The law, the media, parties and personalities.

Brazil, like many Latin American countries, has a weighty electoral bureaucracy. At its apex sits the Tribunal Supremo Eleitoral (TSE) presided over by a Supreme Court Justice and governed by an abundant array of laws and procedures. They for example are the ones who decided that Lula could not stand as a candidate, because of the *Lei da Ficha Limpa’* – the ‘clean slate’ law which stipulates that someone whose conviction of an offence has been upheld on appeal cannot stand, even if further appeals are pending (which they always are in Brazil).

The TSE has [871 technical and admin staff](http://www.tse.jus.br/transparencia/pessoal/cargos-e-funcoes/situacao-funcional-dos-servidores-ativos-do-quadro-de-pessoal-do-orgao) plus 5778 judges and lawyers at its disposal. It even has a dedicated prosecution service – the Ministerio Publico Eleitoral. It distributes state funding to parties in accordance with a legally established formula amounting this year to R$1.7 billion (USD430 million). The electorate numbers some 146 million. There are 29,000 candidates for President, Federal Senator and Deputy, State Governor and State Deputy – 3,000 more than in 2014. Local elections are held separately, but to give you an idea, in 2016 there were 470,000 candidates for 280,000 positions in 5,570 municipalities. Yes: Brazil has 256,863 local councillors plus 22,000 mayors and deputy mayors – all of whom receive salaries. The 1988 Constitution allowed local councils (Conselhos Municipais) to decide the number of seats up to a maximum fixed in accordance with their population.

The TSE oversees voter registration and recently converted the entire electoral register to a biometric system, requiring all voters to register their fingerprints. It has now transpired that a large number of people qualified to vote had not undergone the procedure and the PSB party took the case to the TSE: they estimated that 3.5 million people would be disenfranchised and asked the court to find a way of allowing them to vote. The court turned down the request and so, on appeal, did the Supreme Court, both by large margins. Part of the reason was that there simply is not the time to make the necessary arrangements, raising the question why the case was not brought earlier. (The first round is on the 7th October and the second on the 29th.)The courts were largely unmoved also by the argument that since the disenfranchised were likely to be disproportionately poorer than the average voter their disqualification was discriminatory. It should be added that the report on this by the extremely useful Portuguese-language [BBC Brasil](https://www.bbc.com/portuguese/brasil-45661789) website does say that for various reasons the 3.5 million figure may be wrong –on that everyone agrees.

Two further interventions this week underline the ample powers of the Court as well as the incomprehensible (to me) interactions between its members. The *Folha de São Paulo* newspaper was due to interview Lula in prison. This was first prohibited by the local court but that decision was reversed in an injunction (*liminar*) by Supreme Court Justice Lewandowski on the basis that journalists routinely interview people in jail and this would be a case of discrimination. But somehow another Supreme Court Justice, Judge Fux overruled Lewandowski in a decision described by the *Folha*’s lawyer as the ‘most serious act of censorship since the military regime’ (which ended in 1985). Of particular interest is the justifying statement of Fux, who said that his decision fell within the scope of the of free expression of ideas which protects the functioning of democracy. “The circulation of misinformation among the electorate undermines the ability of the democratic system to choose political leaders of suitable quality (“mandatários políticos de qualidade”). This judge claims he is entitled to decide what is and what is not disinformation and that far from ensuring freedom of expression the judiciary should regulate it. His decision may well be overturned this week by the Supreme Court in full session, but coming just a few days before the first round vote next Sunday the timing raises suspicions that he wanted to find whatever pretext possible to stop the interview for a few days. Within a day the newspaper reports that Fux’s decision has caused much disquiet and many phone calls among the other Justices, on both procedural and substantive grounds.

Further controversial decisions, by the Regional Electoral Court (yes it has regional as well as federal instances) in the state of São Paulo, this time concerning the relations between churches and politics, also illustrate the broad discretion claimed by the judiciary. In August this year this court removed one federal and one state deputy because a religious leader had called on his followers to vote for them, and in another case it disqualified a candidate because a pastor had handed out leaflets in support of them outside a church. I do not think there is a written constitutional or legal basis for these decisions. The only legal issue in a state based on a strict *laïcité* is the tax exemption of religious institutions: in theory this exemption can be lost if they get involved openly in politics or in for-profit activities. It has however not been properly enforced – either here or for that matter in the USA where a similar rule exists.

The state also has to pay for the free air time which TV channels are obliged to provide for political broadcasts. There is an 18,000-word TSE resolution governing this and all other electoral campaigning. A big recent change, in the wake of the scandals of recent years, is the prohibition on corporate donations. Under the counter donations (known as *caixa dois* – second, undeclared, account) may well continue, but companies are surely more wary than in the past. Enrique Meirelles, former head of the Bank of Boston and prominent figure in Brazilian banking, who was appointed head of the Central Bank by Lula and later Minister of Finance by Temer, persuaded the ‘hard centre’ (*centrão*) MDB party to make him their (hopeless) candidate on the understanding that he would pay for it himself: R$ 45 million (USD 10 million).

The TSE is involved in the campaign on a daily basis because it is constantly being called to resolve legal issues, like whether a candidate for Governor of São Paulo can use images of schools in Russia and the US as if they were school he had opened as Mayor of São Paulo. He was told to take them down.

So I go to a tiny bar in a street teeming with people and shops adjoining Salvador’s vast, walled Campo Santo (cemetery) to watch the statutory political broadcasts.

The slots vary from a split second to about half a minute. Allocation of TV time (the *horario gratuito*) is by party but the focus is much more on the name of the candidate than on the party. No one else is watching and that is not surprising: it is boring and interspersed with adverts and trailers for *novelas*: these free slots are no longer the influencers they once were, and there is a sense of going through the motions: Lula is the one big name and PT candidates at all levels include an image of him in their clips. Even Meirelles includes him, trying to capitalize on his appointment by Lula to the Central Bank. (The PT went to the TSE to complain but failed to have the image removed.)

Bolsonaro’s following is even more personalistic than Lula’s, and he had to shop around to find a small party who would put him forward, since without a party no candidate can stand. He has minuscule TV time, but still retains a lead, albeit a narrowing one, with some 28 per cent in the polls as against Haddad’s 22 poer cent. Were he to win the election he would find it almost impossible to get legislation through Congress – but there is a fear that he would not abide by the rules of a system for which he displays utter contempt.

Another sign of the limited appeal of parties is Ciro Gomes who sits in third place with declining prospects. Ciro has had a long and successful political career, as Governor of his home state of Ceará where he was widely praised for his innovative and well managed social programmes (the subject of a book by the late MIT Professor Judith Tendler entitled *Good Government in the Tropics*), as a Minister for various presidents of different colours, and as a Federal Deputy. He has done well to be in third place for someone without a steady party affiliation, but now he finds himself on his own running under the banner of the much diminished PDT– the party of Vargas and Brizola. All his four siblings are in politics, but that does not seem to be enough.

Only the PT has a proper party following, but they too have become more and more reliant on the figure of Lula whose image they plaster on every wall and poster available. For the rest voting appeal depends largely on the appeal of individuals, especially at the state level – and ‘appeal’ means building roads and bridges or finding government jobs for followers.

To speak of left and right has long been meaningless in Latin America and even in the polarized atmosphere of this election it has very little meaning. Journalists write of pro-business candidates but we know from the last two years that if by that is meant ‘market-friendly’ and ‘fiscally hawk(ish)’ there simply is not the support in Congress for such reforms. Although Congress, with its built-in over-representation of hinterland regions, has an overall conservative complexion, Deputies and Senators believe that if they reduce the benefits associated with state employment, especially pensions, they will get voted out, so they don’t touch the single biggest chunk of expenditure which is predicted to bring the state to its knees in a future years. This despite [evidence](http://fazenda.gov.br/centrais-de-conteudos/publicacoes/boletim-de-avaliacao-de-politicas-publicas/arquivos/2017/efeito_redistributivo_12_2017.pdf) of the severely inequitable distribution of those [benefits](http://fazenda.gov.br/centrais-de-conteudos/publicacoes/boletim-de-avaliacao-de-politicas-publicas/arquivos/2017/efeito_redistributivo_12_2017.pdf). The same goes for privatization, which deprives politicians of oppoertunities for placing followers, friends and relations.

The conservatism, like elsewhere, is more about sex and culture than economics, and as we now know all too well these are subjects which offer juicy opportunities for the digital spread of corrosive untruths. If you post something about an opponent’s plan to cut pensions by a few percentage points or even to further privatize Petrobras, it will circulate, but it won’t go viral. But if you post something depicting your opponent as advocating that the state should choose the gender of your child, or allowing teachers to spread political propaganda in the classroom, then it will go viral. [A posting](https://www1.folha.uol.com.br/poder/2018/09/nao-e-verdade-que-haddad-disse-que-governo-deve-decidir-o-genero-de-criancas.shtml) depicting Haddad saying that ‘in future the state will decide whether your child would be a boy or a girl ‘ was put up on Sunday morning and by Tuesday morning had been shared 152,000 times. In 2011 as Minister of Education, Haddad had indeed drawn up a school programme against Homophobia: Dilma stopped it after protests but the association stuck and provided a springboard for him to be portrayed as a monster.