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The Right to free and fair elections: an analysis of the approach of the American Law Doctrine on ballot secrecy

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Abstract

This article offers a description of the concept free and fair election being the most fundamental principle defining credible elections is that **they must reflect the free expression of the will of the people**. Human rights treaties and international law doctrine have established that in order to hold democratic elections, states should assure their transparency, accountability and most of all must be inclusive by giving any citizen the equal opportunities to participate and be elected in the elections. These broad principles are strengthened by several electoral process-related responsibilities, as well as several key rights and freedoms, each of which derive from public international law. The paper aim in the second part to analyse the article of the US constitution that provide for the criteria of free and fair elections and more specifically the principle of ballot secrecy. Furthermore, the article will analyse the caselaw of the Supreme Court of US regarding the right to vote and elections and the interpretation of this Court in the application of the legislation.

Keywords: free elections, fair elections, secret ballot

Introduction

The Principle of Fair and Free Elections

Elections is the process where the citizens that have gained the right to vote, choose an individual or party to hold a formal office in for regional of local government or represent them in parliament. International law provides that elections, procedurally shall be held according to domestic law, but respecting the norms and standards of international law, that is free expression of will of people. However, the terms “free” and “fair” used to define the standards upon which elections should be legitimate are very difficult to measure and define because it can change meaning according to the countries in question, because it contains subjectivity. The main aim of the electoral process is that should present the will of the people and to that concern it should be safeguarded, giving the feeling to citizens that are being involved. Scholars have supported the transparency of voting process and, based on the Universal Declaration of Human Rights this process is open to public knowledge and scrutiny. The obligation for a transparent process supports the freedom of expression in elections because its freedom to request and receive information vital to the election process. Another important part of free and fair elections is the right of a secret ballot, because the citizens should be protected from intimidation suppressed over them by parties and by the community to which they belong (Valelly, 2016).

Free elections involve two aspects: the free formation of the will of the elector and the free expression of that will. Only an effective and equal possibility of information guarantees the free will of the voter and this can only occur in a context in which fundamental freedoms and human rights are guaranteed to all citizens. Among the fundamental freedoms, there are some that are so strongly connected with electoral rights that we can consider them essential prerequisites such as freedom of opinion, freedom of expression and information, freedom of assembly and freedom of association that are recognized by the Universal Declaration of Human Rights, articles 19 and 20 (United Nations, 1948). The first of these freedoms is that of opinion because it would make no sense to speak of democratic elections or popular will if the freedom to have a political opinion without interference or restrictions were not absolutely recognized.

The right to freedom of expression and information includes not only the freedom to express one's political views but also the right to seek and receive information. In the electoral field, this implies that public authorities must maintain absolute neutrality towards candidates, but also that positive obligations arise against them (Venice Commission, 2002), such as

the duty to regularly submit candidacies to citizens' suffrage, allow voters to know the lists and candidates, make this information accessible, guarantee equal opportunities for the electoral campaign and freedom for the media.

Freedom of assembly must always be guaranteed that it is peaceful. Citizens must, in fact, have the opportunity to come together peacefully to discuss and develop their political programs without unjustified administrative or bureaucratic impediments. Freedom of association obviously also includes the right to form and be part of political organizations. This freedom, like the others just mentioned, can be limited only in cases provided for by law and which are necessary "in a democratic society, in the interest of national security, public security, public order, or to protect health and public morals or the rights and freedom of citizens " (United Nations, 1948).

The free expression of the will of the voter then implies that the vote is expressed in compliance with the established procedure, and without intimidation, violence, interference or fear of retaliation. Therefore, the public authorities are obliged to prevent and sanction such practices and to prepare simple electoral procedures. The concept of free elections also includes the possibility for third party observers, be they national or international, and for the representatives of candidates and parties to observe all phases of the electoral process.

Fair and impartial elections mean, first of all, that equal conditions of participation must be offered to all participants in the electoral process, candidates, parties or political organizations. Anyone wishing to apply must be given the opportunity do so in accordance with the law, and to compete based on equal conditions and absolute impartiality on the part of public authorities. This equal opportunity must be guaranteed above all to the possibility of access and usage of media without facing any discrimination. Legislation and its implementation must allow unhindered access to all candidates and political parties on an equal basis. A similar equal opportunity must be recognized for voters: in a truly democratic system, both public and private media have a responsibility to ensure sufficient, balanced and impartial information so as to allow voters to be able to make a choice truly informed, which is the basis of a correct formation of their vote usage (OSCE/ODIHR, 2012).

Fair and free election principle could not be applied without the universal suffrage of the vote that provides for the recognition of the right of active and passive electorate. The universal suffrage is perhaps the principle that is indicated in the most obvious manner by international instruments. Article 25 of the International Covenant on Civil and Political Rights of 1966 states that "Every citizen has the right ..., without any of the discrimination mentioned in Article 2 and without unreasonable restrictions ... to vote and be elected ...' (United Nations Human Rights, 1966)

Even if article 3 of the additional protocol of the ECHR does not recall it, the principle of universal suffrage is also clearly considered by the European Court of Human Rights as a basic principle. The court define that the right to vote is not a privilege but is instead a right. that a democratic state must guarantee in the most inclusive way possible (European Court of Human Rights, 2005). To ensure universal suffrage it is obviously necessary that the voters be registered and that there are, therefore, one or more electoral lists. The inclusion of a person on this list ensures the possession of the requirements and the absence of causes of limitation and therefore allows the voter to exercise their right to vote. The registration process must be transparent, accurate and inclusive, in order to protect against tampering and to enjoy the trust of voters. The principle of universal suffrage is not only guaranteed through adequate legislation, but it is also necessary that each holder of the right has the effective and concrete opportunity to exercise it without any discrimination.

States in order to ensure fair and free elections should assure the secrecy of the vote according to international law standards. The function of secret ballot is to be found in the need for the vote to be expressed freely, without coercion and without the danger of retaliation for the voter, but also in the right of the voter to vote in private and, in this way, not to acquaint others with their political views.

The following part of the article explores the principle of the secret vote in the American law doctrine and analyses the US Supreme Court judgements.

The principle of secret ballot and the right to vote in the American doctrine

The Constitution of the United States of America does not contemplate in its articles the principle of secret ballot as a fortification of freedom for the electors. The only explicit references to the protection of the secret ballot can be found in the amendments to the US Constitution, in particular, in the twelve amendment whereas its stated that "The electors shall meet in their respective states and vote by ballot for President and Vice-President" (United States Senate, 1804)

All other voting rights are provided for in Fifteenth Amendment of the US Constitution and, are devoted to combating racial, sexual and social discrimination without any other reference to secret voting (United States Senate, 1804) The empirical data provided by the text of Constitution agrees with the most accredited legal doctrine which highlights how, at the federal level in the US there is no constitutional protection of the principle of secret ballot as an perfect element of freedom of electors. On the other hand, at state level, except for only two states that of Texas, Oregon and Iowa, in all other state constitutions, secret ballot is provided for and constitutionally protected in order to preserve the legitimacy of the electoral process. Moreover, this is also supported by the historiographic analysis of the usage of secret ballot, it appeared that the most common way of exercising the vote in the new continent was certainly not the secret ballot, which was adopted only in 1888 following the introduction of the Australian secret ballot (Evans, 1918). In fact, the vote was expressed hands-free or viva-voce voting by those entitled who were called before the magistrates so that they could openly and freely answer the question and provided their personal details (J.Dinkin, 1982). This system did not seem to interact negatively with the freedom of the individual voter, on the contrary the constitutional coverage of the right to freely cast the vote found its possibility of choice in the first amendment, the Freedom of Speech, because the speakerphone or open vote was actually one of the forms of expression of the freedom of expression of thought. Fraud schemes could be circumvented with the aid of the paper ballot, or with putting into writing of all the data relating to the electoral proceedings (Evans, 1918).Thus, the paper ballot system was gradually adopted in all States, and the firs state to use it was New York.

These data are the demonstration, according to Justice Scalia, that American democracy operates differently, because “The different voting methods simply reflected different views about how democracy should function” (US Supreme Court , 2010). It is no coincidence that the voice of the vote was perceived in the United States as an index of the courage of the voters, because “in Virginia and the other states in close affiliation with her this oral expression was vaunted as the privilege of the free-born voter , to show the faith that was in him by an outspoken announcement of his candidate” (Schouler, 1897). Thus, open voting was a privilege for American citizens who had full freedom and a hallmark of the proper functioning of US democracy. However, the flaws in the hands-free system soon emerged mainly following the discovery of the electoral abuses committed by political parties. In fact, the paper ballot system for congressional elections in all States, introduced with the Federal Elections Act of 1871, allowed political parties to freely print and distribute ballot papers to voters, especially in States where there were no particular rules on format, colour and spelling of the ballot paper. The ballot papers distributed by the various parties were so easily recognizable ex post, because each party adopted a type of press that made the affiliation of that card immediately attributable to the party that distributed it (Schouler, 1897). For example, the New York Democratic Party imprinted a particular perfume on the ballots, which it would then distribute among the voters, in order to monitor what the election result would be and, evidently, check for whom their voters voted. Other parties used bright colours for the ballot papers to be immediately recognizable, still others directly printed the ballot with the name of their candidate. The polling station thus became an "open auction place", where votes were bought or won by coercion; in fact, as often happened, employers threatened their employees or those politically engaged prevented other workers, subservient to the will of their employers, from going to vote; other voters, however, went directly to the polling station to find a buyer for their vote (The Supreme Court of US, 1992).

From the countless episodes of electoral fraud and abuse, the conviction took hold that it was necessary to introduce an electoral system that guaranteed the secrecy of the vote. In this transition phase, the role of political parties was decisive, because American citizens became voters simply by being registered on party electoral lists. This led to an inequality of the power of the major political parties in the management of electoral procedures, such as to exert its influence even on the phase of introduction of the secret ballot. In fact, the mass parties opposed the introduction of the secret ballot because they would not have been able to direct the electoral trend, while the smaller parties and the reforming elite advocated the introduction of the secret ballot, not so much to free the voters from forms of “intimidation and deference in the social hierarchy, as much as by parties and by the obligations imposed by the community to which they belong (Valelly, 2016). Furthermore, the Upper-class reformers argued that through the secrecy of the vote the voter would be made more independent from blind party membership, because "political preferences were a private matter and not the stuff of communal ritual". In reality, according to James Bryce, the secret ballot became a tool in the hands of the upper-class to drastically reduce the real possibility for the voters of the most ignorant classes to participate in the vote (Toke S.Aidt, Peter S.Jensen, 2016)109. Thus, remedies were adopted against electoral abuses such as the secret ballot, along the lines of the Australian model which provided for the use of a single state card, and identification systems of the individual voter or the progressive numbering of the ballot papers, without implementing the protection of the secrecy of the vote at the constitutional level (Maurer School of Law, 1941).

The historical reconstruction of the origins of the secret vote in the United States is sufficient for Scalia to affirm that the natural expression of the vote is the obvious one: “that would have been utterly implausible, since the inhabitants of the Colonies, the States, and the United States had found public voting entirely compatible with the freedom of speech for several centuries” (US Supreme Court , 2010). From this reconstruction it emerges that the nature of the right to vote in the US Constitution public.

In fact, in the concurring opinion on the Doe v. Reed case, Justice Scalia argues that, with reference to the exercise of voting during a referendum procedure, the individual is entitled to exercise a public function or rather that of legislating like Congress in the ordinary exercise of its functions. Given that it is an perfect principle of American democracy, protected in in article 1, section 5 of the US Constitution (United States Senate, 1804), that public power, including legislative power, must be expressed publicly. Based on that, the voter, in exercising legislative power through direct democracy tools, must also express the own vote transparently. This mode of expression would be the most direct and natural consequence of the principles of publicity and transparency on which the Founding Fathers created the American democratic and constitutional system. However, episodes of fraud, abuse and coercion against voters have led states to adopt rules and procedures based on the secrecy of voting as a remedy for pathological situations encountered during electoral procedures (US Supreme Court , 2010).

Based on these findings, the question that arises from the interpretation is whether these firm and clear statements of Justice Scalia, with reference to the vote expressed in referendum procedures, are generally extendable to all cases of exercise of the right to vote by electors. Especially in the referendum the elector legislates with his own vote, because it produces legal effects on a state law. In this case it is believed that, through the vote in representative elections, the elector exercises a public power which has consequent legal effects, such as the election of their representatives called to exercise legislative power, in the name and on behalf of their constituents (United States Senate, 1804). It is certainly even more evident when the voters are called to exercise their constitutional right to petition the Government for a redress of grievances enshrined in the First Amendment of the Federal Constitution, but this does not exclude its validity for the exercise of the right to vote in the general sense. The historical reconstruction of the hands-free system in the United States and the introduction of the secret ballot in urgency to support this theory, which therefore did not distort the original sense of publicizing the concept of the right to vote as modelled by the Founding Fathers (Douglas, 2008). There is no point in any criticism of the doctrine that considers the right to vote in the USA as an individual right, obtainable from the fact that alternative forms of voting are allowed, yielding in terms of protection of secrecy, such as voting by correspondence and voting by proxy. The right to vote would thus be a negative freedom because the state does not care to protect its secrecy (Fishkin, 2011).

The theory of publicity of the right to vote, accepts that the admissibility of alternative forms of voting has its legal basis precisely in the public nature of the vote, which does not lead to the lack of neglected protection of the secrecy of the vote. The circumstance related to procedural rules that are applied in order to protect the freedom of the vote, including the secret ballot, are not the result of the constitutionalist elaboration of the right to vote, but arose from the need to stem the pathological phenomena of electoral systems (Strom, 1990).

2. The jurisprudential interpretation of the Supreme Court of the US on secret ballot and the right to anonymity

From the analysis of the jurisprudence of the US Federal Supreme Court, it occurs that the secret ballot system is intertwined with the right to remain anonymous. In fact, historically it is customary to place both legal institutions under the constitutional coverage of the First Amendment, because they are both the result of expression of the Freedom of Speech of US citizens. In particular, it is in the McIntyre v. Ohio Elections Commission that for the first time the red thread connecting the right to remain anonymous and the secret ballot is created (Strickland, 2001). In fact, in the Court's opinion, authored by Justice Stevens, it is solemnly stated that respect for the tradition of anonymity in the political debate finds its maximum example precisely in the secret ballot system, as "it is perhaps the best represented" and is "the hard won right to vote one's conscience without fear of retaliation". In this important ruling the Supreme Court thus affirmed the existence within the Constitution of the right to anonymity, of which the anonymous vote would represent an expression, given that the anonymous vote was already used by Lincoln in 1837 and admitted for the first time in 1868 on the occasion of the approval of the Fourteenth Amendment (Strickland, 2001). In this case, Ms McIntryre had distributed leaflets without giving evidence of her identity on paper to express her opposing view on proposed school district tax levy, during a public meeting, at Blendon Middle School in Westerville, in Ohio. According to the Supreme Court, the American public debate and the constitutional system have always allowed, especially in the political field, to enjoy anonymity as an expedient to support

political campaigns. The most striking example is represented from The Federalist Paper, signed by its famous authors, not with their real names, but with the pseudonym “Publius” (Adair, 1944). This shows for the judges that, under US Constitution, anonymous pamphleteering is not a pernicious fraudulent practice, but an honourable tradition of advocacy and dissent and that the right to anonymity in the political debate is the minority's weapon to fight the tyranny of the majority, because it protects every citizen from retaliation which he may suffer for his own political opinions (Strasser, 1950).

However, the reconstruction carried out in the Court's opinion does not convince the Justice Scalia whom has presented a dissenting opinion, that it is believed to be the basis for changing jurisprudential orientation in the judgment of the Doe v. Reed. According to Justice Scalia, the historical data that demonstrate the tolerance of the American democratic system towards anonymity are certainly not proof of the existence of a consecrated constitutional law: besides having no ruling at the level of the constitutional sources, it never had a approval from constitutional jurisprudence (US Supreme Court, 1913). The only traces of the existence of this right can be found in a more jurisprudence, which, however, would not deserve a continuation, because they expressly refer to freedom of the press, without any reference to the individual's right to anonymity connected to free and democratic elections in the case of Burson v. Freeman (US Supreme Court, 1992).

On the other hand, the non-existence of the right to anonymity is relevant precisely in relation to the interest of the States in guaranteeing "the integrity of their election process". In fact, the anonymous vote was never recognized expressly because the need to guarantee the integrity and transparency of the electoral process does not allow for restrictions on the part of other rights (National Academies of Sciences, Engineering, and Medicine, 2018). As proof of this, it should be noted that the admissibility of the restriction of the same freedom of the press for which anonymity is tolerated, finds its limit precisely in the need to guarantee the integrity of the electoral process. This would make it clear, according to Scalia, that in reality there is not a right to anonymity, in cases where it is admitted or tolerated, but rather an exemption to protect the person who could with reasonable probability, suffer retaliation from the Government or political parties, as stated in Buckley v. Valeo (US Supreme Court, 1976). Therefore, if the main purpose of maintaining anonymity in political debates is not to suffer negative consequences from the exercise of the manifestation of one's own thought, it must restrain when it influences the political process, making it opaquer. The prohibition of anonymous campaigns, with some exceptions, effectively guarantees the integrity of free and democratic elections; this entails the logical consequence that there is no right to anonymity and for our purposes, an anonymous vote is constitutionally sanctioned according to the dissenting opinion of Justice Scalia.

However, the opinion of the Court of the McIntryre judgment has led scholars, for a decade, to consider the right to anonymity as a constitutional right arising from the First Amendment of the US Constitution, whenever there is a reasonable likelihood of retaliation or abuse in against those who exercise this right. This is repeated in Buckley v. Valeo case, where minor parties are allowed not to comply with the disclosure obligations imposed for the collection of funds during electoral campaigns, only if this involves a reasonable probability of retaliation and reprisals against its supporters, clearly violating the First Amendment. The same principle is stated earlier in McConnell v. Federal Election Commission and, in Citizens United, if members of organized interest groups are subject to pressure or threats. In accordance with a precedent of this magnitude, the applicants in Doe v. Reed strongly supported the unconstitutionality of the Washington State Public Records Act (PRA), which granted anyone to access the petitions and, therefore, to scroll and possibly disclose the identification data of the voters signing a given petition (name, surname, address, telephone number). The applicants claimed the unconstitutionality of the PRA because the petitioners' right to anonymity was not guaranteed, as established by the previous constitutional jurisprudence in relation to the First Amendment. In fact, the applicants pointed out that the ease of access to the identifying information of the petitioners could lead to easy episodes of retaliation against the latter, in order to influence and, in certain cases, to divert the referendum result, should the matter of the petition be very heartfelt. The applicants' request did not convince the majority of the Supreme Court Justices, who agreed to reject the sue for the PRA’s unconstitutionality. In fact, according to the judges, States are allowed to implement the security measures of the electoral processes in order to guarantee the integrity of the same, which is not limited to the mere contrast of electoral fraud, but extends "to promoting transparency and accountability in the electoral process ", because" the State argue is essential to the proper functioning of to democracy " (US Supreme Court , 2010). In particular, the publication of petitioners' data is useful for circumventing fraud, to correct any errors in the data of subscribers, to prevent voters who are not registered in the electoral lists from signing petitions that otherwise would never reach the quorum to be submitted. to the electoral test, and, finally, to educate citizens about the democratic process (US Supreme Court, 2008). In this regard, it is interesting what stated in the concurring opinion written by Justices Sotomayor, Stevens and Ginsburg, who highlighted that the democratic process is by its nature devoted to publicity and transparency, as indeed the judge Scalia demonstrated for the

right to vote (US Supreme Court , 2010). Therefore, guaranteeing the publicity of data referable to an electoral process enables the electorate to make informed decisions and give proper weight to different speakers and messages (US Supreme Court, 2010), especially if voters are called to participate in the democratic process to exercise directly legislative power (US Supreme Court , 2010).

From this resume of the jurisprudence of the Supreme Court it is clear that there is no right to secret vote in the constitutional system of the United States, because it is the US Constitution itself that has been voted to the full transparency of the electoral process, given that states are allowed to provide for remedies, such as secret ballots, to protect the integrity of electoral processes, since "...nothing prevented the States from moving to the secret ballot. But there is no constitutional basis for this Court to impose that course upon the States." as specified in the concurring opinion of Justice Scalia in Doe v. Reed case.

3. The State Constitutions and the protection of the secret ballot as a security element of the electoral processes

Despite the failure to provide for the principle of the secrecy of the vote in the US Constitution, the States have provided in their respective Constitutions for the protection of that principle, recognizing its constitutional significance. In almost all States we find the legal formula according to which "The vote shall be secret", with the exception of the Constitution of Texas and Iowa, where no protection of the secrecy of the vote is mentioned, and in the case of Oregon that has provided in the constitution clauses the open vote, barring the possibility for the state legislator to provide otherwise (National Academies of Sciences, Engineering, and Medicine, 2018).

However, the gaps of the provision of the principle of secret ballot in the US Constitution and the remission to the States of the legislative competence in the field of electoral procedures have resulted in the poor protection of this principle by both states legislations and the jurisprudential interpretations132 . A case in point is provided by the California Supreme Court, the which, in Peterson v. City of San Diego, argued that voting by mail responds to the need "to guarantee the right of voters to act in secret" and, therefore, does not violate the principle of secrecy of the vote, but implements voter participation in the democratic process (Jac C. Heckelman, Andrew J. Yates, 2002). Furthermore, the Supreme Court of California itself, in Wilks v. Mouton, admitted that "the legislative framework on voting by mail does not prohibit the voter from allowing third parties to be present while the ballot paper is being filled in|, but this is not enough, in the absence of concrete evidence, to consider illegitimate constitutionally the vote by correspondence with respect to the constitutional principle of the secrecy of the vote (Supreme Court of California, 1986).

The landmark decision of the US Supreme Court regarding the constitutionality of two provisions of the Voting Rights Act of 1965 in the Shelby County v. Holder recognizes ample room of manoeuvre to the States in their regulations of electoral procedures, giving good hope that States will move towards greater protection of secret ballot, and therefore, of the integrity of the electoral process (US Supreme Court, 2013). More specifically, the US Supreme Court declared that Section 4 and Section 5 of the Voting Rights Act of 1965 are unconstitutional, in the part in which they provided that the state and local bodies of States could change the regulation of electoral processes, only after obtaining of a successful preclearance from part of the federal authorities. The rationale for this provision lay in the need to put an end to the countless cases of racial discrimination that occurred during the electoral phases, from registration on the electoral lists, up to the moment of voting, thus implementing the Fourteenth and Fifteenth amendments provided for Section 2 of this Act, under which "standard, practice, or procedure … imposed or applied … to deny or abridge the right of any citizen of the United States to vote on account of race or colour" were prohibited. This provision had a duration of five years from its entry into force, because its adoption was justified by the contingency conditions dictated by the period of racial segregation, especially in the Southern States. This provision was reiterated several times by Congress, again with the coverage formula, provided for in Section 4, with which the law established which entities were covered jurisdictions of the same Act, including the states or political subdivisions that preserved evidence or mechanisms, the satisfaction of which constituted a prerequisite for the voting and, moreover, which had low percentages of registered voters or low turnout (Christopher S. Elmendorf, Douglas M. Spencer, 2015).

Such a provision evidently conflicted with the federal legislative system because Congress was allowed a strong interference in the legislative power of the States in electoral matters, due to them by virtue of the 10th amendment, which enjoy "broad powers to determine the conditions under which the right of suffrage may be exercised ", considering however that the Federal Government maintains a controlling role over federal elections pursuant to art. 1, Section 4, of the Federal Constitution (Arizona v. Inter Tribal Council of Arizona). However, for the majority of the Justices of the Court, if this

prediction held up in terms of constitutionality for about 50 years, since the contingency of the fight against racial discrimination was still tangible, it would no longer be justifiable in today's American society, where great strides have been made in terms of equality of citizens, especially in the voting phase, as demonstrated by the record presented by Congress when the Act was re-approved in 2006 (Fannie Lou Hammer, Rosa Parks, Coretta Scott, 2010). Following the aforementioned ruling, it is believed that the States are now facing a new challenge: that of deciding to effectively implement the protection of the right to vote and, the principle of secret ballot, which almost all the States have foreseen in the Constitution as an unfailing principle of the vote. The recognition of the autonomy of states in electoral matters could have the positive effect of bringing the regulation of the electoral procedure back to the centre of the political debate in order to guarantee a fair vote and greater security for the entire electoral system. This is possible thanks to a synergy of intent between States and Congress, which, in compliance with the Fifteenth amendment and the Election Clause, can redesign the preclearance system on the basis of the current conditions of the right to vote (Overton, 2013). It is noted that an amendment has been presented, still under discussion in the House of Representatives and the Senate, called The Voting Rights Amendment Act (Issacharoff, 2013).

4. The "voting before the Election day" in the United States

In the United States, the lack of provision in the US Constitution of the principle of the protection of secret ballot has certainly allowed the experimentation and consolidation of different voting practices, which facilitated the expression of the vote. Probably the most fitting example to demonstrate what is gaining ground is the voting by mail or voting by mail which was first introduced in the USA for the military on mission as early as 1865 (US Federal Voting Assistance Program, 2018). The practice of voting by mail had the purpose of facilitating the exercise of the vote for those entitled who were unable to vote for reasons of service; subsequently, the extension of this opportunity was also envisaged for all those who were able to produce plausible justifications, such as health reasons or work impediments. Today we talk about early voting as a possibility of voting before the election day. The possibility of extending early voting to an ever-larger slice of the US population was a definitive "silent revolution" (US Supreme Court, 1953). In fact, almost 1/3 of the voters, equal to double the number of voters in 2000, during the 2012 elections, took advantage of early voting (Persily, 2014). The trend is to facilitate electoral operations by expanding the period dedicated to the exercise of voting, in order to implement wider voter participation. It seems that the early voting tool has responded well to this need, enough to receive the bipartisan approval of political parties (Persily, 2014).

Early voting has known various models: in the Western States predominates the use of both vote by mail and absentee voting, with the exception of the State of Washington and Oregon165, where voting is only by mail, while in others 27 states and in the District of Columbia absentee voting predominates, and in the southern states in person early voting is more widespread (Belt, 2016). For example, in Arizona and California a voter can apply to be registered as an absentee voter, so that they can vote permanently by early voting in the absentee voting formula. To these two models of early voting, a third is added, defined as "hybrid", because voters are allowed to ask to vote by correspondence at a county office, at an office set up for early voting or at a polling station on the day of the elections (Pozen, 2008). Still other states provide for an in person absentee voting system, for which the voter can vote by correspondence and personally use ballot before election day at an electoral venue, so that it will be counted together with the other votes received by correspondence (Pildes, 2020).

The early voting system, however, has faced strong critics: first of all it does not guarantee equal levels of information on candidates during election campaigns, thus being able to result in evident discrimination (Issacharoff, 1992). The “hybrid” early voting, in the formula of in person absentee voting, aggravates the electoral procedures because it requires more staff from both the electoral authority and the committees responsible for monitoring the seats (Issacharoff, 1992). The system of voting by correspondence, both for absentee voting and for vote by mail, presents major flaws in terms of regularity of the procedures. First of all, it may happen that the ballot papers may be lost, both in the delivery phase to the voters and in the postponement phase by the voters; moreover, it has often happened that the ballot papers voted on arrived too late at the electoral authorities, when the counting activities had already started, with the evident loss of votes of final election results. Finally, postal voting is often paper-based, making it more difficult for people with disabilities, such as the visually impaired, to exercise the right to vote (Quan Li, Michael J. PomanteII, and Scot Schraufnagel, 2018).

Conclusion

One of the elements that makes the fair elections is the possibility that the legislation and election system should give all citizens the possibility of choosing when and how to vote. The early voting system in order to be improved should be extended generally to all those entitled to vote, because the possibility of choosing when and how to vote is the way to protect diversity in an equal way, since enabling voters to cast a ballot at time convenient to them, not to the election authority.

States in order to ensure fair and free elections should assure the secrecy of the vote according to international law standards. The function of secret ballot is to be found in the need for the vote to be expressed freely, without coercion and without the danger of retaliation for the voter, but also in the right of the voter to vote in private and, in this way, not to acquaint others with their political views.

Regarding the usage of voting before the voting day, it's a way to rediscover the solemnity of the moment of voting that citizens had lost during the voting in a single day. Early voting triggered a greater propensity to vote among American voters, because above all the "absentee voting has continued to grow in popularity with voters and elections officials alike" and it's a challenge for the future of voting in the US.

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