Paulo, in the first round, 22% of the electorate abstained, and those who attended, approximately 21% chose to either vote blank (5%) or annul the vote (11%). In Belo Horizonte (capital of the state of Minas Gerais), however, the indifference in the first round is even more expressive, although abstention has approached the percentage of 22% similar to São Paulo, when considering voting attendance, 7% chose to vote blank and 14% to cancel the vote. It is worth mentioning that in the capital of Minas Gerais the two candidates who competed in the second round had, in the first round, fewer votes together than the total abstentions, null and white. This trend have been repeated in eight other Brazilian capitals.

Across Brazil, according to the Superior Electoral Court (TSE), the number of voters who did not attend to the polls in the second round of municipal elections, plus white and null votes, was approximately 32.5% of the national electorate, which reveals the importance of discussing the theme.

This reality conflicts with the current electoral order that imposes the duty to vote, under the risk of suffering monetary sanctions (payment of an electoral fine, in case of unjustified absence) and

administrative sanctions (indication of pending electoral obligations and, to a certain extent, cancellation of the election register).

Therefore, in this scenario we could ask: would it be possible to infer the reasons that prevent voters from attending to the polls? And, further, would it be possible to see whether these reasons would reflect behavior similar to an act of civil disobedience?

It is already recognized that the task of identifying, precisely, the reasons that lead to the non-exercise of voting is invariably unworkable. For this reason, this work will only evaluate whether those reasons already mentioned by doctrine, in a generic way, can eventually be classified as an act of civil disobedience.

Finally, it will be evaluated whether such practices would be suitable to contest the legitimacy of the electoral process and, mainly, the elected candidates.

2 THE VOTE

Without the intention of exhausting the topic, we will analyze what would be the exercise of suffrage by voting, subsequently, we will dedicate a topic to the phenomenon of electoral indifference.

Caggiano (1987, p. 14) explains that democracy shapes a historical-social category, adjusting, in varied nuances, to the condition of each people, to the peculiarities of each society, hence the extreme difficulty of a precise definition. According to the mentioned author, this uncertainty results in a plurality of different concepts about what should be understood as democracy.

According to Brito (2013, p. 417), democracy is a regime for freedom preservation and sovereignty of people power. In fact, the ideal model would be, in principle, the direct democracy, in which citizens exercise – themselves – the political power. The author, however, recognizes that in a society with currently dimensions (considering that populations grew tremendously and have gathered in overpopulated regions) the participation of all, in an immediate way in political deliberations is not viable. Based on that, the notion of freedom and its exercise by the individual has been changing throughout Western history, so that direct democracy has not only ceased to be viable, but has also ceased to be desirable¹.

For those reasons, there is no other viable way to exercise democracy than through the representative route. This is, even, the form of democracy elected by the Brazilian constituent in the

¹ In summary, for two reasons: a) the individual starts to occupy himself mainly with his private life (welfare, business, family); b) according to Montesquieu, the common man, besides being disinterested, would not seem capable of discussing public affairs (BRITO, 2013, p. 424)

paragraph of the 1st article of the Constitution of the Republic of Brazil, in which it is stated that all power emanates from the people, who exercises it through representatives or directly.

In this context, Gomes (2011, p. 42) dealing with the theme resorts to Ferreira (1989, p. 295) thinking about voting as a popular sovereignty in representative democracy, which would justify and legitimize elections as a common and mandatory duty, under the perspective that all citizens would have the duty to manifest his/her will in democracy. In addition, advocates of compulsory voting claim that it would make citizens more interested in political life, approaching to it and, furthermore, the Brazilian mass people would not be prepared for the facultative voting.

In another point that also worth mentioning in this study, Gomes (2011, p. 42) warns that, since it is recognized as a right, it would not be reasonable for the exercise of suffrage to be compulsory. Besides, the imposition would certify the immaturity of the people, still deserving state protection. It is also believed that citizens who vote merely out of obligation, when not exercising the right of abstention or null (or white) vote, would have less chance of voting for “serious and honest” candidates, since they do not take part in political life on his/her own initiative.

3 ELECTORAL INDIFFERENCE: THE BLANK VOTE, THE NULL VOTE AND ABSTENTION

As already mentioned, electoral indifference can be understood as the same category that includes blank votes, null votes and abstentions. For the construction of this category, Ramos (2009, p. 173) adopts certain assumptions.

One assumption – especially relevant to this work – recognizes that both the deposit of valid votes and electoral indifference are behaviors or, in other words, social actions and not just mere intentions. For this reason, even the abstention resulting from the voter’s omission, in itself, must be understood as an action that reveals, at least, the practice of disobedience to the rule set.

Finally, one more assumption starts from the understanding that intentions and results are not synonymous. In the same way, motivations of each phenomenon that are understood as electoral indifference are not all equal², but the impact of the behavior focused on mitigating the legitimacy of the representative system is quite similar for the three forms of action (RAMOS, 2008, p. 173).

After clarifying this category, Ramos (2009, p. 176) seeks to answer questions about the foundations of legitimacy in her work, recognizing that this would be inversely proportional to the

² As the author (RAMOS, 2008) defines, null votes are usually associated with protest, while blank votes, indifference, and abstentions commonly indicates a repudiation of candidates, content or system, or, at least, complacency.

degree of conflict with the State, so: the more acceptance, the less questioning. For that author, however, in complex societies there are different ways of questioning the established order, and it is necessary to check whether electoral indifference may or not be a politically effective form of questioning, in other words, if it truly hits the legitimacy of the representative system.

In this context, legitimacy becomes an axis of two opposite ways of manifesting consensus, which are sustained by its extreme legality (general legitimacy) and its extreme popular support (specific legitimacy)³. Considering elections only, because it takes place regularly, and also because there is a rotation of representatives in positions of power, it reveals the sense of general legitimacy. The fact that there is electoral indifference, on the other side, would be part of the complexities of specific legitimacy (RAMOS, 2008, p. 176)

The electoral forms of manifestation, according to Albert Hirschman (1985, apud RAMOS, 2009, p. 177), is one of the problems of the extension of the monopoly of the voting legitimacy: the popular vote is a reduced form of political action, which ends up making ordinary citizens politically weak, since it is isolated and diluted in millions of other formally equal people. Besides, ordinary citizens would, as a rule, have two choices: they obey commands or disconnect from political association. In fact, however, they could choose a third option: passive or civil disobedience, which implies a peaceful and inwardly submission connected to a state of dissatisfaction and rebellion, but still limited by the monopoly of the legitimacy of the vote (RAMOS, 2009, p. 177).

Under these parameters, the mentioned author presents her concept of electoral indifference, understood as the manifestation, in an election, of individuals who do not choose a political representative to exercise power⁴. This movement would be responsible for denouncing the failure of a certain class of voters in providing content to the representative democracy, or, beyond, it could denounce problems with the primary objective in an election, which is the election of representatives.

We must mention that electoral indifference should not be considered the same as alienation, since there is no absence of awareness or mental disconnection from reality in the first concept. Likewise, it should not be understood as a political alienation since politics is broad and not restricted to elections (the decision for not choosing a candidate in the elections does not necessarily correspond to an absence of political engagement, and such concepts must be separated) (RAMOS, 2009, p. 187).

³ RAMOS explains that legitimacy is expressed in various ways, but, synthetically, it can be said that in a country with rational-legal domination (WEBER, 1999) that adopts electoral democracies there are general legitimacy and specific legitimacy (LEVI, 1996).

⁴ By the idea of indifference, according to the author, there is an attempt of avoiding certain situations by the option of self-exclusion. The mental state that would lead to this behavior is not explicit in the action, but the electoral indifference is, above all, the registration of a vacuum in the popular choice (RAMOS, 2008, p. 177)

Therefore, there is no reason to confuse electoral indifference with the absence of political participation or non-electoral participation. Certainly, the blank vote and the null vote are, according to the theory, encompassed by the concept of electoral indifference and do not mean a non-participation, because both are realized through the non-attendance at the polls (and the absence of a decision is not equivalent to the absence of participation). Nevertheless, non-participation in elections implies only one of the elements of electoral indifference (abstention) (RAMOS, 2009, p. 178).

That is fine. But, after all mentioned, remains the question: what does electoral indifference translate? According to the considered author, the reasons why the individual does not choose his representatives can be numerous. There is no consensus among researchers who are dedicated to understand this type of behavior, although it can be said that electoral indifference is the result of a combination of states of conscience and general political behavior, which manifest themselves in a specific way in elections (RAMOS, 2009, p. 179).

To illustrate, it is possible to suggest these reasons for practicing electoral indifference: (a) alienation of the voter (considered, in short, as the absence of responsibility and social commitment); (b) voter satisfaction with the current political scenario (as explained by Ramos (2009, p. 180), it is possible that the satisfied citizen adopts someone else's behavior, in a "conscious and rational" way, not bothering to choose one representative because political reality is good for him); (c) voter dissatisfaction (in this case, the citizen does not feel part of the politics and feels uncomfortable, resembling Durkheim's anomic social subject (DURKHEIM, 2000), or the democratic man described by Alexis de Tocqueville (TOCQUEVILLE, 1987)); (d) voter apathy (which, in this case, would express the individual's "inertia", his/her low receptivity to political stimuli, tending to establish an absence of autonomy (RAMOS, 2009, p. 181), making him/her a mere spectator of everything; and, finally, (e) the protest (considered as a manifestation of opposition, a challenge to the current order, which would reveal clear dissatisfaction with the system).

4 CONCLUSION

After some considerations presented in this work, it is possible, at this moment, to draw some conclusions, albeit inaugural, about the effectiveness of the act of civil disobedience in the face of the electoral process and the legitimacy of representatives.

Using authors such as Sartori (1996), it can be said that electoral indifference should be considered as a form of political questioning, especially when subsidized by acts that reveal practices of civil disobedience (in particular, dissatisfaction and protest).

From another angle, however, regardless of being a form of questioning, electoral indifference, according to the major doctrine, would not be able to generate a scenario that undermines legitimacy, especially because it did not compose a destructive power of representative democracy in itself, although it is capable to weaken the legitimacy of a specific government.

According to Ramos (2009, p. 195), electoral indifference (which, in this case, would also involve a form of expression of an act of civil disobedience) would not undermine systemic legitimacy. Firstly, because the anti-systemic notion is an activity that requires the articulation of a social group, and has not effectiveness in the disaggregated silence of electoral indifference. Secondly, because electoral indifference manifests itself in the official spheres of the State, considered as an isolated behavior it has no power, but symbolic repercussion (RAMOS, 2008, p. 195).

Here is one of the main criticisms of the doctrine about civil disobedience: an act practiced against the State ends, in fact, legitimizing its reaction and reinforces its very existence. In other words, the revolt practiced within the rules of the game turns out to be ineffective.

In addition, electoral indifference has no defined objectives. It is still an element of denunciation, which does have a potential threat to the political system only when associated with numerically significant adhesions and organized around an alternative proposal for social organization.

Finally, electoral indifference indicates (RAMOS, 2009, p. 195) that, once consolidated, political institutions move on their own, tending to be self-sufficient by the underpinnings of general legitimacy or legitimation by the procedure, as stated by Luhmann⁵ (1980, p. 103).

In the face of the electoral process, therefore, voting failure to attend would not make the process any less legitimated. In other words, the legitimation by the procedure does not imply achieving personal will, so its agreement or rejection for part of the electorate would be unnecessary for the constitution of the social organization (LUHMANN, 1980, p. 103). We must consider that general legitimacy becomes self-sufficient and individuals end up accepting it even without understanding its meanings (Ramos, p. 196).

To finish, consequently, it is noted that in light of understanding disobedience as a constitutional expression of structured power implies that the act of opposing to the electoral process through indifference would be highly ineffective.

⁵ In Luhmann's thought the bureaucracy and the public sector are separated from each other.

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