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THE CONCEPT AND MAIN PATTERNS OF COMPULSORY VOTING

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Summary

Elections are one of the main institutions of good governance. The correct and relevant functioning of the mentioned institution determines the quality of democracy, the legal self-awareness of society and the index of political-economic development of the country.

The democratic nature of the elections is indicated by the existence of specific principles, which are stipulated by the electoral law, in particular, universal suffrage, equality, free elections, and secret ballots. The relevant interpretation of each principle determines the effectiveness of the institution.

The presented paper focuses on the institution of compulsory voting, which is directly related to the expression of free will. The aim of the paper is to review the institution of compulsory voting, to study its impact on electoral integrity and the overall legitimacy of the political system.

According to literature review, the pros and cons of compulsory voting are highly debated. The reason is that there are a lot of supporters and opponents of a given institution with quite strong arguments supporting or opposing the institution.

Based on the goals of the paper, it provides a description of the concept of compulsory voting and the reasons for establishing the mentioned institution. The paper reviews the types of obligation and their characteristics, explains the different systems of sanctions imposed on the persons avoiding their voting obligations, and the exemption rules based on the legislation of various countries.

Based on literature review and collected data analysis, authors highlight the main patterns of compulsory voting, its relationship with legitimacy and efficiency of elected body. The final part of the paper outlines and evaluates the arguments for and against compulsory electoral participation and presents main findings according to comparative analysis of different cases.

Based on the analysis it's obvious that the institution of compulsory voting cannot be considered with the same results in different societies or states with different social-economic conditions.

Key words: compulsory voting; elections; sanctions; pull and push factors, electoral turnout; legitimacy of elections

1. Introduction

One of the most important principles of democratic elections is the principle of free election, which implies the free exercise of the will of each voter. According to this principle, the voter can make a choice according to his/her will without any pressure. The formation of an individual's own opinion regarding the elections should be ensured by the state, in particular, lists of candidates and their programs should be available/accessible.

According to the Venice Commission: "the voting procedure should be simple", and in order to achieve this goal, it is necessary to form an electoral administration based on the principle of proportionality from representatives of different political forces; Counting of votes should be done directly in the polling station and should be transparent (Demetrashvili, Kobakhidze, 2011, pp. 149-150).

Discussing the principle of free elections, it is necessary to mention the compulsory voting system, regarding which opinions are divided. Both sides have strong arguments to support their positions.

Democracy means the rule of the people, but what happens if the people do not have the will to rule and participate in elections? At the end of the XIX century, 70-80% of voters in the United States of America participated in presidential elections; by the XX century, this ratio had dropped to 50-60%. In more detail, Lyndon Johnson was elected by 38% of the voters in the 1964 elections, Reagan by a third of the voters in 1984, and Bill Clinton by a quarter of the voters in 1996. Canada's statistics are similar to those of the United States, while Switzerland's figures are lower (Brennan, Hill, 2014, p. 3).

The question of compulsory voting has recently sparked increased interest in both political and scholarly circles. Most democracies are concerned about increasing voting turnout. Electronic elections, mail and online voting, and increased campaigns – all of the, have been proposed to raise voter turnout, but evidence suggests that none of them are as effective as compulsory voting. The legitimacy of compulsory voting is frequently contested by supporters and opponents.

The presented paper analyzes the arguments of both sides, discusses the characteristics in the formation and development of the concept of compulsory voting, the practice, and the results in different states. Based on literature review and collected data analysis, the final finding related to the legitimacy of compulsory voting and its compliance with constitutional rights are outlined.

2. The Concept of Compulsory Voting

In the constitutions adopted after the World War II, compulsory voting is found very often. The constitutions of some countries stipulate mentioned institution for participation in elections (Melkadze, 2012, p. 53). However, compulsory voting was used before World

War II in countries, like Belgium (from 1892), Argentina (from 1914), Australia (from 1924). There are some stated that used the institution, but then abolished it, like Austria, Netherlands, Venezuela.

Compulsory voting can be defined very simply as the legal obligation to attend the polls at election time and perform whatever duties are required there of electors. The terms "obligatory voting" and "mandatory voting" do make their appearances in the English-language literature, yet the most used term to designate this practice is "compulsory voting". (Birch, 2009, p. 13). According to Sara Birch, a more appropriate term might be "the legal obligation to participate in elections", but in the present study we will mostly use "compulsory voting" as recognized term.

Electoral behavioralists determine two types of factors, that are motivating voters to participate in elections, in particular:

- Pull factors – desire to influence electoral outcome, expressive aims, identification with political contestants, perceptions of civic duty [Norris, 2004; Blais, 2000].
- Push factors – Legal obligation to vote with the threat of sanctions, social and political influence (Bruner, 1990, pp. 24-25).

There are two types of obligation to vote: informal (social, political) and formal (legal). It's important to mention that legal and informal socio-political forces interact in complex ways, which means that social and political norms can be congruent with legal obligation (Birch, 2009, p. 17).

The example of a formal obligation to vote combined with effective sanctions can be Australia, where the sanctions are very small, but effectively imposed. In contrast, in Latin American Countries, despite the legal obligation, sanctions either do not exist or do not apply. There are also cases where formal obligation is absent, but socio-political pressure is high, for instance former Soviet Union and modern North Korea. The other case is informal voting combined with no sanctions – this model is used in more developed democracies (Birch, 2009, pp. 18-19).

3. Sanctions for non-participation and their regulation

Compulsory voting is linked to a complicated set of rules controlling election administration, and these rules shape one another. States with compulsory voting are obliged to make voting as simple as possible for citizens, as this reduces the costs of enforcement and increases the institution's popular acceptability and validity. However, when voting is made as easy as possible, there will still be those who refuse to participate in elections. For this reason, states with compulsory voting impose some sanctions, that differ from one country to another, in particular demand for an explanation, Reprimand, name-and-shame systems, fines,

use-it-lose-it system, prohibition of public employment for non-voters, loss of services, imprisonment (Birch, 2009, pp. 19-20).

In Belgium, the electoral right granted by the constitution is at the same time an obligation, the non-fulfillment of which leads to a monetary penalty (Constitution of Belgium, article 62). After the election, the judiciary has a duty to contact all non-declared citizens and *demand a written explanation*. In the case of an unfair reason, the fine ranges from 25-50 euros for the first time, and 50-125 euros for repeated violations. A voter who has not participated in elections four times in 15 years is *restricted from participating in elections and public service for the next 10 years* (Pilet, 2007, p. 2). These sanctions are not often used, as compulsory voting in Belgium is more of a moral obligation than a legal one. That is why a large number of voters always go to the elections. According to statistical data from 1981 to 2003 elections, the number of citizens who came to the elections was never less than 90.6% (Pilet, 2007, p. 3).

According to Article 67 of the Turkish Constitution, participation in elections is a right, although voting is mandatory. A fine is provided for non-fulfillment of this obligation (Constitution of Republic of Turkiye, 1982, article 67). However, this sanction is not used in practice.

In Singapore, the right to vote is also an obligation. As in other countries, in the absence of good cause, a person is fined \$50 and removed from the electoral roll for the next election. He will be re-registered after paying the fine based on his own application.

In Australia in case of non-fulfillment of the obligation, the voter is obliged to submit an explanation indicating the legitimate reason for the absence, in order not to be sanctioned (Commonwealth Electoral Act 1918, Section 245).

As in all regulations some exemptions exist from the general rule, that is divided in two categories: Exclusions from the right to participate and exclusions from the legal obligation to participate.

Exclusions from the right to participate are mostly related to the principle of universal suffrage, according to which the franchise is granted to all members of community, with notion of minimum competence. The determinants that are used for defining minimum competence are age, mental incompetence, citizenship, residence, military service, imprisonment. In previous centuries, this list was longer, and it included property ownership, male gender, literacy.

In countries with institutions of obligation to vote, there are a number of categories of persons, who commonly have the right to vote but not an obligation to participate. In some cases, people are formally exempted from the mentioned duty, while in other cases sanctions are not applied for non-participation [Birch, 2009, 30]. The main exemptions are as follows:

- In many states, when compulsory voting was first introduced, women had not right to vote. In Ecuador voting was obligatory for men from 1929, but for women from 1967 (Nohlen and Pachano, 2005, p. 374); In Guatemala – for men from 1894, for women from 1981 (Somoza, 2005, p. 402). In modern world in countries with compulsory voting system, Egypt is the only country where participation remains mandatory for men only (Birch, 2009, 30).

- Several Latino American Countries, including Argentina, Brazil, Peru, make electoral participation voluntary for the persons over 70 years of age, in addition Brazil does not impose sanctions to non-voters aged 16-17.

- People in Argentina who are more than 500 kilometers from their place of registration on election day for a reasonable reason are exempt from voting. The same is in Chile for individuals who live more than 200 kilometers from their place of registration, and in Cyprus for those who live 50 miles or more from their polling location.

- Different rules apply to citizens living abroad. States that allow foreign residents to vote do not necessarily make it mandatory. Belgian Citizens residing abroad have had the right to vote since 1999, although they are not required to do so. If they want to register, they are subject to the same criteria as ordinary Belgians, although they have the option of not registering (Birch, 2009, pp. 31-32).

- Several countries, including Australia, Belgium, Chile, and Luxembourg, give sanctions relief retroactively if sufficient grounds are presented to a judge or court (Birch, 2009, 32).

4. Pros and Cons of Compulsory Voting

As mentioned above, democracy is ensured together with other institutions by elections, which in its turn, means participation and collective decision-making process. But the debates about democratic elections always include how much and what forms of participation are necessary for the democratic electoral process. According to the mentioned, the opinion of scientists and policymakers about compulsory voting is divided.

Advocates of compulsory voting declare that democratic obligations accompany rights, and that voting is a civic duty. Compulsory electoral participation promotes cooperative behavior by requiring people to act in the collective interest (Lijphart, 1997, Engelen, 2007).

Opponents of compulsory voting contend that the right to vote entails the right not to vote. If one lacks the ability to choose whether or not to exercise a right, it is not a right. As a result, political obligations should not be made legally binding (Mackenzie, 1958, p. 131, Lever, 2007, pp. 26-35).

In the modern world, pressure from society is no longer capable of functioning as a social bond that would impose communal norms, hence legal com-

pulsion might be required to achieve that goal. While unified communities offered a vehicle for upholding standards of involvement in prior generations, this system has broken down in many contemporary settings (Birch, 2009, p. 232).

Citizens require a different way of self-binding in the absence of conventional forms of norm enforcement, which can only be implemented in modern society through legal rules. Compulsory voting is an example of such a regulation.

Supporters of compulsory voting claim that it assures that decisions made by representative institutions are democratically legitimate. Democratic decisions must represent the opinions of the majority, but decisions will be inadequate in democratic terms, and less valid, unless we have some means of determining everyone's position (Katz, 1997, p. 243; Lijphart, 1997, p. 9).

Compulsory electoral participation is the only method to effectively consider all points of view while distributing the expenses of voting evenly among all those who benefit from political institutions.

Critics of compulsory voting argue that it simply addresses the symptoms of low levels of political involvement and the resulting lack of legitimacy of democratic institutions, rather than solving the problem. If the real issues are voter indifference with politics, there is no point in artificially expanding turnout levels by convincing individuals to vote (Ballinger, 2006, p. 20).

Advocates of compulsory voting state that compelling citizens to vote will increase citizen awareness, engagement in politics, and participation in society. Therefore, it will have both mobilizing and instructive impacts, enhancing public involvement and political awareness. Furthermore, since elections will consider the views of all citizens, instead of the socio-demographically biased selection of those who vote voluntarily, the governments' decisions will better reflect the necessities of the entire population.

Opponents of compulsory voting indicate that it is both expensive to administer and likely to be unpopular. Other more effective, and less expensive methods of enhancing public engagement include selective voting incentives, vote facilitation tools, and other improvements in the political process. Furthermore, many people are misinformed about public policy concerns and hence will not make educated decisions. Their votes will be unjust, and they may even vote for extremist parties in protest against electoral necessity, lowering the quality of policy results (Birch, 2009, pp. 234-235).

5. Conclusion

As a conclusion, debates about compulsory voting reach to the core of many central concerns of contemporary political theory, including the nature of rights, the nature of democracy, and the possible tension between these two key concepts. They also address the

central concern of the legitimacy of political decision-making, and the capacity of individuals to take part therein [Birch, 2009, p. 106].

Even though many of the preceding justifications have been framed in normative terms, the debate has revealed that they are based on an empirical statement that are frequently unsupported by evidence.

The main suggestions related to compulsory voting after discussion are as follows:

- It raises citizens' levels of political awareness.
- It either increases or decreases citizen engagement in politics.
- It either strengthens or weakens the legitimacy of the electoral process and democracy in general.
- Boosts turnout.
- It increases the number of invalid and random votes cast.

The institution of compulsory voting and related sanctions definitely increase the number of voters in elections, but the problem of absenteeism remains unsolved. Although the legitimacy level of the government depends on the number of voters, how legitimate is the government that is elected by the voters against their will.

Regardless of how we evaluate the compulsory voting institution in theory, the implementation and the results of this mechanism will vary in different countries based on different patterns. Before applying to the mentioned system, it's significant to address the issue of the conditions under which obligatory participation should be adopted and how it could be used in practice.

By mentioning conditions under which the compulsory voting institution should be adopted, we mean if there's a necessity and capacity of it. In some states, where turnout is high even without mandatory participation, there is no need for such an institution. In cases where sanctions are not imposed, mandatory participation has little impact on outcomes. Lack of state administrative capacity is typical for developing countries, where use of the mentioned institution makes no sense. And finally, if a mandatory participation system will be implemented in less democratic or authoritarian states, it will be used as an attempt to legitimize one-party contests, which is totally opposite to democratization process.

Based on Literature review and data analysis, there are some considerations that can be used as a replacement of compulsory voting, in particular: the constitutionalizing electoral obligation, collective sanctions in the form of turnout requirements, and the provision of incentives for voting. All of them are used in various countries even today, but there is no direct evidence which option will be more effective, since it can be influenced with legal and political culture of particular nations, but at the same time mentioned options can serve as the mechanism for raising awareness and motivation for willingly participate in electoral process.

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ПОНЯТТЯ ТА ОСНОВНІ ЗАКОНОМІРНОСТІ ОBOB'ЯЗКОВОГО ГОЛОСУВАННЯ

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Анотація

Вибори є одним із головних інститутів хорошого урядування. Правильне та актуальне функціонування зазначеного інституту визначає якість демократії, правову самосвідомість суспільства та є показником політико-економічного розвитку країни.

Про демократичність виборів свідчить наявність конкретних принципів, які передбачені виборчим законодавством, зокрема, загального виборчого права, рівності, вільних виборів, таємного голосування. Від відповідного тлумачення кожного принципу залежить ефективність діяльності установи.

Представлена стаття присвячена інституту обов'язкового голосування, який безпосередньо пов'язаний із волевиявленням. Метою роботи є огляд інституту обов'язкового голосування, дослідження його впливу на чесність виборів та загальну легітимність політичної системи.

Згідно з оглядом літератури, плюси та мінуси обов'язкового голосування є предметом активних дискусій. Причина в тому, що є багато прихильників і противників того чи іншого інституту з досить вагомими аргументами на підтримку або проти нього.

Виходячи з цілей роботи, подано опис поняття обов'язкового голосування та підстав для встановлення зазначеного інституту. У статті розглядаються типи зобов'язань та їх характеристики, пояснюються різні системи санкцій, що застосовуються до осіб, які ухиляються від своїх обов'язків голосування, а також правила звільнення, засновані на законодавстві різних країн.

На основі огляду літератури та аналізу зібраних даних автори виділяють основні закономірності обов'язкового голосування, його зв'язок із легітимністю та ефективністю виборного органу. У заключній частині статті викладено та оцінено аргументи «за» та «проти» обов'язкової участі у виборах, а також представлено основні висновки за результатами порівняльного аналізу різних ситуацій.

Виходячи з аналізу, стає очевидним, що інститут обов'язкового голосування не може розглядатися з однаковими результатами в різних суспільствах або державах з різними соціально-економічними умовами.

Ключові слова: обов'язкове голосування; вибори; санкції; фактори притягування та підштовхування; явка на виборах; легітимність виборів