

Lowering the Voting Age: Brief Legal Considerations

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ABSTRACT

One of the most important problems that a young person entering adolescence has to solve is the way in which he is recognized by adults. If in childhood the distinction of perception is clearer, when reaching the threshold of adolescence, both the adult's personality and his professional and political options are outlined.

Based on this transformation, in the second half of the 20th century there was a discussion in the political and legal doctrine about the voting age – especially regarding the reduction of this threshold. However, the discussion about the age from which a person can vote should be extended to the other end of life, because in some texts there is a correlative issue, regarding the abilities of seniors in electoral matters.

This text considers the possibility of lowering the age at which a person can vote, opening this debate in the geographical area of Southeast Europe.

KEYWORDS: *Voting Age; Mental Capacities; Constitutional Changes; Debates; Quality of Governance; Trust.*

1. Introduction

Among the most important debates that nations had at the time of their establishment or transformation into modern states was that of establishing the mechanisms by which a person – respectively a political group – would take power in the state legally.

All the peoples and countries of the world had better or weaker moments, in which either dictators manifested themselves, or the bad government lasted for decades, or the qualities of the enlightened minds of the country could not be brought together, etc. In this specific context to each country, at the moments when the political-legal resizing of the state was discussed, certain conclusions from history were drawn, and based on them constitutions were adopted or modified.

It is not the space for a discussion about the distinction between what has been retained in history and what is planned for the decades following the adoption/amendment of the constitutions, although this would be a very useful exercise from the perspective of the history of public law. What interests us is rather the projection that the constitutional legislators at a key-moment had for their own country, because it (the projection) is the basis of an entire legal corpus, with effects on future generations.

At the base of these projections was – without any doubt – especially a configuration of the political system. Within this political construction, the norms of constitutional law had to express first the power relations within the state, the mechanisms of cooperation between the state powers, as well as the way in which the top representatives of these powers will be appointed.

The political system configuration is made by norms of constitutional and administrative law, but their application can have multiple facets, in relation to the interests of political actors, as well as the consequence of the inaccuracy of the legal norms in the fundamental law. We must not forget that the dimension of human psychology – less considered in legal studies¹⁾ – is very wide one, and the desire for power is one of the most important drivers of life. In relation to the human will, however, not only the life of an individual is outlined, but also entire political, economic, cultural-civilisational systems, etc. From this perspective, the study of human will should interest the public law jurists, because in this sphere of legislation and application of the law we find the broadest and most important consequences of human gestures. Thus, if the will of a forester can affect the inhabitants of an area – usually – rural, less populated, we will find ourselves in another hypothesis in the situation where the will of a finance minister manifests itself. It is therefore necessary for legislators to consider the creation of a political-constitutional equation in which to find ways to limit the power of an individual or a political group to the detriment of a nation.

2. Political power mechanisms and procedures

The mechanisms of power will always take into account the ways of appointing persons who will fulfil public dignities.

In a dictatorial state, these mechanisms will be provided in the constitutional legislation, without there being a guarantee of their observance. At the same time, the constitutional norms can be changed whenever the interests of the group that controls the dictatorial country demand it, the degree of protection that the fundamental law must enjoy being equal to that of the other laws.

In countries that want to maintain a real balance between state powers, the mechanisms for appointing dignitaries are drawn after broader debates, involving larger groups of social actors, and once they are set in constitutional rules, their duration is measured in decades or even centuries.

In this hypothesis, the clearest way to achieve a result that satisfies to a high degree the population of a country is that of designating the dignitaries by vote.

This method has been established for millennia, with the civilizations of ancient Rome and Greece using it with consistent results in terms of public satisfaction – although not at a level comparable to today, relative to the sphere of those who could vote. Obviously, the medieval period also privileged the vote in several politico-religious constructions, of which the best known examples were those regarding the appointment of the emperors of

¹⁾ Unlike the legal sciences, in recent decades the search for understanding human behaviour and the consequences that its rationality induces grow in economic field. The results are appreciated by practice and within the Nobel Prizes laureates we find some behavioural economists, like Robert Shiller (2013) and Richard Thaler (2017).

the Roman-German Empire, as well as the election of the supreme leaders of the Catholic Church.

The issue of voting in modern society initially involved the answer to the question of equality – more precisely, whether the votes can be equal. Inheriting the previous system of noble privileges, he had a basis in the fact that the aristocracy had only accepted with great difficulty the widening of the sphere of decision-makers, and this tolerance of the new voters presupposed a certain degree of restriction of their voting possibilities.

In this way, differentiated voting systems were reached, in which men had the right to vote, and only if they fulfilled other conditions, of which wealth was the most important. Starting from the idea that wealth – created in a life or inherited – offers access to all social strata, it was considered that this is the safest way to sort people. Basically, patrimonial success presupposed that the owner of money and goods had a clear mind, able to understand problems with social impact. This type of voting was reinforced by the aspect of the absence of education for almost the entire population: those who were not able to read could not understand the problems of society; and those who did not have money could not go to the few schools of those centuries – or could not afford private tutors.

From the moment when the increase of educated population percentage at least in the primary cycle became effective – in the second half of the 19th century – it was obvious that the census criterion can only be used as an exception, for certain institutions with a small number of members. The situation of the degree of education of the population had as a consequence the increase of the patrimonial development possibilities of those who knew how to read, meaning also the increase of the general wealth of their countries. For this reason, the nineteenth century saw an unprecedented expansion of the idea of universal suffrage, with the Western hemisphere leaders Britain, Germany and the United States.

The development of education systems in the 19th century was accompanied by the increase in the size of national armies, quickly reaching figures of hundreds of thousands of soldiers. As an effect of this form of discipline of young people, a new increase in male literacy was needed, with effects on increasing the number of voters – legislators being forced to lower census thresholds.

In this situation, the moment of the beginning of the great conflagrations of the 20th century brought up an additional issue: the potential death of hundreds of thousands of young people in battles had to be compensated by lowering the voting age, to balance at least the value of their sacrifices. The two world wars were – from the perspective of expanding the right to vote – the most important source to legitimize the idea that all people belonging to a national community must be involved in the process of establishing state and local leadership. The huge efforts made by the masses of people without "aristocratic blood" eliminated any form of opposition, and the right to vote became universal, with a standard age – namely that of the civil age of consent.

The second half of the 20th century brought with it a development of communications at an unprecedented level, unimaginable by the fathers of political analysis literature – neither Aristotle, nor Montesquieu or Tocqueville would have imagined the ways in which at the end of the century the messages of any way could be sent or known. For this reason, the scientific literature in the field of public law has had to analyze certain new circumstances without necessarily resorting to the classics of legal, administrative and political sciences.

In addition to all these developments in communication, the second half of the 20th century brought with it a demographic explosion, so that in less than 75 years (1946 – 2020) the planet's population increased by 5 billion people – with the specification that of these, 3 billion have been born in the last 35 years²⁾. Suddenly, their public needs have put more pressure on the balance of the world's budgets, as well as on the planet's bio-system, which is forced to provide food to a population that has reached – perhaps – the maximum level of agricultural productivity.

The great technological progress of the second half of the 20th century brought with it the emergence of a network of computers connected to each other, this being called the Internet. Its ability to connect people has been particularly useful to researchers and people who need up-to-date information in their professional work, and from here to the transformation of this network into a huge universal library was only a step. This step was taken naturally, after 1990, and as a result we will notice the increase of the influence of the models of good governance in the world, at least at a theoretical level (because the practical aspect is influenced by other considerations).

Suddenly, the Internet has provided political leaders with examples of good practice, as well as cases where bad governance has shown its dimensions, so that the choice between the two perspectives of country administration has become easier to make and at the same time argued.

Just as fast, however, Internet access has given all citizens the opportunity to learn the same examples of good practice – or failure of administrations. Information is present for everyone, and the main language of the Internet is one of the easiest to study for average minds. For this reason, the literature on good governance is not only national (from a linguistic point of view), but especially universal, which offers at any time possibilities of information almost equal to the over 1.13 billion English speakers³⁾.

In addition, the technological development of recent years has led to the emergence of free online translations, which greatly simplifies the task of anyone who wants to have access to knowledge of the literature of good governance. Thus, the 4.93 billion people with internet access⁴⁾ can today have the chance to know the best practices of government and public administration in their own languages, in just a few seconds of searching.

Internet access has been accompanied by various ways of expanding relationships between people, and these sites recognized under the name of social media has achieved extraordinary performance, acting at the transnational level – with the most famous of them reaching a level of 2.74 billion monthly users, of which 1.82 billion are daily users⁵⁾.

No television or radio – or alone a newspaper – could ever have reached such a level, and this aspect is known to any rational man. At the same time, access to this huge site is

²⁾ B. Bostock, *These 12 charts show how the world's population has exploded in the last 200 years*, available at: <https://www.weforum.org/agenda/2019/07/populations-around-world-changed-over-the-years> (accessed on 20 October 2020).

³⁾ M.I. Teixeira, *The 20 most widely-spoken languages in 2020*, available at: <https://blog.lingoda.com/en/most-spoken-languages-in-the-world-in-2020/> (accessed on 20 October 2020).

⁴⁾ *Internet World Stats*, available at: <https://www.internetworldstats.com/stats.htm> (accessed on 20 October 2020).

⁵⁾ D. Noyes, *The Top 20 Valuable Facebook Statistics – Updated October 2020*, available at: <https://zephoria.com/top-15-valuable-facebook-statistics/> (accessed on 25 October 2020).

the gateway to universal, transnational and trans-civilisational links between people in any country, and this aspect of its global use allows sensitive causes to be not only national, but to gain interest and even free-money support of millions of people from other countries.

The social media networks accounts have a lower age limit, which is lower than that of the age of consent – implicitly of the electoral voting threshold. However, a like on Facebook is not counted from the perspective of age, and an avalanche of such appreciation – or criticism – on this network can come from anyone who has an account, meaning that the fate of public figures depends on discernment and the ability to analyze and understand the world of 13-year-olds.

Even though a significant number of civil laws establish the age of 14 as a presumption of discernment, it is not electorally relevant. However, the world of the Internet is suddenly eliminating this age threshold, and the number of people to whom a political speech will be addressed has increased by a few percent in each country.

Even if these percentages do not have the right to vote, they can influence the public status of any politician, and from here we will find a curious situation, related to the age of those who can quickly decide the rise or decline of a politician. Specifically, even if the age limit for voting is between 18 and infinite years, social media users are usually under 65 years old. At the same time, even though only 4.8% of Facebook users are over 65⁶⁾, their proportion as an electorate is 8% of the planet's population⁷⁾ (which is three times the number of users of this network). From the same perspective of the age of Facebook network users, we would like to note that 23.8% of them are between 18 and 24 years old, which is the beginning of life as a citizen with the possibility of exercising the right to vote⁸⁾. In this complex equation, the voting age discussions become more frequent and more passionate.

3. Voting age: lowering or keeping the same limits?

Discussions about who should vote are intrinsic to a democratic system, as they determine who gets to make the choice about elected representatives or outcomes in referenda. Questions about the age at which people should be allowed to begin voting are one important dimension of these debates and have been for a long time. The 1960s and 1970s saw extensive discussions in many Western democracies about the reduction of the voting age from 21 or 20 to 18 – and some countries have engaged with changes on precisely those dynamics more recently (such as Japan). However, more recently, countries in which there had been a decades-long consensus on the voting age at 18 began to contemplate whether an earlier enfranchisement at 16 might be more appropriate. While there are also other ideas being discussed, such as minimum tests for literacy (in our opinion, this question is the most important topic in 21st century elections, M.V.) and independent voting instead of a set voting age, major policy and campaign discourses have been focusing on the question whether 16 may be a better age for enfranchisement⁹⁾.

⁶⁾ S. Aslam, *Facebook by the Numbers: Stats, Demographics & Fun Facts*, available at: <https://www.omnicoreagency.com/facebook-statistics/> (accessed on 29 October 2020).

⁷⁾ H. Ritchie, M. Roser, *Age Structure*, available at: <https://ourworldindata.org/age-structure> (accessed on 29 October 2020).

⁸⁾ S. Aslam, *Facebook by the Numbers: Stats, Demographics & Fun Facts*.

⁹⁾ J. Eichhorn, J. Bergh (Eds.), 2020, *Lowering the Voting Age to 16. Learning from Real Experiences Worldwide*, Palgrave Macmillan, p. 1.

In legal doctrine the voting age debate tends to revolve around four general topics:

- A debate about legal issues, and the relationship between the voting age and other age-limits that are defined by national legislation or international conventions;
- Whether a lower voting age may affect the political engagement of young people;
- The issue of political maturity. Are 17-year-olds or 16-years old ready and able to get voting rights?
- What are the political consequences of a lower voting age, because the electorate will be substantially expanded, and this may affect election outcomes, and in the long term it may affect politics (from recruitment of politicians to political campaigns).

It should be noted that the debate on the voting age has not yet reached a critical threshold, because internet technology is still in its infancy, but in just a decade the number of its users will increase both numerically – remember, today there are 4.93 billion users from 7.8 billion world inhabitants – but also percentage in the planet's population. At the same time, the unification of the communication space that the Internet realizes every day will bring with it the influence of examples, as well as a greater uniformity of the civic education of the people, regardless of the will of the governments.

In 2007 the voting-age in Austria was lowered from 18 to 16 years in the course of a broader reform of the electoral law. Since then, at the age of 16 youngsters are allowed to vote in general, municipal, federal and presidential elections as well as in the elections to the European Parliament. Malta is the only other country to have lowered the general voting age to 16, and that only recently – in March 2018. In Germany, young people at the age of 16 are allowed to vote in municipal and federal state elections in some federal states. In Scotland, 16-year-olds can cast their vote in elections to the Scottish Parliament and this was also the case for the referendum on Scottish independence.

At the 2008 general election – the first at the national level at which 16-year olds were allowed to vote – the reported turnout of first-time voters was 88%. This corresponds to the average voter turnout and indicates a positive starting effect. At the next general election in 2013 though, the Austrian National Election Study (AUTNES) confirmed that first-time voters went to the polls far less than older voters. The reported turnout of the 16-to-17-year olds was 63%, which is significantly lower than the reported general turnout of 80%. Nevertheless, between 2013 and 2017 the political interest of Austria's youth rose again. Whereas in 2013 only a quarter of first-time and young voters defined themselves as very or quite interested in politics, the figure more than doubled ahead of the general election in 2017 and their likelihood of voting also increases. According to the AUTNES pre-election survey, an overall 86.9% of the 16-to-17-year olds were inclined to participate in the election¹⁰.

There is interest in the issue of lowering the voting age, including from the European Parliament, which hosts on its website including materials written by interested young high school students¹¹. There are also regional analyzes, including the Nordic Cooperation,

¹⁰ P. Schmidt, J. Edthofer, *Voting at 16 in Austria: a possible model for the EU?*, Elcano Real Instituto, Spain, available at: http://www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/zonas_es/europa/ari88-2018-schmidt-edthofer-voting-16-austria-possible-model-eu (accessed on 29 October 2020).

¹¹ For example, R. Zwolsman, *Suffrage for sixteen-year olds within the EU [should the EU lower the voting age to sixteen in future elections?]*, available at: <https://www.europarl.europa.eu/thenetherlands/resource/static/files/pdf/rosanna-sophie-zwolsman---suffrage-for-sixteen-year-olds-within-the-eu.pdf> (accessed on 29 October 2020).

which brings together Denmark, Finland, Norway, Sweden, the Faroe Islands, the Åland Islands, Iceland and Greenland¹²⁾. Australia has also an important debate on this topic too¹³⁾, but the proposal of lowering voting age from 2018 was rejected by Parliament¹⁴⁾.

What are the main arguments in favor of lowering the voting age?

According to several doctrinaires, the discussion must start from the fact that even before reaching the age of 18 – this being an almost universal threshold – a person has the right to work, being aware of his rights and to benefit from their own professional skills results. It can also be considered that the possibility of marrying before the age of 18 can be considered an argument in favor of the same proposal¹⁵⁾.

Another dimension of the argument is that it encourages the political maturation of young people, making them aware of the world in which they live, and the fact that there is a higher percentage of good faith among them is beneficial to the entire political sphere, largely dominated by the cynicism of people with life experience.

An argument in favor of the same lowering voting age is that the legal norms are understood by all persons with discernment, and because it does not appear suddenly on the day of reaching the age of consent, it would be necessary that dignitaries appointment to be made by all those who can respect and consciously use the normative acts. Moreover, in the official documents adopted in the last decades it is insisted that each social category should participate both in the elaboration of the normative acts that will be applied to it, as well as in the designation of those who will effectively create and vote for them.

Several arguments argue against this reduction in the voting age, however, related to the different intellectual capacity of young people, which is less oriented towards long-term thinking. The same idealism – wonderfully noble – contradicts the political and economic practices of adults, which are spread over a much wider range of ages.

Leading the affairs of a society – either of a smaller community or of an entire country – must sum up several qualities, among which that of knowing the past is very important. The importance of wisdom in fact underlines the need to know as many examples of political life as possible, because the world of states is not just one of cooperation and peace, and the year 2020 was no exception, despite the Coronavirus pandemic that affected all social activities on the planet.

Here, however, there is a distinction regarding the possibility that could be offered to young people aged 16 or 17 to vote in local elections, because the problems that the local public administration has to solve are closer to the citizens, they have a lower degree of abstraction and a lower perspective in terms of time, which is closer to a lower level of political education than that which should be required to be achieved in parliamentary elections.

¹²⁾ Nordic co-operation, *Youth, democracy, and democratic exclusion in the Nordic countries*, available at: <https://www.lnu.no/wp-content/uploads/2018/02/youth-democracy-and-democratic-exclusion-in-the-nordic-countries.pdf> (accessed on 29 October 2020).

¹³⁾ I. McAllister, *The politics of lowering the voting age in Australia: Evaluating the evidence*, in *Australian Journal of Political Science*, 2014, Vol. 49, No. 1, p. 68 – 83.

¹⁴⁾ Australian Parliament, available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1130 (accessed on 20 October 2020).

¹⁵⁾ Is true, the possibility to marriage before 18 is given mainly to women.

It is necessary to be very attentive to two other aspects related to the ways of governing.

First of all, educating the citizen is a process that must be done consciously from the first years of school – civics attitude can be learned and it can make correct connections with the moral norms and ethics of life in a community. At the same time, adult education is also needed to achieve better political participation – because future community leaders will be recruited among adults. Or, the continuous education of young people and adults must include not only the civic aspects, but also the good political and administrative practices. Hence, a discussion related to the redefinition of school and university programs, relative to the technological, political, economic and ecological challenges that will appear in the coming decades.

The second aspect is that of the ethnicity of the populations. The 21st century is no longer one in which nations are mono-ethnic, and one of the consequences of this mixture is that of more or less direct confrontation of some civil and political models. From this perspective, it is hard to believe that followers of one model can convince others of the truth of their own world perception. However, the forms of education of young people can lead to a unification of political and social practices, without guaranteeing such a result.

In the global report on the democracy index for 2019, conducted by The Economist Intelligence Unit¹⁶⁾, only 22 of 167 states meet the criteria to be considered fully democrats, and 91 of them are "authoritarian" (54) or "hybrid" (37). Continuing the analysis in the sphere of failed/fragile states¹⁷⁾ – namely those with inefficient administrative systems or little concern for improving the lives of their own inhabitants – out of 178 countries surveyed only 58 were considered "stable" in different percentages, and the other 120 are considered "fragile".

As it can be seen, it is not democracy and the rule of law that are the rule among the countries of the world, but insecurity, authoritarian rule, corruption and unethical struggle for positions of public dignity in the state.

Conclusion

For these reasons, the discussion about lowering the global voting age seems to be initiated too early, relative to the state of too much of the world – because among the less performing countries in terms of rule of law we find very important demographically names, of the order of tens and hundreds of millions of people. It is hard to believe that an emigrant from these countries will suddenly be the perfect citizen of another country, without any trauma and no mistrust about the political class.

Therefore, we consider that it would be more useful to discuss the professional qualities and the studies of the political class, in order to create a group of decision makers more able to understand and solve the problems that humanity and implicitly the countries will encounter in the coming years.

¹⁶⁾ The Economist Intelligence Unit, *Democracy Index 2019. A year of democratic setbacks and popular protest*, available at: <https://www.in.gr/wp-content/uploads/2020/01/Democracy-Index-2019.pdf> (accessed on 29 October 2020).

¹⁷⁾ The Fund for Peace, *Fragile States Index Annual Report 2019*, available at: <https://fundforpeace.org/wp-content/uploads/2019/04/9511904-fragilestatesindex.pdf> (accessed on 20 October 2020).

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