



Adjudication of electoral competition in Dominican Republic and Brazil: two different paths*

Adjudicação da competição eleitoral na República Dominicana e no Brasil: dois caminhos diferentes

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Abstract

Elections constitute one of the fundamental elements of contemporary democracies. While there exists a robust body of scholarship on electoral governance, significant opportunities for research remain, particularly in the adjudication of results. This study focuses on the adjudication of electoral competition in the Dominican Republic and Brazil, addressing the following question: how has the adjudication of elections varied over time in these countries? To this end, the study draws upon relevant literature on institutional change and seminal works in electoral governance. The work is primarily descriptive, comparing the institutions without losing sight of the historical neoinstitutionalist perspective. Methodologically, a small-N analysis was selected. Although this approach has limitations in terms of causal inference, it enables more detailed studies that provide a deeper understanding of the phenomenon being analyzed. In addition to reviewing pertinent literature,

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empirical data were used, partly collected previously and partly collected for this purpose. Temporally, the study focuses on the 2020 elections held in both countries. The results suggest that, although there are similarities in the models of electoral governance adopted in the two countries, significant differences exist in the scope of adjudication, especially regarding levels of regulation and specialization. The Dominican Republic exhibits a lower regulatory volume compared to Brazil. Additionally, it has a specialized Superior Electoral Court dedicated to adjudication, whereas its Brazilian counterpart is responsible for the entire electoral governance system.

Keywords: adjudication; elections; electoral governance; neoinstitutionalism; institutional change.

Resumo

As eleições constituem um dos elementos fundamentais das democracias contemporâneas. Embora exista um corpo robusto de estudos sobre governança eleitoral, permanecem oportunidades significativas para pesquisa, particularmente na adjudicação de resultados. Este estudo foca na adjudicação da competição eleitoral na República Dominicana e no Brasil, abordando a seguinte questão: como a adjudicação das eleições variou ao longo do tempo nesses países? Para tanto, o estudo se baseia na literatura relevante sobre mudança institucional e em obras seminais sobre governança eleitoral. O trabalho é predominantemente descritivo, comparando as instituições sem perder de vista a perspectiva neoinstitucionalista histórica. Metodologicamente, foi selecionada uma análise de *small-N*. Embora essa abordagem tenha limitações em termos de inferência causal, ela permite estudos mais detalhados que fornecem compreensão mais profunda do fenômeno analisado. Além de revisar a literatura pertinente, foram utilizados dados empíricos, parcialmente coletados anteriormente e parcialmente coletados para este propósito. Do ponto de vista temporal, o estudo foca nas eleições de 2020, realizadas em ambos os países. Os resultados sugerem que, embora existam semelhanças nos modelos de governança eleitoral adotados nos dois países, existem diferenças significativas no âmbito da adjudicação, especialmente em relação aos níveis de regulação e especialização. A República Dominicana exibe um volume regulatório menor em comparação



com o Brasil. Além disso, possui um Tribunal Superior Eleitoral especializado em adjudicação, enquanto seu equivalente brasileiro é responsável por toda a governança eleitoral.

Palavras-chave: adjudicação; eleições; governança eleitoral; neoinstitucionalismo; mudança institucional.



Introduction

Elections constitute one of the fundamental elements of contemporary democracies. Indeed, while elections and democracy were relatively independent phenomena in their origins, today it is nearly impossible to separate the act of voting from the consolidation of democratic regimes.

While there exists a robust body of scholarship on electoral governance, there remains significant opportunity for research at one of its levels: the adjudication of results¹.

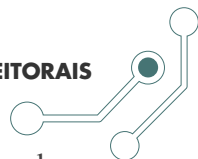
In this context, this study focuses on the adjudication of electoral competition in the Dominican Republic and Brazil, aiming to address the following question: how has the adjudication of elections varied over time in these countries?

To this end, the study draws upon relevant literature on institutional change (Thelen, 1999; Mahoney *et al.*, 2010; Thelen; Mahoney, 2015) as well as seminal works in electoral governance (Mozaffar; Schedler, 2002; Orozco-Henríquez, 2010; Pastor, 1999; Taagepera; Shugart, 1989).

The literature on institutional change is connected to historical neoinstitutionalism, a scholarly approach that emerged in the 1980s. This approach emphasizes the importance of broad temporal dimensions in the analysis of institutions and political decisions (Contrera, 2021). From this perspective, it is imperative to examine not only specific political outcomes but also how institutions shape their conception and development (Steinmo, 2001, p. 2).

Institutions, within this framework, are understood to emerge from concrete historical processes and are deeply embedded in them (Thelen, 1999). It is crucial to highlight that institutions serve as the mediating space between social structures and individual behaviors (Théret, 2003). In this

¹ Adjudication, in this context, refers to the process of certifying electoral results and resolving disputes that may arise during or after the elections (Mozaffar; Schedler, 2002). This level of electoral governance is crucial for ensuring the legitimacy and credibility of the electoral process.



context, both formal organizations and informal norms and processes play a crucial role in defining and guiding the formation of institutional structures.

The work has an eminently descriptive character, aiming to compare the institutions without losing sight of the historical perspective.

Methodologically, a small-N analysis was selected. Although this approach has limitations in terms of causal inference, it enables more detailed studies that can provide a deeper understanding of the phenomenon being analyzed (Mahoney, 2000).

In addition to reviewing pertinent, empirical data were used, partly collected previously (Nogueira; Martins; 2024), and partly collected for this purpose.

Temporally, the study is focused on the 2020 elections held in both countries. In the Dominican Republic, general elections were held for all offices, including those at the municipal level. President and Vice President were elected; 32 senators; 190 members of the Chamber of Deputies; 20 deputies of the Central American Parliament with substitutes; in addition to 158 mayors and 1164 municipal councilors. In Brazil, 5568 municipalities went to the polls to elect their mayors and councilors still under the impact of the Covid-19 pandemic.

Decisions issued by the Dominican Superior Electoral Court regarding the 2020 elections were compiled, regardless of the type of contested position.

Regarding Brazil, all decisions issued by the Superior Electoral Court regarding the 2020 municipal electoral cycle were compiled, in actions that may result in the invalidation of elections through the refusal or revocation of the registration, diploma, or mandate of elected candidates.

The main aim of the article is to provide a comprehensive overview of the development of electoral governance in the Dominican Republic and Brazil, with a particular emphasis on the adjudication level.



Given the broad scope of the study, it addresses the dimensions of electoral governance: centralization, bureaucratization, independence, specialization, delegation, and regulation² (Mozaffar; Schedler, 2002).

The article is divided into four sections, in addition to this introduction and conclusion. The first section revisits the concept of electoral governance, focusing on adjudication. The following section presents the Dominican electoral governance model. The third section deals with the Brazilian electoral governance model. The next section presents empirical data on adjudication in the 2020 elections in both countries.

The conclusion discusses how the formation and consolidation of electoral institutions in the Dominican Republic and Brazil have been shaped by each country's unique historical processes.

1 Revisiting electoral governance

The contemporary concept of electoral governance is relatively recent, emerging in the 2000s. It encompasses a comprehensive range of activities that establish and sustain the extensive institutional framework within which not only voting but also electoral competition occurs (Mozaffar; Schedler, 2002, p. 7). The primary objective is to ensure procedural certainty while maintaining outcome uncertainty in electoral processes (Zuccolotto, 2020, p. 25).

Traditionally, electoral governance operates on three distinct levels: rule making, rule application, and rule adjudication. The rule making level

² Centralization refers to the degree of centralization or decentralization of electoral governance, either vertically between different levels of government or horizontally among different bodies at the same level. Bureaucratization measures the level of autonomy of electoral bodies in relation to elected politicians, indicating whether governance is more bureaucratic or political. Independence also assesses the autonomy of electoral bodies from political power, while specialization considers the level of specialization of these bodies compared to other governmental functions. Delegation refers to the degree of autonomy granted to electoral bodies or other actors in electoral governance. Finally, regulation measures the degree of formalization and transparency of electoral rules and the accountability of electoral bodies.



involves the formulation of the fundamental rules governing electoral processes, while the rule application level pertains to the implementation of these rules to structure the electoral competition. Finally, rule adjudication is concerned with resolving disputes that arise during the electoral process (Mozaffar; Schedler, 2002, p. 7).

It is uncommon for a single institution to control all three levels. Rule making is generally associated with constitutions and electoral codes, thereby falling within the legislative domain.

In some countries, the administration of the electoral process is overseen by Electoral Management Boards³ (EMB's), which can either be independent of the executive branch or part of the governmental structure (Tarouco, 2014, p. 230).

Adjudication may be managed by specialized bodies known as Electoral Dispute Resolution Bodies (EDRB's). Depending on their formal nature, these bodies can be integrated into the legislature, composed of elements from the judiciary, or created ad hoc to function during specific periods. They can also be merged with EMB's (Orozco-Henríquez, 2010, p. 60).

Thus, when a single institution is responsible for both the application and adjudication of electoral rules, it functions as an EMB or Electoral Body (OE) with dual functions (Zuccolotto, 2020, p. 29).

The literature further suggests that the administration of elections by bodies perceived as independent, impartial, and competent not only addresses administrative issues but also enhances the legitimacy of the electoral processes (Pastor, 1999).

Electoral governance models can be categorized into five general types (Pastor, 1999): 1. An electoral body with governmental supervision; 2. An electoral body supervised by a judicial entity; 3. An electoral body controlled by the legislature; 4. A multiparty electoral body; 5. An independent electoral body.

³ The term Electoral Management Body is also frequently used (López-Pintor, 2000; PAL, 2016; Garnett, 2019).



According to the prior model, the Dominican electoral governance consists of two independent electoral bodies: the Central Electoral Board (JCE), responsible for rule making and rule application, and the Superior Electoral Court (TSE), responsible for rule adjudication.

The Brazilian Electoral Justice is an Electoral Management Body (EMB) and an Electoral Dispute Resolution Body (EDRB): it organizes and administers elections and resolves disputes. Additionally, it distributes its administrative/adjudicatory competence across three levels, occupied by Electoral Judges, Regional Electoral Courts, and the Superior Electoral Court.

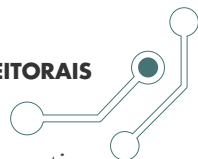
2 Electoral governance in the Dominican Republic

Electoral organization, as a permanent, stable, and specialized institution, did not exist in the Dominican Republic until 1923. Law No. 35 of May 8, 1923⁴ created the Central Electoral Board (JCE), separate from the other powers, to which the Provincial and Municipal Boards were subordinate, all with their own permanent facilities (Santoro, 1966).

At that time, both the adjudication and the administration of elections were under the responsibility of the Central Electoral Board (JCE), composed of a President and two Judges, appointed for a period of twelve years by the National Assembly, chosen from a list of three presented by the political parties.

Its duties under the legislation were as follows: to comply with and enforce the constitutional provisions relating to electoral matters, appointing, dismissing and removing the members of the provincial and municipal Boards, maintaining the machinery indispensable to the holding of elections, as well as

⁴ It is important to emphasize that although the Electoral Court of Uruguay, established in 1924, and the Chilean Tribunal Calificador de Elecciones, established in 1925, are frequently recognized as pioneers in the independent management of elections in South America (Souza, 2016; Hasbun, 2016), the Dominican Electoral Board, established in 1923, had already pursued formal independence from other branches of government. This independence was characterized by the appointment of a president and two judges by the National Assembly. Subsequently, with the enactment of Law 386 in 1926, the number of board members increased to five (Junta Central Electoral, 2023).



the formation, maintenance and purification of the electoral register, counting the elections, directing and technically and economically supervising all the Boards and electoral officials, hearing and deciding in the last instance on appeals, objections, protests, complaints, etc., related to electoral acts and processes and on the validity of elections, to apply penalties of dismissal and disqualification for the performance of public functions, up to five years, to those accused of electoral crimes, to respond to queries formulated by the Boards that are hierarchically inferior to them, to call elections, to maintain and equip with material its organs and those subordinate to it (Santoro, 1966).

At the end of April 1965, the Dominican Republic was facing the beginning of a civil war, originating in the attempt to restore former President Juan Bosch to the position from which he had been deposed by a military coup just over a year earlier (Pedrosa, 2020).

Concerned about the possibility that Bosch's followers would establish a communist-oriented government in the Caribbean country, the United States chose to intervene in the conflict, sending military troops under the justification of ensuring the safety of American citizens present in the country and members of the diplomatic corps accredited there (Pedrosa, 2020, p. 1).

The intervention ended on September 21, 1966, with the complete withdrawal of Inter-American Peace Force troops and the ascension of Joaquín Balaguer to the presidency of the Dominican Republic on June 1, 1966. The relative political stability was succeeded by the authoritarian government of Balaguer, who would come to dominate the politics of the Dominican Republic for the next few years (Macedo, 2022).

Researchers point out that since the transition to democracy in 1978, the Dominican Republic has held elections continuously, within a patrimonial and clientelist political context, however, with the political elites respecting the rules of the democratic game (Marsteintredet, 2018, p. 1).



The main exceptions would be the famous electoral fraud of 1994⁵ and the authoritarian outbursts of the last government of Joaquín Balaguer from 1994 to 1996 (Marsteintredet, 2018, p. 1).

The year 2010 represented a turning point in the political and institutional life of the Dominican Republic. On January 26 of that year, after an extensive process of debates, consultations, and public hearings, the Dominican Constitution was promulgated, with a guarantor nature and content more focused on social and legal development (Tribunal Constitucional, 2024).

In practice, election administration and adjudication are consolidated within a single body only at the grassroots level. According to Article 211 of the Constitution, the Central Electoral Board (JCE) and the Electoral Boards are the entities tasked with organizing, directing, and supervising the electoral processes.

The Central Electoral Board (JCE) is an autonomous body with legal personality and technical, administrative, budgetary, and financial independence (Article 212 of the Constitution). Its main objective is to organize and direct the electoral assemblies for the holding of elections, possessing regulatory authority⁶ in matters within its competence.

According to Article 209 of the Constitution, the electoral assemblies will operate in electoral colleges opened every four years to elect the President and Vice President of the Republic, legislative representatives, municipal authorities and other officials or elected representatives.

The JCE is composed of a president and four members, together with their alternates, elected for a term of four years by the Senate of the Republic, with the vote of two-thirds of the senators present.

The Organic Law on the Electoral Regime (Law No. 20/2023) provides for the requirements for the exercise of the presidency, as well as for being a member of the JCE, as shown in the table below:

⁵ These elections became famous for the “fabrication of voters”, with electoral cards being issued up to 48 hours before the election (Bissio, 2017).

⁶ Article 96 of the Constitution of the Dominican Republic provides that the Central Electoral Board also has the right to initiate laws on electoral matters.



Table 1 – Requirements to join the Dominican JCE

| REQUIREMENTS FOR PRESIDENCY | MEMBER REQUIREMENTS |
|---|--|
| Be a native Dominican; | Be Dominican; |
| Be over 30 years old and be in full exercise of civil and political rights. | Be over 30 years old and be in full exercise of civil and political rights. |
| Have a bachelor's degree in law with at least 12 years of practice. | Have a university degree and be qualified for professional practice, preferably in the areas of administration or related, computer science or related and legal sciences or related, with at least 8 years of experience. |

Source: Nogueira (2024).

In the National District and in each municipality, in turn, there will be an Electoral Board with administrative and litigation functions. Administratively, they are subordinate to the Central Electoral Board. In contentious matters, however, its decisions are challenged before the Superior Electoral Court (Article 213 of the Constitution).

The Electoral Boards are permanent (Article 35 of the Organic Law of the Electoral Regime) and function in the National District and in each municipality. They are composed of a president of four members, in the National District and when their territorial competence exceeds 1000 electoral colleges. In other cases, they will be composed of a president and two members (Article 37 of the Organic Law of the Electoral Regime).

The requirements to be a full or alternate member of an electoral board, according to article 39 of the Organic Law are: 1) to be over 25 years of age; 2) have a secondary or secondary education; 3) be domiciled in the municipality with residence for at least 3 years and; 4) be in full enjoyment of civil rights, as well as be in good standing.

The law also provides for the disqualification from exercising as title or alternate, of persons who are responding to proceedings or have



been convicted of infraction of the electoral law; property crime; bribery or corruption; falsification or misappropriation of public funds (Article 44).

The Superior Electoral Court (TSE) was created by the 2011 Constitution and is the competent body to judge and decide, definitively, on electoral contentious issues and to resolve internal disputes within parties, associations, and political movements, or between them (Article 214 of the Constitution).

In addition, it also has the authority to decide on rectifications of civil registries of a judicial nature, with powers to regulate, in accordance with the law, the procedures within its competence, as well as everything related to its organization and administrative and financial functioning.

Its composition is provided for both in Article 215 of the Constitution and in Article 5 of Law No. 29/20211 (Organic Law of the Superior Electoral Court): five electoral judges and their respective alternates, appointed by the National Council of the Judiciary⁷ for a period of 4 years. The Council also chooses who will occupy the Presidency of the TSE.

The requirements to be a judge or alternate judge of the Dominican TSE (Article 6 of Law No. 29/2011) are:

Table 2 – Requirements to join the Dominican TSE

| REQUIREMENTS FOR THE TSE | |
|--|--|
| Be a native Dominican; | |
| be over 30 years old; | |
| be in full exercise of civil and political rights; | |

⁷ It is interesting to note how the National Council of the Judiciary of that country is integrated, as provided for in Article 178 of the Dominican Constitution: 1) By the President of the Republic, who presides over it; 2) the President of the Senate; (3) a senator chosen by the Senate and belonging to a party or bloc of parties other than the President of the Senate and representing the second majority of that House; 4) The President of the Chamber of Deputies; (5) by a member of parliament chosen by the Chamber and who belongs to a party or bloc of parties other than the Speaker of the Chamber and who is a representative of the second majority of that House; 6) the President of the Supreme Court of Justice; (7) a judge of the Supreme Court, chosen by the Supreme Court, who shall act as secretary of the Council; 8) By the Attorney General of the Republic.

REQUIREMENTS FOR THE TSE

have a bachelor's degree in law with at least 12 years of experience, have been a university professor in law or have performed for an equal period of time as a judge of the Judiciary or as a representative of the Public Prosecutor's Office and; have carried out studies in electoral matters or in public law.

Source: Nogueira (2024).

It should be noted that the applications are made public on the website of the National Council of the Judiciary and the originals of the corresponding documents can be accessed remotely. Article 20 of the Organic Law of the National Council of the Judiciary (Law No. 138/2011) provides that candidates need at least 5 favorable votes to be elected.

The Dominican Superior Electoral Court can be considered a specialized body, since it acts solely as an *Electoral Dispute Resolution Body* – EDRB. Although the Electoral Boards have the competence to exercise adjudication, their decisions are subject to review in the last instance by the Superior Electoral Court. Only in constitutional matters is it possible to access the Supreme Court of Justice of that country.

The Organic Law of the Electoral Regime provides that the procedure of all actions seeking the annulment of elections must follow Law No. 29/2011 (Organic Law of the Superior Electoral Court). There is also provision for the holding of new elections in the event of annulment, in cases where the decision annulling an election becomes irrevocable, either due to the absence of an appeal when it comes from an electoral board, or by the confirmation of this decision by the Superior Electoral Court (Article 289 of the Organic Law of the Electoral Regime).

If the annulment is confirmed, the Superior Electoral Court will order that the election be held again at the polling station or polling stations in which it was annulled, within 30 days thereafter.

Article 18 of Law No. 29/2011 establishes that elections may be annulled in the following situations: 1) When it is conclusively established, only by examining the documents, without the examination of the ballots, that



there is any of the grounds for nullity provided for by law; (2) when it appears that a person who is not eligible for office at the time of his election has been declared elected; 3) If it is impossible for the Electoral Board to determine, with the documents in its possession, which of the municipal candidates has been elected to a particular office.

In addition, Article 19 provides that votes held in one or more polling stations may be challenged for the purpose of annulment by a political organization that has participated in the elections in the corresponding jurisdiction, for one of the following reasons: 1) By error, fraud or malfeasance of an Electoral Board or any of its members, which has the effect of altering the outcome of the election; 2) because illegal votes have been admitted or legal votes have been rejected, in sufficient numbers to alter the outcome of the election; 3) By preventing voters, by force, violence, threats or bribery, from turning out to vote, in such numbers that, if they had turned out, they could have altered the outcome of the election.

Challenges seeking the annulment of elections must be brought within 24 hours of notification of the result of the general ballot, of the organisations and political parties that have supported candidacies, or of publication on the publication tablet of the Central Electoral Board, of dissemination in a national media, or within 2 days of the conviction for electoral fraud that influenced the outcome of the election (Article 20, of Law No. 29/2011).

In addition, the Law establishes in its article 26 that the deadline and form for appealing to the Superior Electoral Court against the decisions of the Electoral Boards shall be established by the Regulation of Electoral Litigation Procedures and may not exceed 48 hours in the case of an action for annulment of the result of a polling station.

Article 186 of the Rules of Contentious Electoral Procedures of the Superior Electoral Court states that the time limit for filing an appeal against a decision rendered by an electoral board that accepts or rejects an action for annulment of the election in one or more polling stations is 48 hours, counted from the notification of the decision by the electoral board



to the president of the party's municipal governing body, interested political organization or grouping.

With regard to the contestation of candidacies, Article 150 of the Organic Law of the Electoral Regime provides that the Central Electoral Board or the electoral board to which a proposal for candidates has been submitted will have the obligation to meet within 5 days of its submission and declare its admission or non-admission, as it verifies that it is in accordance with all the relevant provisions of the Constitution and the laws. This decision may be appealed to the Superior Electoral Court within 3 days of notification (Article 152).

It should also be remembered that the deadline for submitting proposals for candidacies is 90 days before the date on which the corresponding ordinary election must be held, as established in Article 147.

In summary, from the perspective of the dimensions of electoral governance, adjudication in the Dominican Republic is partially decentralized, as electoral boards initially address inquiries, with the final decision resting with the Superior Electoral Court.

Both the Electoral Boards and the Superior Court exhibit relative autonomy and independence from elected politicians. Although the members of the Superior Electoral Court are appointed by the National Council of the Judiciary, which has a significant political presence in its composition, it is important to note the existence of fixed terms for the judges, which allows for greater freedom in their functions.

Moreover, the composition of the National Council of the Judiciary dilutes the political forces responsible for appointing the members of the Superior Electoral Court.

In terms of delegation, it is emphasized that political actors have transferred the administration and adjudication of elections to specific bodies, with the Dominican Constitution guaranteeing their autonomy.

This autonomy also extends to the bureaucracy, where positions are typically filled through public competitions, similar to the process in Brazil.



As previously mentioned, the Dominican model can be considered genuinely specialized, as the Superior Electoral Court operates exclusively within the realm of adjudication. The conduct of elections and substantial normative activities are the responsibility of the Central Electoral Board.

In the dimension of regulation, it is observed that while adjudication is not as regulated as it will be in the Brazilian case, it is nonetheless governed by a substantial body of laws and regulations.

3 Electoral governance in Brazil

The demand for an Electoral Justice was one of the major banners of the 1930 movement, given the notorious and frequent electoral fraud that persisted throughout the First Republic (Marchetti, 2013, p. 41). One of the main criticisms made by the revolutionaries of 1930 regarding the First Republic was related to the lack of integrity in the electoral processes (Bonavides; Amaral, 1996).

After a tumultuous⁸ period (Zulini, 2019), the Electoral Code was promulgated by Decree No. 21,076 on February 24, 1932. The new Code established the Brazilian Electoral Justice, assigning it both contentious and administrative functions (art. 5), with three levels of operation.

The third level was represented by the Superior Electoral Court, headquartered in the Capital of the Republic; the second consisted of Regional Courts, headquartered in the capitals of each State, the Federal District, and the then Territory of Acre; and the first level was composed of electoral judges in the judicial districts (Brasil, 1932).

Article 30 further stipulated that only tenured members of the local judiciary could serve as electoral judges (Brasil, 1932). This provision served

⁸ The creation of the new code was part of a broader effort to revise all the country's legislation following the revolutionary movement of 1930. In addition to the inherent challenges of governing in such a context, the commission tasked with drafting the Electoral Code faced numerous legislative hurdles and substantial scrutiny from the media at that time (Correio da Manhã, 1931, 1932).



two purposes: to provide extensive reach to this new branch of the Judiciary, as there was already an established structure of local judges, and to ensure the independence of the new body (Nogueira, 2021).

The challenge of the ballots should be carried out at the beginning of the counting process, according to articles 89 and 91 of the 1932 Code, under penalty of preclusion. It is worth noting that the rule of immediate preclusion has been maintained over time and remains in force today.

However, the constant strain on the Vargas⁹ Government culminated in a self-coup on November 10, 1937. Subsequently, Vargas enacted a fascist-inspired Constitution (Melo, 2021), known as the “Polaca¹⁰,” which no longer provided for the existence of an Electoral Justice. This marked the beginning of the Estado Novo¹¹, and with the dissolution of all political parties by Decree-Law No. 37 on December 2, 1937 (Brasil, 1937), the country entered an eight-year electoral void.

After Vargas’s ousting, Decree-Law No. 7,586 was promulgated on May 28, 1945, which restored the organs of the Electoral Justice in a manner quite like the 1935 Code. However, notable differences included the reduction of the number of ministers in the Superior Electoral Court (TSE) from eight to five, and the establishment of the competence for the Superior Electoral Court and the Regional Electoral Courts to requisition public officials, which rendered the bureaucracy unstable (Brasil, 1934).

⁹Getúlio Vargas was a central figure in Brazil’s political history for much of the 20th century. Born on April 19, 1882, in São Borja, Rio Grande do Sul, Vargas served as the president of Brazil in two distinct periods: from 1930 to 1945 and from 1951 to 1954. His first rise to power occurred after the Revolution of 1930, which ended the First Republic and began the Vargas Era. After being deposed in 1945, Vargas returned to power in 1951 through democratic elections, but his second term was interrupted by his suicide on August 24, 1954, amid a severe political crisis.

¹⁰Document inspired by the Polish Constitution of 1935.

¹¹The Brazilian dictatorship of the Estado Novo was an authoritarian regime established on November 10, 1937, by then-President Getúlio Vargas, who remained in power until 1945. This period was marked by the centralization of power, suspension of civil and political liberties, censorship of the media, repression of opponents, and the promulgation of the 1937 Constitution (Polaca), which consolidated Vargas’s power.



The Constitution of 1946 increased the number of members of the Superior Electoral Court to seven and maintained the rule of a two-year term, allowing only two consecutive terms (Brasil, 1946). It also regulated the competence of the Electoral Justice, assigning it responsibilities such as the registration and cancellation of political party registrations; the electoral division of the country; voter registration; setting election dates when not determined by constitutional or legal provisions; the electoral process, election results, and issuing certificates to the elected; adjudicating and deciding on eligibility challenges; the process and trial of electoral crimes and related common crimes, as well as habeas corpus and mandamus in electoral matters; and handling complaints related to legal obligations imposed on political parties regarding their accounting and the investigation of the origin of their resources (Brasil, 1946).

It is worth noting that not even the 1988 Constitution grants as much power to the Electoral Justice (Nogueira, 2024).

After the Military Coup of 1964, the Electoral Justice entered a 21-year period without direct elections for president, governors, and mayors of capitals and cities considered national security areas. The Electoral Justice was then limited to organizing elections for the National Congress and municipalities in the interior of the country. A new Electoral Code was promulgated on July 15, 1965 (Law No. 4,737), which remains in force today with various modifications. The Code changed the composition of the Counting Boards, which began to be composed of a judge, as president, assisted by two or four citizens of notable integrity (Brasil, 1965a).

The voting tables were now composed of a president, a first and a second polling officer, two secretaries, and a substitute, all appointed by the electoral judge and subjected to the following prohibitions: candidates and their relatives by affinity, up to the second degree, inclusive, as well as spouses; members of party directories if holding an executive function; police authorities and agents, as well as officials in positions of trust in the Executive; and those belonging to the electoral service.



Additionally, a preference rule was established for appointing voters from the same electoral section, and among them, those with higher education degrees, teachers, and court officials (Brasil, 1965a).

On November 26, 1965, Constitutional Amendment No. 16 was promulgated, altering the composition of the Regional Electoral Courts by reducing the number of judges chosen by the Court of Justice from three to two and adding a judge chosen by the Court of Appeals. Furthermore, it provided for the selection of one judge chosen by the Court of Justice from among its judges, or two where there was no Court of Appeals (Brasil, 1965b).

Both the 1967 Charter and the 1969 Amendment maintained the structure of the Electoral Justice as it existed up to that point. Additionally, the number of members of the Superior Electoral Court remained at seven (Brasil, 1969). Institutional Act No. 2 of October 27, 1965, included in its Article 18 the extinction of political parties, a measure that had already occurred during the Estado Novo.

However, Article 3 of Supplementary Act No. 4 of November 20, 1965, created a bipartisanship system under the regime, giving a democratic veneer to the dictatorship (Nogueira, 2022c).

Multipartyism was only restored to the national legal framework with Law No. 6,767 of December 20, 1979, which extinguished the parties created as organizations under Supplementary Act No. 4 (Arena and MDB).

On October 5, 1988, a new Constitution was promulgated, reorganizing the country's electoral structure and aligning it with the newly restored democratic regime.

The Brazilian Electoral Justice is described in articles 118 to 121 of the 1988 Federal Constitution. It comprises the Superior Electoral Court, Regional Electoral Courts, Electoral Judges, and Electoral Boards. The Superior Electoral Court, headquartered in the Federal District, is the highest body of the Electoral Justice in Brazil.

Unlike the Constitutions of 1934/1946 and the Charters of 1967/1969, the 1988 Constitution does not establish an extensive list of competencies



for the Electoral Courts, limiting itself to specifying the competencies of the Electoral Justice for appeals to the Superior Electoral Court, challenges to elected mandates, and analysis of party financial reports.

Therefore, the main competencies of the Superior Electoral Court are established in ordinary and complementary electoral legislation, including Law No. 4,737 of July 15, 1965 (Electoral Code); Law No. 9,504 of September 30, 1997 (Electoral Law); Law No. 9,096 of September 19, 1995 (Political Parties Law); and Complementary Law No. 64 of May 18, 1990 (Ineligibility Law).

The TSE is composed of seven ministers, with three originating from the Supreme Federal Court (STF) and two from the Superior Court of Justice (STJ), all elected by secret ballot in their respective courts. Additionally, the President of the Republic appoints two lawyers of notable legal expertise and moral integrity from a sextuple list presented by the STF. Ministers are elected for a two-year term, with re-election prohibited for two consecutive terms, a rule that has been maintained since the 1934 Constitution. The presidency of the TSE is elected from among the STF ministers, and the vice presidency from among the STJ ministers.

Table 3 – Requirements to join the Brazilian TSE

| REQUIREMENTS FOR THE TSE |
|---|
| Three ministers from the Supreme Federal Court: be over 35 years old; Notable legal knowledge and unblemished reputation. Appointment by the President of the Republic, after the choice is approved by an absolute majority of the Federal Senate. |
| Two from Superior Court of Justice: be over 35 years old; Notable legal knowledge and unblemished reputation. Appointment by the President of the Republic, after the choice is approved by an absolute majority of the Federal Senate. |
| Two lawyers: Appointment by the President of the Republic, from among six lawyers of notable legal knowledge and moral integrity, nominated by the Supreme Federal Court. |

Source: Nogueira (2024).



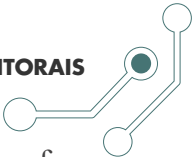
Studies in political science highlight that the composition of the Superior Electoral Court makes it a kind of extension of the Supreme Federal Court in electoral matters, playing a crucial role in the judicialization of electoral competition in Brazil (Marchetti, 2008, 2013). After all, of the seven members of the TSE, three come from the STF and two are appointed by it.

The Regional Electoral Courts (TREs) are headquartered in the capital of each state and the Federal District. Similarly composed of seven ministers, TREs include two judges chosen from among the justices of the state Court of Appeals and two judges chosen by the state Court of Appeals, all elected by secret ballot. Additionally, each TRE includes one judge from the Regional Federal Court with headquarters in the state capital or the Federal District, or if none exists, a federal judge chosen by the respective Regional Federal Court. The last two members are appointed by the President of the Republic from among six lawyers of notable legal expertise and moral integrity, as indicated by the state Court of Appeals.

The president and vice-president of the Regional Electoral Courts are elected from among the justices of the Court of Appeals. While the Constitution is silent on this, typically, the Vice-Presidents of the Regional Electoral Courts also serve as the *Corregedor*, a judge overseeing disciplinary matters (Nogueira, 2023, p. 25).

The first instance of the Electoral Justice consists of judges from the state and Federal District judiciary. Each magistrate assumes jurisdiction over the electoral district of their respective judicial district for a two-year period. In districts with multiple courts, the respective TRE appoints the judge who will serve in this capacity (Resolution TSE No. 21,009/2002).

Electoral Boards are temporary collegiate bodies of the first instance of the Electoral Justice, formed exclusively during election periods, which span from 60 days before the election until the issuance of certificates to the elected candidates. Their primary responsibilities include counting votes and issuing certificates to the winning candidates. This board is composed of a



judge from the state judiciary, appointed as president, along with two or four citizens of notable integrity. Other responsibilities are specified in Article 40 of the Electoral Code.

The current electoral code provides for the inadmissibility of an appeal against the voting if there has been no challenge before the receiving board at the time of voting against the alleged nullities (Article 149).

Recent studies (Nogueira, 2019a, 2019b, 2021, 2022a, 2022b, 2024) suggest the political use of lawsuits that can lead to the rejection of a candidate’s registration, the revocation of their certificate, or the loss of their elected mandate. These so-called “removal actions” now constitute almost the entirety of election invalidation cases in Brazil.

The following table presents the main characteristics of removal actions.

Table 4 – Removal actions

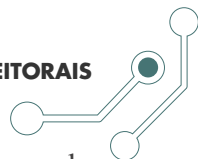
| Lawsuits | Deadline | Objective | Outcome |
|---|--|--|---|
| Action to Challenge an Elective Mandate (AIME) - Article 14, §§10 and 11, of the Federal Constitution | 15 days from the certification | Protect citizenship, fairness, and the balance of the election, as well as the legitimacy of political representation | Annulment of the elected candidate’s mandate |
| Action to Challenge Candidacy Registration (AIRC) - Article 3, caput, of Complementary Law 64/90 | 5 days from the publication of the notice publicizing the registration request | Verify compliance with the eligibility or ineligibility requirements provided in Complementary Law 64/90 or the Federal Constitution | Rejection of the candidacy registration request |



(continuation)

| Lawsuits | Deadline | Objective | Outcome |
|---|--|--|--|
| Electoral Judicial Investigation Action (AIJE) - Articles 19 and 22, caput of Complementary Law 64/90 | From the registration request to the certification of the elected candidates | Prevent the abuse of economic power or authority, as well as the improper use of vehicles or media, in favor of a candidate or political party | Declaration of ineligibility for 8 years and revocation of the registration or certificate |
| Appeal Against Issuance of Certificate (RCED) - Article 262 of the Electoral Code | 3 days from the certification of the elected candidates | Recognize subsequent ineligibility, constitutional ineligibility, and lack of eligibility condition | Annulment of the elected candidate's certificate |
| Specific Representation for Irregular Campaign Fundraising - Article 30-A of Law 9.504/97 | 15 days from the certification | Prevent irregular campaign fundraising (off-the-books funds) | Denial or revocation of the elected candidate's certificate |
| Specific Representation for Illegal Vote Buying - Article 41-A of Law 9.504/97 | From the registration request to the certification of the elected candidates | Prevent illegal vote buying | Revocation of the registration or certificate and imposition of a fine |
| Specific Representation for Prohibited Conduct - Articles 73 to 78 of Law 9.504/97 | From the registration request to the certification of the elected candidates | Prevent prohibited conduct by public officials | Revocation of the registration or certificate |

Source: Nogueira (2024).



Regarding the governance dimensions, the Brazilian model can be formally classified as independent. The only aspects that could potentially limit this independence are the appointment process of its members and budgetary issues, both of which fall under the executive's prerogatives.

However, the legal prerogatives of the judiciary in Brazil, as well as the fact that budgetary expenditures are determined by the Electoral Justice itself, help to maintain institutional independence.

This independence has, over time, allowed for the formation of a highly specialized bureaucracy, insulated from political pressures. As noted above, the regulation not only of governance but especially of adjudication is supported by extensive and detailed legislation.

Another significant dimension pertains to decentralization. Although the Superior Electoral Court regulates elections nationwide and serves as the final judicial instance¹² in electoral processes in Brazil, it delegates responsibilities to Regional Electoral Courts and Judges, rendering the model highly decentralized.

Similarly, the model provides for delegation by political actors, who distanced themselves from electoral governance as early as the 1930s, further reinforcing the prior dimensions.

Although it is commonly identified as a specialized judiciary (Anjos, 2015), the Brazilian model of electoral governance is, in fact, non-specialized in the sense that the same institution handles both administrative and judicial functions simultaneously. The Brazilian Electoral Justice operates as both an EMB (Electoral Management Body) and an EDRB (Electoral Dispute Resolution Body): it organizes and administers electoral processes and resolves disputes (Tarouco, 2014, p. 239).

The following section presents the empirical research data conducted during the 2020 electoral cycle in both countries.

¹² Regarding constitutional matters, the final instance is the Supreme Federal Court (STF).



4 Adjudication of 2020 Election results

In the year 2020, Brazil and the Dominican Republic held elections, still under the shadow of the COVID-19 pandemic. In Brazil's case, elections were held to choose mayors and councilors in 5,568 municipalities, while the Dominican Republic went to the polls to elect all elective offices at both local and national levels.

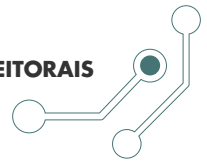
As previously noted, the level of rule adjudication in Dominican electoral governance is primarily exercised at the top by the Superior Electoral Court. At the base, electoral boards hold jurisdiction for adjudication, and their decisions can only be reviewed by the Superior Electoral Court.

This division of adjudicatory authority into two instances is not unprecedented globally, being the standard model within the judiciary. However, it is worth noting that the adjudicatory authority at the Dominican first instance is not exercised by a judicial body but by the local electoral board.

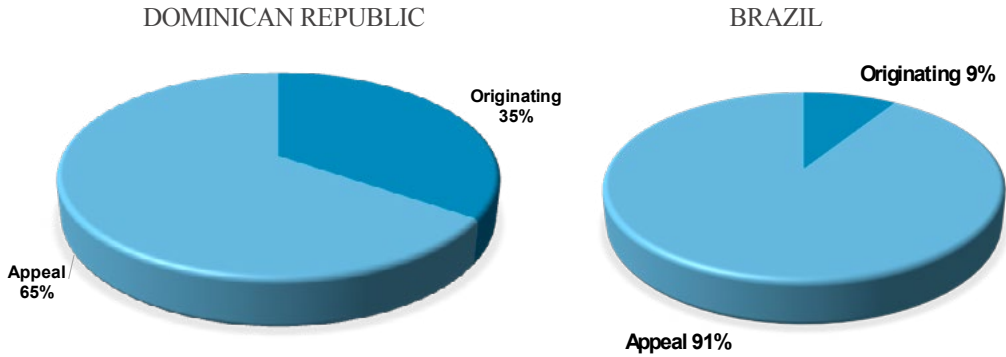
In Brazil, on the other hand, there is no division of functions, with the Superior Electoral Court responsible for both adjudication and the organization of elections. Additionally, there is a residual normative competence exercised by the Superior Electoral Court, which acts as a legislator in electoral matters through its resolutions.

While there are similarities between the countries in terms of electoral governance dimensions, the adjudication data reveal significant differences in regulation and specialization.

The following graph presents the origins of actions adjudicated by the analyzed Superior Electoral Courts.



Graph 1 – Case's origins



Source: Martins; Nogueira (2024).

In both courts, it is observed that most lawsuits arise from appellate jurisdiction, meaning they involve challenges to decisions made at lower levels.

Given that Dominican elections are concentrated around the same time and the number of local-level offices contested exceeds those at the national level, it is expected that the number of appeals adjudicated by the Superior Electoral Court will exceed cases of original jurisdiction.

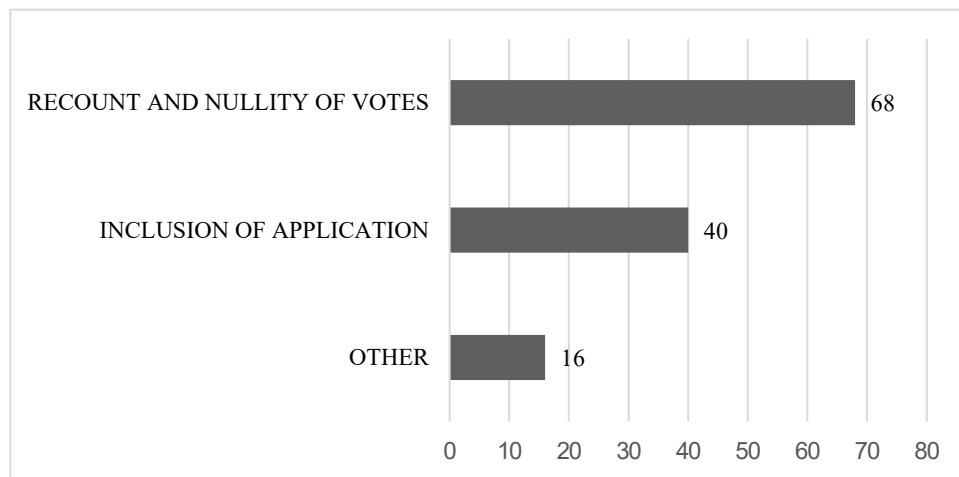
In Brazil, however, the 2020 elections were solely municipal, which may explain the relatively low percentage of original jurisdiction cases adjudicated by the Superior Electoral Court (TSE).

Another relevant piece of information pertains to the themes of the lawsuits adjudicated, an area where the Superior Electoral Courts often distinguish themselves.

The following graph presents the data regarding the Dominican Republic:



Graph 2 – Lawsuits’s thems (Dominican Republican)



Source: Martins; Nogueira (2024).

Most of the actions concern requests for vote recount or annulment, accounting for approximately 55% of total cases. Following this, about 32% of actions involve requests for inclusion of candidacies.

As previously mentioned, Articles 18 and 19 of Law No. 29/2011 address the main reasons for election annulment, with most cases revolving around circumstances related to voting moments or errors committed by Electoral Boards.

Considering that Dominican democracy is relatively recent, it's not surprising that the primary actions concern electoral fraud, as electoral integrity is a gradual construction. Gains in integrity achieved in a particular electoral cycle may not automatically translate into permanent changes in electoral norms and institutions (Uberti; Jackson, 2020).

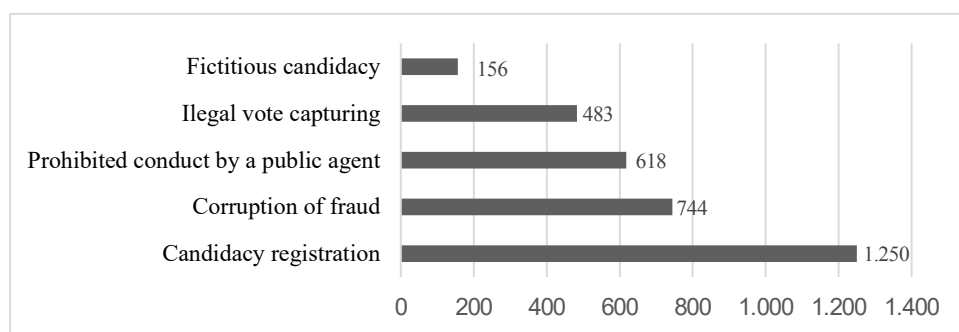
In this regard, the local dynamics of Dominican elections appear to be quite turbulent, with many actions addressing issues that are fundamental to electoral integrity. The most common rationale in Latin America for establishing independent electoral bodies is to combat electoral fraud.



Studies indicate that electoral fraud negatively impacts satisfaction with democracy, regardless of whether voters are on the winning or losing side (Fortin-Rittberger; Harfst; Dingler, 2017).

In contrast, Brazil, with a more consolidated democracy, presents different data, as can be seen in the following graph:

Graph 3 – Lawsuits’s thems (Brazil)



Source: Nogueira (2024).

Demands for recount or annulment of votes are virtually non-existent in the Brazilian case, with issues relating to improper campaign conduct by competitors being more prevalent.

The introduction of digital voting mechanisms (electronic voting machines) in Brazil, beginning in 1996, may have contributed to the near elimination of vote recount requests in the country. However, further research is needed to confirm this hypothesis. In contrast, the Dominican Republic faced problems with its automated voting system during the 2020 municipal elections. Opposition parties reported that candidate names and party abbreviations did not appear on the voting screens.

The Dominican electronic voting system differs from the Brazilian model: while the Brazilian process is fully digital, Dominican voters select candidates on a screen, print a ballot, and then deposit it into the ballot box.

This malfunction led the Central Electoral Board (JCE) to suspend the elections initially scheduled for February 16, 2020, which were only resumed on March 15 of that year.



In the dimension of regulation, a significant difference exists between the Dominican Republic and Brazil.

It's noteworthy that Brazilian legislation provides for a significantly larger number of possibilities for invalidating election results, with the presence of seven judicial mechanisms (Table 4) for this purpose. It is natural to expect political actors to utilize available lawsuits to challenge results, even if their effectiveness is low (Nogueira, 2024).

It should be mentioned that even during the dictatorship period, the Brazilian Electoral Justice continued to conduct elections that at times produced results contrary to the regime's expectations (Alencastro, 2014).

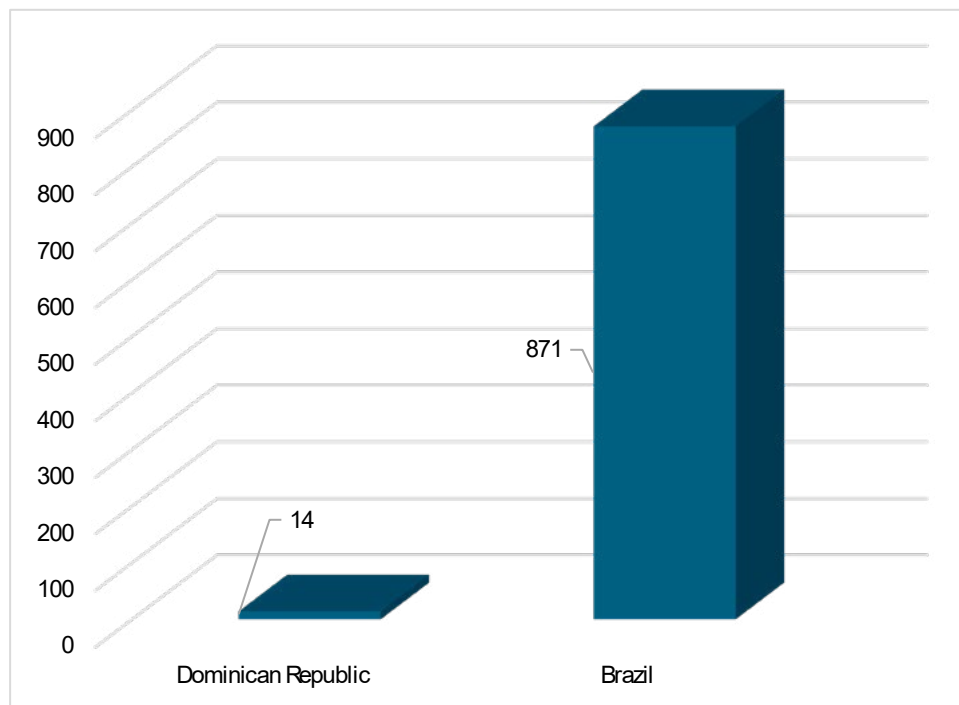
There has been a long process of institutional consolidation of Electoral Justice in Brazil, and since 1988, the Superior Electoral Court has emerged as a guarantor of electoral procedure integrity. Perhaps this partly explains the differences in the profiles of lawsuits filed in the Dominican Republic and Brazil.

However, the hypertrophy of the Brazilian electoral body comes at a cost, as can be seen below in the significant difference in the time taken to adjudicate demands between the electoral courts.

The following graph compares the average time (in days) for adjudication of lawsuits during the 2020 electoral cycle in the Dominican Republic and Brazil:



Graph 4 – Average time for adjudication of lawsuits (in days)



Source: Own elaboration (2024).

Obviously, there is a significant difference in scale between the countries; however, this alone cannot explain the observed difference in average adjudication time. In 2020, the Dominican Republic had 7,529,932 eligible voters, approximately 4.8% of Brazil's electorate during the same period, which was 156,454,011. Yet, the Dominican Superior Electoral Court takes approximately 1.6% of the time compared to its Brazilian counterpart to adjudicate cases.

However, it seems reasonable to expect a discrepancy in average adjudication time when comparing countries with such different realities.

Here, perhaps, lies the most significant difference between the Superior Electoral Courts of the Dominican Republic and Brazil in terms of adjudication: the dimension of specialization.



It's important to note that the Dominican TSE does not have the responsibility to conduct elections; its sole competence is adjudication. In contrast, the Brazilian TSE handles nearly all stages of the electoral cycle, deciding on various administrative issues and processing a vast number of original and appellate lawsuits.

An institution focused solely on adjudication would likely be faster than one that needs to handle regulation, organization, and adjudication of elections. This may help explain part of the discrepancy between the countries.

Conclusion

The Brazilian model of Electoral Justice is one of the oldest in the world, making it a benchmark, especially in Latin America. However, the idea that institutions respond differently according to each country's reality is well-supported in the literature on institutional change (Banwo; Onokala; Ametepe, 2021; Faundez, 2016; Veblen, T. *et al.*, 2021).

Thus, the distinct institutional paths have emerged from the peculiarities of each country. Although Latin America suffers from very similar problems, with its populations having endured decades under dictatorships, each country has found distinct ways to operationalize the complexity of the democratic regime.

While somewhat emulating the independent Electoral Justice model in Brazil and Uruguay, the Dominican Republic has entrusted its electoral court solely with adjudication. The Central Electoral Board continues to exercise the role of regulating and organizing elections, a responsibility it has held since the 1920s.

The emergence of new practices, rules, or institutional arrangements because of continuous adjustments and adaptations within an organizational system is well-documented in the literature on institutional change (Mahoney *et al.*, 2010). The creation of a specialized court to adjudicate Dominican



electoral conflicts reveals, to some extent, society's capacity to adapt and create institutional arrangements to face new challenges and demands.

It is pertinent here to recall the concepts of institutional drift and conversion brought forth by the literature on institutional change (Thelen; Mahoney, 2015). Institutional drift refers to the phenomenon where institutions or policies remain static, without undergoing formal changes, while the environment around them evolves, resulting in unintended or undesirable effects.

On the other hand, institutional conversion involves the transformation of existing institutions through redirection, reinterpretation, or authoritative reappropriation, allowing political actors to achieve new objectives without the need for formal rule changes.

In the Dominican case, the historical research suggests that the Central Electoral Board remained in institutional drift for decades but eventually lost its adjudication authority with the creation of the Superior Electoral Court. Apparently, the political community in that country came to understand the necessity of separating the levels of electoral governance into two distinct bodies.

In Brazil, by contrast, a long historical process unfolded for the judge's role to become central in electoral organization (Nogueira, 2024). Indeed, even in the early 20th century, long before the creation of electoral justice, judges were already called upon to manage voter registration.

Over time, the idea consolidated that a specialized justice system would be capable of addressing the classic Brazilian electoral woes, represented by high absenteeism and frequent fraud in the results.

Although the Dominican Republic and Brazil share similarities in their electoral governance models, significant differences emerge in the dimensions of regulation and specialization, particularly concerning the adjudication of results.

After delegating the management of nearly all aspects of electoral governance to the judiciary, Brazilian political actors have developed a



comprehensive and intricate legal framework to address conflicts arising from electoral competition.

This has led to the establishment of a major institution in the Americas. In 2020, the total expenditure of the Brazilian Electoral Justice amounted to US\$1,361,336,469.61, based on the average exchange rate of R\$5.15 for that year (IPEA, 2021).

The specialized adjudication model in the Dominican Republic seems to accelerate case resolution, even when accounting for the significant differences in the scale of the countries studied. Unlike the Dominican case, the Brazilian political community chose a model of electoral body that manages all stages of the electoral cycle.

The Brazilian electoral body, with its more than 90 years of virtually uninterrupted existence, suggests the presence of great institutional resilience. An institution created in the mid-1930s continues to operate with almost the same set of responsibilities in a world very different from the one in which it originated.

Institutions matter, but new dilemmas impose increasingly frequent challenges on Superior Electoral Courts. In the era of post-truth (Sismondo, 2017), social perceptions of election integrity are almost as relevant as the implementation of fair elections themselves.

It is hoped that both countries can find paths in this not-so-brave new world.

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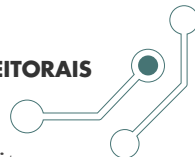
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