

The Limits of Political Participation in an Exceptional Democracy: Migrants in Costa Rica

Los límites de la participación política en una democracia excepcional: migrantes en Costa Rica

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ABSTRACT

In comparison to other countries in the Latin American region, especially in Central America, support for democracy in Costa Rica is high —despite ups and downs in recent years. Still, regarding the challenges that immigration poses for the principles of democratic inclusion and representation, Costa Rica lag behind 11 countries in Latin America —and 35 democracies in the world— where immigrant residents have the right to vote in local elections. In Chile and Uruguay, the only countries in the region where support for democracy tops that observed in Costa Rica, the right to vote of immigrant residents even reaches national elections. With such a comparative background, this article addresses the question: how to explain that this democracy disregards the tendency to give the right to vote to resident migrants? The study reveals a society in which the narrative of exceptionalism with respect to other countries of the continent and the formal primacy of nationality to political citizenship, allow tolerating a clear inequality between the political rights of emigrants and immigrants.

Keywords: 1. franchise, 2. vote, 3. migrants, 4. Costa Rica, 5. Latin America.

RESUMEN

En comparación con otros países en la región de Latinoamérica y sobretodo, en la región de Centroamérica, el apoyo a la democracia en Costa Rica es alto, a pesar de algunos altibajos en los últimos años. No obstante, respecto a los desafíos que la inmigración supone para los principios de inclusión y representación democráticas, Costa Rica se queda atrás con respecto a 11 países en Latinoamérica —y 35 en el mundo— en los que los inmigrantes residentes tienen el derecho a votar en elecciones locales. En Chile y Uruguay, los únicos países en Latinoamérica donde el apoyo a la democracia entre sus ciudadanos supera al observado en Costa Rica, el derecho a votar de los residentes inmigrantes alcanza las elecciones nacionales. Con tal trasfondo comparativo, este artículo aborda la siguiente pregunta ¿cómo explicar que esta democracia, ejemplar en muchos sentidos, ignore la tendencia democrática de dar derecho a votar a los migrantes residentes? El estudio revela una sociedad en la que la narrativa de excepcionalidad con respecto a otros países del continente y la primacía formal de la nacionalidad a la ciudadanía política, permiten tolerar una evidente desigualdad entre los derechos políticos de emigrantes e inmigrantes.

Palabras clave: 1. sufragio, 2. voto, 3. migrantes, 4. Costa Rica, 5. Latinoamérica.

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INTRODUCTION

The way we imagine ourselves as a political community is quite self-indulgent. Our due towards these migrant groups is to guarantee for them rights to health, education, scholarships, focused programs for housing; but if you pay any attention you realize that political and sociocultural imagination perceive migrants as workforce. Whenever a virtue is recognized in them, that is being hard-working and that is it. Every now and then it's the food, the celebrations, but citizenship is never brought up [...] That has to do, I believe, with imaginary meanings about ourselves being a country with a solid, centuries-old democracy which shouldn't even be touched (Alexander Jimenéz Matarrita, Costa Rican philosopher, personal communication, December 7, 2013).

Costa Rica is under a rule that guarantees the same duties and rights for both national and foreign residents, respecting the principles of equality and non-discrimination. Nevertheless, this recognition follows exceptions and limitations; among them, the prohibition of foreigners to participate in domestic political matters (Constitución Política de Costa Rica [Const.], 1949, art. 19).² Contrastingly, in about a dozen Latin American countries migrants can vote in municipal (in all cases), state (in some states in Argentina), and even presidential elections (as in the case of Chile).

Costa Rica is constituted as a unitary republic. In this context, national-level participation could be seen as an over-ambitious goal, but the current decentralization process would allow an opening path for migrant participation in local governmental bodies (Const., 1949, arts. 168 and 169). This is to say that the type of state organization is no deterrent for such reforms. How to explain, then, the lack of debate on this right in a democratic country where 9% of the population was of foreign origin until 2011? (INEC, 2018).

The discourse on the outstanding state of things in Costa Rica, which I highlight in contrast to its surrounding region, acknowledges not only the long-standing democratic tradition of this country but also its well-rooted universalist social tradition (Martínez Franzoni & Sánchez Ancochea, 2013). Due to its political stability and geographic location, Costa Rica has become a migrant-receiving country in the region. According to Pellegrino, “from the late 1970s until well into the 1980s —period in which violence exploded in Central America— displaced populations looked for asylum in the country with the longest-running democratic tradition in the region” (Pellegrino, 2003, p. 15). Up until 2019, Costa Rica has not partaken of the migration policy harmonization of its neighboring countries: even if it belongs to the Central American Integration System (SICA, for its acronym in Spanish)

²Additionally, foreigners are prohibited from exercising leadership or authority in unions (Const., 1949, art. 60), from being Representatives, State Ministers, or Supreme Court Justices, unless ten years have passed since they became naturalized citizens (Const., 1949, arts. 108, 142 and 149), and from being president or vice president of the country, or from being a member of the General Assembly.

together with Belize, El Salvador, Guatemala, Honduras, Nicaragua, Panama, and the Dominican Republic, it has not entered the CA-4 free transit agreement, rather making unilateral and selective agreements (Kron, 2011).

Regarding Costa Rica's migration profile, Gatica (2013) states that 75% of its migrant residents are Nicaraguan nationals. Out of that figure, a large number can barely meet their basic needs, which stands in correlation with their education and work profile (high probability of having informal low-paying jobs, vulnerable to labor rights violations).³ Under these conditions, it is unrealistic to expect integration into political life to follow socioeconomic integration, which was the case in the 19th and 20th century for some migrant groups that secured their power first in production industries and then in elite family relationships (Herrera Ballharry & Zamora Chacón, 1985). The current social and work vulnerability of the migrant population compounds with the legal one: frequent changes in migration regulations make it difficult for migrants to navigate the legal landscape in force, thus being pushed into irregularity. Also, discrimination is fed by the alarmist approach of many of the debates on such changes (Fouratt, 2014, 2016). Both the definition and the implementation of the civil and social rights of migrants are widely debated in Costa Rica (López, 2011; Voorend, 2016). As an example of this, our article reveals one of the high-contrast areas of migrant inclusion in this "outstanding democracy": the lack of space for immigrants in electoral participation, as opposed to the political rights that emigrants do hold.

A COMPARATIVE CASE STUDY: THEORETICAL GOAL AND METHODOLOGICAL PATH

A comparative study of 51 countries indicates that among those political communities meeting two conditions, being democratically consolidated and having large numbers of immigrant residents, most have expanded the reach of franchise to resident migrants without requiring them to naturalize as a condition to obtain those rights (Pedroza, 2013). Such reach of franchise does vary significantly in terms of election level, passive or active electoral rights, and status or residence in order to exert the right to vote. However, the general tendency to expand the reach of franchise among democracies with large numbers of migrants, or at the very least to open serious debate on law proposals towards such ends, would appear to validate the hypothesis that such reforms can potentially correct a democratic deficit: the one arising from the lack of formal representation and participation channels for a significant resident population within a regime self-defined as democratic. Costa Rica is the only case meeting such conditions in Latin America: a negative case for this hypothesis.

³See Morales (2008) for more details on labor insertion.

Let us take into account why it is important to focus on a negative case. The debates about formal participation of migrants in the political community (that is, if they are to be enfranchised, why, and how) enable us to look at how that political community defines citizenship understood as a set of political rights associated with formal belonging. These debates assess the inclusive and exclusive components of citizenship (Bosniak, 2006). Even when it should be apparent that social and economic rights are essential to any person, and that for migrants, as well, probably represent the most important rights to be conquered, it is political rights that highlight and legitimize a categorically different treatment of the individuals that reside in a given State. Because of this, and without demeaning any historical, sociological, and anthropological perspective defining citizenship in a broader sense—as in the case of understandings of citizenship based on practices and identities—it is worth focusing on a component that is quintessential to citizenship: the right to vote. Even if other political rights come with citizenship, the right to vote is the privilege of citizens par excellence in any democratic polis. Moreover, it provides the basis for civil equality among the members of a community by acknowledging them as their participants.

The right to vote and its exercise were cemented over the last two centuries in the condition of being national to a nation-State. That is what Hannah Arendt termed appropriation of citizenship by the nation. Notwithstanding, over the last 50 years, such a basis has been cracked by the tendency to expand the reach of franchise to cover resident migrants residing in political communities of different levels (mainly in local level elections, but, as mentioned above, also in national elections, as prominently shown by two Latin American cases: Chile and Uruguay).⁴

Negative cases are by definition framed comparatively and are thus of an “essential” nature for refining theories, as they help to delineate the limits of an hypothesis so far validated only by positive cases: the goal is to understand the reasons of the exception (Gerring, 2007). In this case, the question revolves around explaining why something is not happening there where, according to a theory of democratic inclusion, it should be happening. Anomalous as it is, the negative case of Costa Rica can help us gauge the scope of this theory. And so, this is a comparative case study oriented towards specifying the conditions under which the theory applies that democracies are bound to reconsider their inclusion principles in the face of a large immigrant population excluded from franchise (that is, to solve a representation and participation deficit).

⁴It is relevant to clarify that there are two main variations across extensions of voting rights for migrant residents. The first one is the level of the political community that makes the enfranchisement (e.g., in states where the federal government has the power to redefine the electorate or if subnational governments can do so, there may be provinces that give the vote to migrant resident while others not, as is the case in Argentina). The second one represents the level at which the franchise can be exercised (national, state, or local elections).

Hypothesis

Available literature on citizenship traditions suggests that the legal paths of a nation-State determine how open they are to those aspiring to formally belong. The most common indicators of these traditions tend to be the legal principles of nationality by birth (*jus sanguinis* or *jus soli*) and the conditions for naturalization (Joppke, 2001; Brubaker, 1989, 1998; Kalicki, 2009a; Green, 2005; Howard, 2009; Earnest, 2015). In any case, the hypotheses are ambiguous when it comes to the expectations generated by the traditions regarding concrete voting rights for migrants.

For instance, authors in the citizenship traditions literature expect that countries with a conservative or ethnocentric citizenship tradition will not grant franchise to resident migrants, following regulatory coherence (Kalicki, 2009b). However, others in the same literature contend precisely the opposite; namely, that traditionally conservative countries not prone to naturalize immigrants will open participation paths for immigrants by means of granting voting rights, thereby providing an alternative, moreover when there is a democratic deficit to address (Justwan, 2015; Earnest, 2002).

Assuming that expanding the reach of franchise over to migrants and facilitating naturalization are indeed policy alternatives for solving a democratic deficit, some derive that if the citizenship tradition of a country is liberal and inclusive, that is, if their rules regarding the acquisition of citizenship via naturalization are relatively easy to access for resident migrants, then there is no need to grant voting rights to migrant residents (Mouritsen, 2013; Thränhardt, 2014). On the other hand, some consider that, following regulatory coherence, those are precisely the cases in which it would be expected franchise to be expanded (Carens, 2002; Pedroza, 2014).

In reality, there are cases satisfying the four types of relationships that result from either expectation of coherence or of policy alternatives (Pedroza, 2019). This proves that the relationship between citizenship tradition and voting rights is ambiguous. In order to understand the decisive factors that encourage reforms of electoral rights in democracies that face democratic deficits of inclusion it is necessary to study a negative case in which the institutional framework is decidedly democratic, the number of resident migrants large enough to create a deficit, and in which however a reform in the matter is still lacking. Costa Rica is such a case.

My initial hypothesis before going onto the field was in line with the citizenship traditions hypothesis in its policy alternative variant: given its democratic and relatively open citizenship tradition, policymakers in Costa Rica do not consider it necessary to open new participation paths. According to this hypothesis, different political actors would be expected to detect a democratic deficit, but also to understand the reach expansion of political rights as an undesirable political alternative to naturalization. The null hypothesis would be that no

deficit is detected, but it would remain to be explained how Costa Rica can stay coherent with its democratic principles and regulations.

It is clear that the legal principles of the citizenship regime barely delimit the political discussion but do not determine the direction of the political debates, nor their origins (Hansen & Koehler, 2005; Howard, 2009; Jacobs, 1998), so the goal of this article is to elucidate the factors that prevent these debates from occurring or, conversely, that point towards their start. Since the immediate precedent of such a debate would be a parliamentary proposal, by “factors” I refer mainly to the actors in a position to propose a parliamentary bill on the subject matter or to open a public debate on it, regardless of whether they are ready to fully incorporate the issue or not in their agenda or program. In order to identify them, I took into account the institutional framework in which they operate and interviewed them to find out if they identified a deficit in immigrant resident’s unrepresented situation that requires proposing a solution such as enfranchising them.

Research Methods and Data Management

This study builds on empirical evidence from primary (mainly laws and parliamentary debates consulted in the Legislative Assembly Archives) and secondary sources, collected and analyzed with qualitative research methods, particularly through an interpretative analysis of policies (Hajer, 2005; Yanow, 2009), process analysis (Checkel, 2005; Hall, 2006) and 14 semi-structured interviews with experts —understood as such due to their activity and not because of they belonged to some “elite” (Hochschild, 2009). The purpose of these interviews was to understand how come the political activism of different actors (either foreign residents or Costa Rican) in favor of different migrant causes has avoided the issue of political rights.

All interviews were conducted in San José, Costa Rica, between October and November of 2013. Parliamentary debates of the Assembly of the Republic (of different legislative committees and also of the plenary meeting) were analyzed which dealt with policies on different areas related to migration, in order to identify the positions of political and social actors invited to such debates in matters potentially pertaining the political rights of immigrants. This methodology allowed me to collect evidence on mobilization arguments and strategies for the expansion of the rights of migrants in general.

ANALYSIS

Institutional Framework

References to homogeneity, the leveling of fortune, and moderation in the territory that is today Costa Rica, in relation to the rest of Central America, precede even the very formulation of the idea of the Costa Rican nation, which historians consider took place in

the second half of the 20th century: “Costa Rica was born from the failure of Central America, and at some point, when this nation was already aware of itself, it discovered that its internal and external success could be guaranteed by self-proclaiming as democratic” (Acuña, 1995, p. 150).

The Constitution of Costa Rica includes to this day an exclusive nationalist rule that is common to other Central American countries and Mexico. It sets forth that foreigners “*have the same individual and social duties and rights than Costa Ricans, with the exceptions and limitations established by this Constitution and the law,*” specifying thereafter that “*they cannot intervene in the political affairs of the country*” (Const., 1949, art. 19).

The prohibition of political participation of foreigners contrasts with the Costa Rican regulations in terms of social inclusion, rooted in a golden age of growth, job creation, and expansion of the welfare state, dating from 1950 to 1980. In the last three decades, the Costa Rican state has faced great challenges in maintaining the quality and coverage achieved until the 1980s decade when it comes to pensions, health services, and education; also, the informal economy has led to a segmented labor market (Martinez Franzoni & Sánchez-Ancochea, 2013).

In the last few years, the *Sala Constitucional* (the highest constitutional court in Costa Rica) has interpreted social rights as attributes of inhabitants or individuals (i. e., not only of nationals), formally including foreign residents. However, some researchers have shown that their implementation is far from effective: the official acknowledgment of the human and social rights of migrants goes hand in hand with legal mechanisms (and extra-legal ones, such as social discrimination) that factually exclude them, partially or totally, from the social and, particularly, health security systems, universal as they formally are meant to be (López, 2011; Fouratt & Voorend, 2018; López, 2012).

Highlighting, even more, the contrast between formulation and practice, researchers have shown how the media and public opinion have scapegoated immigrants as causes of the worsening of public services due to a supposed overuse of the services, and as threats to the welfare state and public safety and national identity (Sandoval García, 2002; Dobles, Vargas Selva & Amador, 2014; González & Horbaty, 2015). Interdisciplinary academic research has shown the selectivity in the mediatic construct of these threats and has provided evidence that the contrary to what media claims is true (Voorend, 2016); the quality decadence of the health system finds is not caused by overuse by migrants but in structural causes such as the lack of State investment (Solís, 2009; Sandoval Carvajal, Pernudi Chavarría, Solano Acuna, Solís Salazar, Gómez Ordóñez, & Aguilar Carvajal, 2008). This goes to show that even universal access to social services, a formal principle of the Costa Rican state, is contested when it comes to immigrants.

Nationality and Citizenship Tradition

Costa Rica is the Latin American prototype of a liberal, pacific, egalitarian and universalist democracy. Lately, however, some question this picture and denounce a growing criminalization of pacific protesting and the militarization of the police (Padilla Chinchilla, 2015; Boeglin, 2017), as well as an expansion in jobs taking place at the cost of their precarization, and a tendency towards greater inequality (CONARE, 2017).

When it comes to naturalization, however, there are no ambiguities: The Costa Rican tradition is noticeably conservative. Even if at first sight the residence time requirements are similar to those of other Latin American countries, a closer analysis of the nationality and immigration laws of Costa Rica provides a glimpse of why so few immigrants have decided to naturalize.⁵ First, besides completing the Spanish tests and swearing an oath of respect to the constitutional order there is a long list of tedious requirements to fulfill the naturalization process, such as: proving a known trade or livelihood, proving financial competence, and prospects of a promising stay within the territory, undergoing a test on the history and values of the country and bringing two witnesses who can attest for the individual's good conduct⁶ (Constitution, art. 14, reformed under the Law No. 7879 (1999)).

Second, the decision to naturalize implies high costs not only monetary but also in terms of transnational identity and belonging, as it requires solicitors to be expressly willing to renounce their previous nationality, with an exception made for nationals from countries with which there are double citizenship agreements (Law No. 1155 of Naturalization by Residence, Options and Naturalizations, 1950, art. 11). Ever since the 1995 reform, this contrasts with the possibility for Costa Rican emigrants of acquiring double or multiple citizenship thanks to the irrevocability of Costa Rican citizenship law (Const., 1949, art. 16).⁷

In terms of the authority in charge of the procedure, it is the Supreme Court of Elections in Costa Rica (TSE hereafter, for its acronym in Spanish). TSE is not only the highest

⁵Naturalization by residence requires five years for nationals from other Central American countries, Spaniards, and Ibero-Americans by birth, or seven for nationals from other countries or Central Americans, Spaniards, or Ibero-Americans by naturalization.

⁶Const., 1949, arts. 14 and 15; Ley 1155 de Opciones y Naturalizaciones (1950); Reglamento relativo a los trámites, requisitos y criterios de resolución en naturalizaciones, Decreto No. 12 (2012).

⁷This is not an exception in the region; Mexico also recognizes double nationality asymmetrically for emigrants and immigrants, allowing its citizens by birth to acquire as many nationalities as they wish, without losing their Mexican nationality by origin, but require foreigners who want to naturalize in Mexico to renounce their nationality by origin (Pedroza & Palop-García, 2017).

authority for organizing elections, guaranteeing their transparency, and protecting political rights, but also monopolizes the civil records functions and also manages and decides on the naturalization applications. The TSE is such a State power that it monopolizes the use of force during election times.

On average, 5,060 people have naturalized per year during the last 10 years (figure by the author from TSE 2014 information). Until 2013, those naturalized were barely 1.3% of the electoral roll in Costa Rica (Statistical Bulletin 293, TSE, 2014). Despite this minimal percentage, the electoral weight of Paraguayans nationalized as Costa Ricans in the 2010 elections was a relevant subject matter in public opinion (Bravo, 2010). Beyond public opinion, it is remarkable that the law itself suggests a suspicious take on the formal participation of immigrants even after their nationalization, imposing as it does on those successfully naturalized a waiting year before they can exert their political rights.

Compared to the laws on naturalization, those regarding migration have changed substantially towards a greater acknowledgment of rights and guarantees for migrants since 2005. In 2006, the General Law on Migration and Foreigners No. 8487 fleetingly passed through the parliament in order to replace the General Law on Migration and Foreigners no. 7033, which had been in force for 20 years. The new law would not last long; having entered into force in November of 2005, it garnered so strong critiques due to its criminalistic focus, that the government looked for ways to disable its implementation while the legislative power was already amending it.

The critique of this law was so wide and coming from so many different areas that the government soon ended up calling for a reform consultation.⁸ This process, which led to an entirely new law, would be praised by the authorities as inclusive and consensual. Although many actors in civil society reject such adjectives, they do acknowledge a wide consultation. It is important to highlight, for the purposes of this study, that the Costa Rican parliament was simultaneously completing a forward-looking voting reform that included widening the scope of franchise to include emigrants. This period opened a formidable opportunity window to debate the possibility of granting more political rights to migrants, and thus of immigrants as a subset, just as emigrants were being thematized, but no discussion on immigrants' participation took place. I turn now to the analysis of the parliamentary debates

⁸Unlike the previous one, the new law (Law 8764 of 2009) is based on human rights instruments in force in the country, guaranteeing to migrants access to health and education, establishing a solidarity contribution from migrants (articles 31 and 242) to the health system, and creating the National Commission on Migration (art. 9, CNM hereafter) with representatives from public institutions and two individuals from civil society (art. 10) to advise the Executive on the country's migration policy (art. 11, subsection 1), among other things.

resulting in both reforms, paying particular attention to the instances when the political rights of migrants were mentioned.

Actors and Positioning: Parliamentary Debates on Related Law Projects

Although the Law on Migration and Foreigners 8487 (2005) entered into force, its implementation was never full, partly due to contradictions in the wider legislative framework, partly due to a lack of resources for the implementation of the excessive security and control measures it imposed, and partly due to the reluctance of the executive power to enforce it (Fonseca, 2007). President Óscar Arias labeled it as draconian and started a process to reform it. In the face of this situation, the Directorate-General of Migration and Foreigners (DGME, for its acronym in Spanish) would take care of particular cases under the new legislation, without proper regulation for its application, and so it would be applied half-ways and sometimes arbitrarily. Even when 2007 saw a reformation project entering the assembly, shortly after it became evident that the reforms would have to be so many (on 180 articles), that it was better to substitute altogether⁹ (Act 7, 2007).

The process to create the new law was truly different: this time, the government organized work sessions with officials from public institutions, international organizations, civil society organizations, academics, unions, and business representatives, etcetera (Jiménez Ardón & Cháves, 2010). The result was a very detailed report based on studies of the migration context in Costa Rica, of the legislation in force and the gaps in Law 8487 (2005), definite recommendations on how to correct it by proposing a focus on human rights and on integrating the migrant population in the keeping of a “social state.” There was, however, no mention of political rights.

When this report entered the Assembly in March of 2007, and the debates on the law started (over 800 hours), the only person getting close to mentioning the political participation of migrants during an intervention in the parliamentary debate was the back then head of the Directorate-General of Migration and Foreigners, Mario Zamora:

There is a significant amount [of immigrants]. It is impossible that they don't participate in the solution of problems affecting the country all through, specially at the community level; that is why we want to incorporate all this migrant force, to solve problems together with Costa Ricans (Act 7, 2007).

⁹Here I refer to Law 8487 (2005), published in La Gaceta No. 239 on December 12, 2005, which came into force on August 12, 2006, and to the General Law on Migration and Foreigners 8764 (2009) published in the La Gaceta Official Journal No. 170, which came into force on March 1, 2010.

An even more marginal mention in an intervention in the parliamentary debates came from Daniel Soley, Deputy Counselor of the *Defensoría de los Habitantes* (Ombudsperson for Inhabitants), who suggested greater incorporation of migrants in the system:

We, different civil society organizations, state organizations, international organizations, joined efforts already over ten years ago and we have been fighting for human rights, the respect and guarantees of migrants, not only within the scope of their entering into the country or their migratory transit but also for their proper inclusion in the system and the life of the country [...], we will not accept there being more talk about social matters for the sake of achieving legislative consensus (Legislative Assembly of the Republic of Costa Rica, Permanent Committee of Governance and Administration, Act 7, June 27, 2007).

“Inclusion” understood as political participation (even at community level) went unmentioned, even when migrant and pro-migrant organizations participated in the debate. The proposal by Mario Zamora quoted above resulted in two members of the civil society participating in the National Commission on Migration (CNM hereafter, for its acronym in Spanish), undoubtedly a progress from the previous law (Legislative Assembly of the Republic of Costa Rica, Permanent Committee of Government and Administration, Act 30-g, October 30, 2007), but far from voting rights.

Also, the warning by Daniel Soley quoted above was in vain: even if the new law replaced the restrictive core of the previous with a more protective one, it still did not posit migrants as co-participants in the political community, but barely as co-participants in the social security system.¹⁰

Throughout the 18 debates analyzed on “the most forward-looking migration law in the American continent regarding matters of migration and foreigners” (words by the Minister of the Interior and Police, Legislative Assembly of the Republic of Costa Rica, Permanent Committee of Governance and Administration, Act 7, June 27, 2007) the democratic deficit of a democracy that allows itself to exclude 9% of its population from political decisions was never directly addressed, nor was the actual or potential civic contribution of migrants to Costa Rican democracy taken into account.

On the opposite, the tone of the debates, fired up by a sense of pride in the “inclusive process” of law-making, was self-congratulating. The references to Costa Rica and the

¹⁰Both in the plenary and committees, the most discussed aspect of the law project was the “migration canon” of a mandatory contribution for \$25 USD per year, based on the principle of solidarity, to cooperate with the sustainability of the public services used the most by the immigrant population (Legislative Assembly of the Republic of Costa Rica, Permanent Committee of Governance and Administration, Acts 11-g, July 24, 2007, and 12-g, July 31, 2007).

reception of migrants throughout these same debates seemed to describe a benevolent people of “good hosts” (deputy Salom Echeverría, quoted in Act 7, 2007); also a “small country, [which in spite of] hardships, offers social security, the best in Latin America, free, which we Costa Ricans pay for” (Fernando Berrocal, Act 7, 2007).

Such discussions served as a mirror to show the Costa Rican exceptionality before “cultural differences,” revealing a superiority perspective in relation to migrants, who were considered necessary but collectively undesirable:

...if we don't allow migrations, you will realize the problems in picking coffee, in the production of pineapple and cane [...] workers come here and support our domestic economy, earning a salary and of course, sending part of it to their families; it would be worse if they brought their entire families (Professor José Joaquín Meléndez González; Act 7, 2007).

[When it comes to] Nicaraguan home maids in Costa Rica [...], we have seen the phenomenon of them gradually becoming “Ticas,” that is, they want to study, they change jobs (Francisco Morales Hernández, Minister of Labor and Social Security, Act 20-g, 2007).

There is an entirely cultural issue, we have to instill in all of these people that if doors are opened to them for working, then they also have to contribute to social security (deputy Lesvia Villalobos Salas, Act 30-g, 2007).

The tone of some of these parliamentary interventions aside, it should be mentioned that any careless differentiation between “Ticos” and immigrants evoked immediate criticism.¹¹ In public debates, all participants are quick to reprimand for discrimination. The new law on migration 8764 was published on October 27, 2008, ruling migration a matter of State and a priority for the development of the country, and making it mandatory for every public institution to establish programs after the recommendations by the CNM.

Concurrently with the debate on this law, the Legislative Assembly discussed in 2007 a set of electoral reforms. Besides matters central to electoral regulation, it included matters classical to any liberal and pluralist agenda such as the idea of achieving gender parity in the representative bodies, or the creation of the Institute of Higher Education and Studies on Democracy (IFED, for its acronym in Spanish), a body that illustrates the regulatory power of the TSE. This set of reforms also included the vote of Costa Ricans living abroad to elect presidents and vice-presidents of the republic, as well as popular referendums of a national nature. It should be stated that this was already allowed since 2006, but had not been regulated and therefore not implemented. Emigrant voting was regulated to required physical attendance at the consular offices which would serve as polling stations.

Emigrant voting rights and regulations were approved with no significant debate¹² and were thus ready for implementation just a year after (2009). Despite overlapping in time with

¹¹For example, deputy González Ramírez demanded data on the convicted population in relation to migrant and native populations to prevent overblowing the supposed violent culture among migrants (Acts 11-g, 2007 and 24-g, 2007).

¹²(Act 24, 2007; Act 26, 2007; Act 27, 2007; Act 28, 2007; Act 29, 2007; and Act 31, 2007).

debates on migration law, nobody brought up that immigrants could also aspire to exercise political rights in Costa Rica, by virtue of their residence and factual integration into the life of the country and their many contributions that, as just shown above, were acknowledged to exist in other areas, mostly the economy and wellbeing of the country.

Now, the lack of controversy in the approval process for the Law 8765 (2009) that regulates the conditions for the voting of Costa Ricans from abroad contrasts with the opinions gathered by researcher Carmen Caamaño (Universidad de Costa Rica) just a couple of years before in her study on the possibilities of such expansion of the franchise. Caamaño (2007) had found rejection among political parties and references to how insignificant the number of votes at stake was. But the reforms enfranchising Costa Rican emigrants were approved. Looking back, Caamaño describes their unexpected success:

The fact is, as almost everything else here, [that had] to do with family and personal ties and links. I interviewed the parliamentarian who proposed this for legislation. It happens so that he has family in an area where migrants are deported and his family in Los Ángeles began to question the lack of protection for Costa Ricans over there as compared to Mexicans. One of his first demands was having an ID with which they could be protected in spite of being undocumented, and the other was the vote. The law was approved without major problems... (Carmen Caamaño, personal communication, December 4, 2013).

Experts on electoral matters also point out that there was no significant questioning on the vote of Costa Ricans abroad, and they attribute the leading role to the TSE:

In 2006 an appeal for legal protection for citizens who deemed they were being limited in their fundamental right to vote while abroad was presented before the TSE. The TSE understood that this was mostly a political decision of legislators. And so, the TSE's jurisprudence did not hold their lack of voting rights as a violation to a fundamental right but did speak of a minimal electoral democracy that could be strengthened. This was communicated to the Committee for Electoral Reforms in the Parliament with one clear message: Gentlemen, here we have an issue that must be addressed, and so this possibility was introduced in the integral reform of 2009. There were technical limitations as we are talking about 51 consulates, about creating an online electoral roll, about having limited economic resources, but given the political stance, the TSE responded properly by adapting (Diego Brenes, Academic Secretary of the Institute of Higher Education and Studies on Democracy of the TSE, personal communication, December 5, 2013).

There has been some questioning when it comes to the election of Representatives, and the reality is that under the current model, very properly, only the election of the president and vice president were approved, as that has national reach. It was not a highly polemic matter and it does set us on

the right track with electoral law. There are other challenges still, as in how Puerto Rico is ahead with the vote of disabled and hospitalized individuals, online vote, but those are subjects we are heading towards... the vote abroad was no big deal (Andrei Cambronero, TSE officer, personal communication, December 5, 2013).

Positioning Beyond Parliamentary Debates

After reviewing the debates on the legislation that simultaneously updated the laws towards migrants and the electoral roll, it is clear now that the political rights of immigrants were not addressed, despite the inclusive nature of both legislative processes regarding the voices that were taken into account. Different experts consulted were surprised when I reported to them the number of cases worldwide in which the reach of franchise has been expanded to immigrants, and every single one of them told me that the subject does not exist in the forums on migration or by state bodies in charge of migration. Some of my interviewees tried some explanations for why:

The key to citizenship here is nationality. [...] Unfortunately, your concern serves as a mirror where we can see how long the way to go still is in terms of exercising rights (Carlos Sandoval, sociologist by the Universidad de Costa Rica, also an activist for migration matters; personal communication, December 12, 2013).

There are few who have said that at local, municipal level, [the vote] could be relevant, but for whatever reason this is not a political subject that's being addressed... what happens is that migration is a matter that politicians don't want to come close to, it's a touchy subject that could lead to conflicts with a certain neighboring country with which there have been problems traditionally, historically. These are very important matters in Costa Rica, a country with no army. That is the good side, sure, but there's also a bad side to it, which is precisely the fact that subjects like these are not brought up. By not politicizing it, you prevent them from becoming cannon fodder, you avoid inciting hate, but you also cancel the subject of political rights (Jorge Vargas Cullel, member of the National Commission of Governors CONARE; *Estado de la nación* director; personal communication, December 3, 2013).

It's a subject still to be addressed since they have not been considered a mass that could be of political interest [...] This obsessive institutionalism does not allow for us to make important transformations. [...] I can tell you that, because I have written on the subject: this topic is absent. The subject of migration is very legalistic, which is interesting because then people remember they have a cousin living abroad or that their grandmother came from another country, but they absolutely deny it as we think of ourselves as a homogeneous population. It is a way to rationalize that exceptional nature of ours (Carmen Caamaño, personal communication, December 4, 2013).

Particularly, the TSE officers interviewed replied sternly to the questions on expanding the reach of franchise to Costa Ricans abroad, but were perplexed when I then asked about the right of foreign residents to vote in Costa Rica:

The TSE and the IFED are related to other bodies, there are joint trainings, feedback. I can't remember this subject being brought up, but I think it is more a matter of having no clue than a direct rejection of bringing it into the agenda (Diego Brenes, Academic Secretary of the Institute of Higher Education and Studies on Democracy of the TSE, personal communication, December 5, 2013).

The explanations offered by the interviewees were noteworthy when, tactfully, they rationalized the lack of debate on this topic:

The issue in Costa Rica will have challenging edges as our culture fears what comes from the outside. A measure to include migrants in voting would probably not be well received, it would not be a good strategy to get votes (Paola Alvarado, TSE officer in charge of implementing the vote of Costa Ricans abroad; personal communication, December 5, 2013).

I can't remember any group in the last few years upholding this proposal, and there can be different explanations for it. The vote of Costa Ricans abroad represented for us a historical debt [...] That idea of voting from abroad would mainly be at the local level, but if the vote of Costa Ricans abroad had not been brought up before, even less so will the vote of foreigners resident here. The recent separation of municipal elections could allow for this issue to be brought up in the future, but right now it is not a debate. It is remarkable since in this country people in prisons can vote and there is a whole logistic process making possible for a great number of disabled people to vote, but when it comes to foreigners it hasn't been posited, it's a subject matter that, and I openly acknowledge it, should be there; but I can't remember it being brought up when the current electoral code was elaborated at the Legislative Assembly in 2009 (Diego Brenes, personal communication, December 5, 2013).

On the other hand, among those who are involved in the study of migration and/or in the social struggle of migrant collectives, there is a sense that franchise is a luxury of sorts that is not proposed because there are other needs of higher urgency:

In the framework of the debate on migration issues, topics such as political rights have been postponed and we haven't been able to, and I include myself here, identify them as something that can be made possible for the integration of those who live over here. What is usually understood by integration is integration into the labor market, as if individuals were merely production factors, which is evidently not true (Gustavo Gatica López, UCR professor and leader of the National Network of Civil Organizations for Migration, personal communication, December 11, 2013).

For the interviewees, the absence of this important matter was baffling, since there is an ongoing debate among Costa Rican society, both nationals, and immigrants, about migration laws. Outreach publications of migrant organizations voice subjects such as the right to have rights¹³ and fighting against discrimination under the light of the equality and universality principles guaranteed in Costa Rica. Moreover, those publications promote and provide an example of the collaboration of nationals and foreigners in struggles that have oftentimes been successful. During the field research undertaken for this article, there were two successful examples of such joint efforts: the first, the struggle of professors and students of the Universidad de Costa Rica to remove the ban for foreigners on candidacy rights for the student union; the second, the filing of an unconstitutionality claim by Costa Ricans academics and activists together with migrants, regarding several articles of the new migration law.

Now, even if the interviewees did confirm a lack of debate on the subject at the time the interviews were held, they still displayed different degrees of confidence regarding the possibilities of such debate taking place sooner or later. Strangely enough, Costa Rican researchers and activists who work for migrants on a daily basis were the most pessimistic. Carmen Caamaño stated: “at least for now, to think of the vote becoming a reality is quite utopian” (personal communication, December 4, 2013); Karina Fonseca, director of the Jesuit Service to Migrants as well as a spokesperson for the CNM (that is, taking one of the two seats allotted in it for civil organizations), clarified:

This is an obviously fascinating issue, and Costa Rica should be at its vanguard, but even for us as an organization, it is still something beyond our scope. [...] One thinks, well, labor codes, migration law, those struggles that finally are already in the political arena were already so hard, that it is almost impossible to think of changing things when it comes to something so deeply-rooted such as the right to vote (personal communication, December 7, 2013).

From my review of primary and secondary sources, I knew there were at least two academics who had proposed (general) participation rights for immigrants: Alexander Jimenéz Matarrita and Carlos Sandoval. In my interview with them, the former was more optimistic than the latter:

The focus of some research is apocalyptic, [they imply] that this country is all xenophobia and discrimination, which is not true. I am not that pessimistic towards sociocultural life [...]. We have had a very strong ethnic nationalism here, with an impact on political and institutional action. People grant a huge load of value to having been born here. That shows up over and over again in debates. Having said that, I do believe there have been interesting changes in political sensitivity [...]. There is something to it that has to do with global

¹³See, for example, Sandoval García, Paniagua Arguedas, Masís Fernández, and Brenes Montoya, 2010.

tendencies, undoubtedly. I trust the universities and the power that people have in the cultural-political debate, the nation-State project [see above, this is an annual report prepared by several experts of an independent research body on the state of several affairs in the country]... interesting collective actors are emerging. Conditions can be created to set in motion an essential process, the way I see it: we have to unimagine this country and then imagine it again in a different way. As of now, this is only a hope (Alexander Jiménez Matarrita, personal communication December 7, 2013).

[we have proposed it because] ...we are a philosopher and a sociologist [but] this is not in the academic or citizen agenda. Well, I have indeed thought about it but it takes a lot for one to even imagine how... in terms of elections one would believe that the Left would uphold this, but that doesn't happen here [...] just so you understand my dissatisfaction with the disconnection here between participative and electoral democracy: at the community level there is plenty of active people, [but] this dynamic is not expressed in elections because those at the level of electoral dynamics can't see the community level as actual politics [...] the Left knows little about these matters which should be their very natural bastion (Carlos Sandoval, personal communication, December 12, 2013).

Surprisingly, the experts coming from a technical perspective saw the debate as something achievable:

If the subject matter is to be addressed then we need a constitutional reform to change the municipal code, but if there was political will then technical factors would not be a limitation. The logistics of it are within our reach (Diego Brenes, Academic Secretary of the Institute of Higher Education and Studies on Democracy of the TSE, personal communication, December 5, 2013).

In terms of effective implementation, it would not be a problem. If there is something that works great here, that is the electoral system (Jorge Vargas Cullel, personal communication, December 3, 2013).

Here, migrants have an ID that the Migration Directorate provides for them. I believe that this is a document that could enfranchise them if there was a political reform. This is only my idea. A secure registration can be guaranteed, and our registration is highly secure as we have a monopoly over vital civil registry records. At the institutional level, the fact that migrants could vote would not be a challenge, it would simply be an additional number of voters. Decisions would need to be taken on other areas, particularly the political one, and that requires social acceptance. I do believe the people here are conservative, they fear change, but we can do it if we manage to reach out to them. That is how the country has achieved important reforms at other levels: it was like that with social security, it was unthinkable in other times and now it is normal for us. The TSE is active when it comes to electoral propositions

precisely because it has come to realize it has to take that stance, as we are lagging as a society in some matters of democratic inclusion. A first step was the vote of Costa Ricans abroad, and I do not see why the immigrant vote here could not be proposed by the Tribunal. The Tribunal can make propositions but it depends on the parties at the Assembly to make room for it, and it also depends on the political moment in which such proposition is presented (Paola Alvarado, personal communication, December 5, 2013).

It should be highlighted that among the interviewees, migrants (academics and/or activists) were open to the possibility of presenting such proposition, but, coming from civil society, the president of the Social Rights Center of the Migrant (CENDEROS, for its acronym in Spanish) and UCR professor Adilia Solís, stated that:

This subject will have to be essential in the same measure as the migrant population becomes increasingly permanent. There was probably not much interest in to the first inflows, but when the foreign population reaches 9% and begins to root, then the subject has to become part of the agenda of the organizations, and some of the parties have to begin taking care of it. So far, the parties have put it on a political scale: by trying to attract the immigrant vote, they think they would risk Costa Rican votes. [And so], everything points to the fact that such spaces will not be gained from the side of institutions [parties]. This will have to be fought by the organizations [...] the franchise has been on our agenda, but as Nicaraguan migrants, we feel a lack of the right political conditions for such propositions here. Here, citizenship is conceptualized as nationality: if you are not a national, you are not a citizen. This country has been Costa Rica for the Costa Ricans... that is how it is thought of: if they want to vote, then they must be like us. There are mechanisms available, but the foreign population has to grab them. We have definitely gained spaces, yes. Me having a sit in the National Commission on Migration, for example [...]. These spaces have not come easy, but thanks to people brave enough to fight, to their constancy. The franchise, I am sure it will have to happen, maybe not in the short term but it is a subject not far from being set forth... universities and particularly academics would work on it together with Costa Rican organizations... because solidarity does exist. At some point, a small group of us did have conversations on having a deputy representing the immigrant population, but certainly a national one, we thought it was time to have someone in the Assembly defending the rights of migrants (Adilia Solís, personal communication, December 10, 2013).

It appears that civil and political rights have been postponed. This already is a challenge for those who are migrant and close to the issue [...]. Our main concern has been getting economic, social, cultural rights: health, education, work, housing. But now you are alerting me on this because at the end of the day [the lack of political rights] ends up consolidating a scheme of a country with first- and second-class citizens, by means of a spatial, economic, or work segmentation. A division consolidated that way would legitimize the others,

solidifying them: those with full rights and those without (Gustavo Gatica López, personal communication, December 11, 2013).

In Costa Rica, the organization of migrants is vigorous. Among Nicaraguan migrant women, for example, home maids have networked with Costa Rican organizations and still retained their own voice, an example of this is Olida García, vice president of the Network of Migrant Women in Costa Rica:

We already know which way to go when women begin to realize how to get into parties and town halls, they take over participation spaces. Look, one of our affiliates in the network already positioned herself as a councilor. She had to naturalize as Costa Rican. We supported her in that process, we let her know how to naturalize since that gives you great power. As a mere resident, you can't participate, but as we say, this country made laws and it has to comply with them. [...] We should not accept leftovers; I do not want quotas for being a woman, please, I want participation. We still need participation because what they offer now is not real (Olinda García, personal communication, December 11, 2013).

However, there was also skepticism among activists regarding the possibility that pro migrant organizations could stand as political actors:

Migrant organizations tend to follow agendas that are maybe not a priority for the country but are on the government agenda or of intergovernmental bodies. That impacts negatively on the disposition and capacity to establish genuine coalitions with other organizations [and working issues independently]. Voting rights is a subject that requires being brave, as I cannot see which organizations would take a stand before Costa Rican institutions for something like that when organizations do not find it easy to get financed. This topic implies exhaustiveness and a very lucid, collective construction of our arguments (Karina Fonseca, personal communication, December 7, 2013).

The proposition could happen, but it will not come from the outside, it will rather come from migrant organizations, and we have to organize first; because organizations fight each other, they are divided and do not share priorities. Certain things move forward through action at the courts, by the fight of a few brave people. Yes, researching, positioning it as a subject matter in the agenda, taking comparative actions, that is the way. At the level of discourse, forget about it, migration stopped being a subject matter because the elite believes that [the new migration law] has solved it all (Ignacio Doblés, psychologist by the Universidad de Costa Rica, personal communication, December 9, 2013).

CONCLUSIONS AND FINDINGS

One by one, the fragments of evidence collected about this negative case allow us to better understand the reasons why democratic institutions and a large number of immigrants are not sufficient reason to open a debate on the democratic deficit of participation and representation in Costa Rica, despite being geographically close to other Latin American countries that have expanded the right to vote to resident immigrants and figuratively lagging behind other stable democracies that have by now implemented immigrant enfranchising reforms, such as Chile and Uruguay, but also countries with feebler democratic institutions such as Ecuador.

The findings in relation to the studied factors allow us to deepen our understanding of the relationship between citizenship traditions and the granting of political rights to migrants.

The first finding has to do with how to understand citizenship traditions. In Costa Rica, *jus soli* and the access to naturalization delineate a formally inclusive framework of regulations to integrate migrants as Costa Ricans (that is, through naturalization). If naturalizing and thus gaining access to all the political rights of a citizen were as simple as the general regulations, it could be expected that no necessity to grant political rights as an alternative is observed. However, the small print and the testimonials of the interviewees (especially those who are migrant) reveal that such a procedure is, in practice, rather hard.

Contrary to the initial hypothesis I held, the naturalization laws and procedures and other regulations that govern the participation of migrants (even of naturalizing them) display a conservative citizenship tradition, which positions political citizenship rights strictly within the limits of nationality. As a negative case, Costa Rica suggests that citizenship traditions must be understood in a wider sense than the mere laws of access and transmission of citizenship and nationality, also to include both the small print and the general principles that drive the very constitutional tradition and political culture.

In a wider sense, the Costa Rican citizenship tradition implicitly draws a framework of citizen rights that puts the social before the political rights. Costa Rican institutions represent a firm and for the most part legitimate, democracy in which social inclusion is a priority for the entire population, but political inclusion is dealt with as an issue of those born in Costa Rica and, in a second-place, those who naturalized. Even those who fight for migrant causes acknowledge this. Although the subject of the democratic deficit due to a lack of political rights for immigrant residents is absent from the public debate, social inclusion is discussed with great controversy, and any regulatory incoherence on the matter is strongly criticized. Upon reflecting on political rights, all the interviewees assessed that there indeed is a democratic deficit to solve but agreed that it has not been publicly discussed so far.

In terms of how the different actors position themselves on the subject, it is noteworthy that political rights for immigrants in Costa Rica have not been brought up even at the

parliamentary level, due to a lack of interest (confirmed by all interviewees) from the parties in the immigrant population as potential voters, and from a negative calculation of what it would cost them in terms of sympathies from their current Costa Rican voters. Certainly, there is no evidence of any deliberate obstruction of the subject matter, but rather of a lack of attention to it from the key actors, who are overwhelmed and engrossed in other matters that appear more urgent to them. At most, some interviewees expressed a benevolent sense of a taboo regarding immigration topics which implies not politicizing migration issues to prevent polarization or public expressions of xenophobia.

There is no reason to expect any soon-to-come convergence with the other Latin American in terms of extending political rights, even if it could be expected that the TSE, being a model of electoral authority for the entire continent could encourage discussion on the topic since its experts do acknowledge that Costa Rica is lagging in this area —especially when presented with the tendency towards inclusion by means of voting in other cases. Having undertaken my field research in 2013, I expected the topic to reach the Legislative Assembly by means of a body such as the Constitutional Court or by the mandatory process under the Law of Migration of 209 (the creation of an integral migration policy). But more than five years passed and none of that happened. The Integral Migration Policy for Costa Rica was decreed (Executive Order 38099-G (2013)) without a mention of the political participation of migrants.

Stretching interpretations of historians of Costa Rican political culture (Acuña, 2014) into current times, it is possible that Costa Ricans define themselves as an island of stability, democracy, and relative economic wealth in a sea of dysfunctional and conflictive societies, in which case they do not expect democratic innovations or reflections on their democracy to generate from the outside. If Acuña's elegant metaphor is anything close to today's reality, Costa Ricans could be painfully blind in their self-complacency.

One finding of this research is the different trust levels there is among Costa Ricans who are friendly towards migrant causes (be it from inside government institutions, civil society, or academia) in terms of their capacities, and those of the experts in electoral matters and migrants themselves.

Migrants perceive themselves as ready to push the topic forward on their behalf and, when it comes to technical experts from the TSE, the pride in their institution allows them to see themselves as possible kick-starters, despite acknowledging that garnering political will is necessary for a constitutional reform that abolishes the prohibition of political participation by foreigners. Thus, it is possible that a coalition of voices could propel the topic from below and that some key institutions such as the TSE facilitate the political process by clearing doubts regarding the technical feasibility of extending political rights to migrants. A template for such a coalition is the Social Fund for Migration Trust, focused on community

participation, which has since 2016 promoted that “the right to participate in political affairs should be demandable by law” (FFSM, 2016, p. 47).

The most important finding of this research is, however, the normative incoherence in Costa Rica that is palpable in the acceptance of different actors, who would potentially be the engines of an enfranchisement reform, of the acceptance of the status quo. How could Costa Rican political parties ignore the subject of political rights for immigrants even as they debated the right to vote for *Ticos* abroad, simultaneously to a wide-ranging migration policy reform? How is it that the “civic/democratic celebration” of the Costa Ricans (this is how they call election day) is already held in consulates (Villegas, 2018) around the world, but working, social-security contributing resident immigrants are still not invited to the “celebration” at home?

The answer seems to be that the reality of emigrants is not associated with that of immigrants. Emigrants are almost non-existent in the national public discourse. Even in the “Integral Migration Policy for Costa Rica,” spanning 82 pages (CNM, 2013), emigrants are only mentioned four times. This is not surprising since it is authored by the CNM, which has representatives from immigrant, but not emigrant organizations. And so, expecting to find parallels between the experiences of one group of migrants and the other is futile, let alone finding coherence in the regulations which could rule the migrants’ citizenship in general, since there are no forums that bring them together.

The asymmetry both in terms of discourse and in public policy for immigrants and emigrants shows the limits of political inclusion in the Costa Rican citizenship tradition: the first is seen as an issue to be solved, and mainly an issue of social and not of political order at that; the second ones are recognized (by virtue of being nationals) as citizens even if they are absent, but are in a good measure forgotten. For Costa Rican democracy to be truly inclusive and not merely exceptional, coalitions of migrants and citizens will have to strengthen to reform citizenship beyond the narrow confines of nationality.

Translation: Fernando Llanas.

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