

Regional Trends of Compulsory Voting

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Abstract

Presented paper reviews one of the main issues for exercising democracy. Since the primary goal of democracy is to identify and implement the will of the people, compulsory voting can be considered challenging. The author provides detailed information about mandatory elections based on certain reasons and countries. It is clear that the institution has been adopted under a wide variety of different political circumstances, and seen as the solution to different problems. The author discusses the arguments for and against compulsory voting taking into consideration the different regional trends around the world. The issue is discussed in the cases of three different regions; particularly it presents the examples of Belgium, Argentina, and Australia. Based on the analysis of given cases, the main findings are made in the conclusion part of the paper.

Keywords: Compulsory Voting, the right to vote, Belgium, Argentina, Australia

Introduction

One of the primary goals of democracy is to identify and implement the will of the people, which can be expressed in democratic elections. Democracy means governance by the people, but what if the people do not have a desire to govern and participate in elections? At the end of the 19th century, 70-80% of voters participated in the Presidential Elections in the United States of America; however, this indicator dropped down to 50-60% in the 20th century. In the 1964 election, 38% of the electorate voted in favor of Lyndon Johnson, in 1984 Reagan was elected by a third of the electorate, and in 1996 Bill Clinton won the elections with a quarter of the electorate (Brennan & Hill, 2014). Based on these statistical data, it can be said that Americans failed to fulfill

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their civic obligations properly. Statistics from Canada are like those of the United States, and the figures in Switzerland are even lower (Brennan & Hill, 2014).

Low voter turnouts can doubt the legitimacy of the elected government and its mandate to govern. Maximizing the participation of the people in elections enhances the legitimacy of the outcome and the legislature's status as a truly representative body (Twomey, 2013).

Recently, the issue of compulsory voting has attracted more interest from both political and scientific circles. Increasing the activity of the electorate is a major concern in most democracies. Various proposals have been developed to maximize electorate activity, particularly e-elections, postal and Internet voting, and the increased intensity of election campaigns, although none of the above is as effective as compulsory voting. Supporters and opponents of compulsory voting often argue about the legitimacy of this concept.

The positive about compulsory voting is that it requires the participation of people from all groups in society, ensuring that their voices are heard and considered by the political elites. It may also lead to greater diversity in political parties and compromise in policy decision-making (Twomey, 2013).

The opponents have been arguing that obliging people to vote is anti-democratic: a right to vote must include a right not to vote. Opponents state that it is the quality of the vote that counts, rather than the number of voters. The focus here is on individual choice rather than the maximization of participation of the people in the electoral system as an end in itself (Twomey, 2013).

The presented paper discusses regional trends in the formation and development of the institution, the practices, and the results of different countries. For achieving the aim of the presented paper Author used Desk Research, including the data collection based on the study of Legislation and Court Practice of various states, the amendments made in legal regulations, and the changes influenced by them. The comparative research

method was used to analyze collected data based on which the main findings are presented in conclusion.

1. Regionalization of Compulsory Voting

Compulsory voting first was established in the 17th century American colonies, in particular, in Plymouth Colony, a fine for non-voting was introduced in 1636, in the Colony of Virginia - in 1649, in the Colonies of Maryland and Delaware - in 1715 and 1734, in the Colony of Georgia – in 1777 (Abraham, 1952). After the American war of Independence, electoral compulsion lost its popularity in the US and the discussion of this measure was not revived until the early 20th century.

Following its pre-history in Europe and North America, compulsory voting was introduced in the 19th and 20th centuries in Europe, Latin America, Australia, Asia, and Africa. All these trends were distinct in terms of influences and patterns.

Factors associated with the adoption of any institution differ from state to state and from period to period. Sometimes regional factors play a part in this process, but country-specific and regional factors may not tell the whole story. It should be defined whether there are common elements that led this institution to be introduced across a very diverse range of states (Birch, 2009). While discussing this issue, 3 countries are chosen for proper analysis considering the temporal and geographic context. These states vary not only by location, but also differ regarding political and socio-economic development.

1.1. Belgium

1.1.1. Historical Overview

Belgium is one of the few developed and democratic countries where mandatory participation is still used. Yet, compulsory voting has always been an issue for debate in Belgian politics. Pros and cons have always argued about the legitimacy of the mentioned issue (Pilet, 2005).

In Belgium Compulsory Voting system first was introduced in 1858 by conservatives; in 1865 the commission studied it in detail for reducing electoral fraud; in 1887 the progressives presented it in their electoral campaign program (Quiri, 1908).

Before 1983, only citizens paying taxes were eligible to vote; in 1878, for local elections, some criteria of intellectual capacity were also introduced. In 1893, the right to vote was granted to all men above the age of 21. “Yet, the universal suffrage was moderated by a plural voting system. One extra vote was attributed to citizens paying a certain amount of taxes and to citizens having children. Another extra vote was attributed based on the intellectual capacity of the citizen, of the degree of education” (Pilet, 2005). According to Van Eenoo, “the electorate grew from 136,755 to 1,370,687 voters (853,628 with one vote, 293,678 with two and 223,381 with three)” (Van, 2003).

The system of compulsory voting was adopted at the same time, in 1893, as the natural complement of the universal franchise by 94 votes to 38 in the Chamber and by 58 votes to one in Senate (Stengers, 1990). Despite its adoption, the opinions differ; the same people criticized both - the extension of the franchise and the obligation to vote.

At that time arguments were supporting mandatory participation, in particular:

- The guarantee of the legitimacy of elections by ensuring that results reflected the popular will;
- Citizenship rights and duties (Pilet, 2005);
- Prevention from bribing opponents’ voters not to go to the polls (Robson, 1923).

According to Stengers, partisan motives were prominent also. Mandatory participation was considered as a “corrective” to universal suffrage, which granted the franchise to a large number of working-class. It also was the way to prevent radical forces from having a disproportionate influence on outcomes (Stengers, 1990).

Among the opponents of this institution (mostly conservative Catholics and liberals), the obligation to vote violated individual freedom. The same argument had those who

proposed absenteeism. According to them, it is one of the ways to express one's resistance to the political offer (Pilet, 2005).

Following its initial introduction, compulsory voting was not widely discussed in Belgium until the 1970s; it was effective in increasing turnout and acceptance by the population. In the 1970s, when the Netherlands abolished the same system, in Belgium the subject was re-introduced into political dialogue for the same aim.

In the early 1990s, the issue of compulsory voting occurred as a turning point. The Flemish Liberals changed their approaches for a more libertarian and individualistic democracy. Their new approach included certain proposals, with the cancellation of compulsory voting (Pilet, 2005, 7). The ecologist parties initially were also for abolition, but in 1995, the francophone Ecolo party argued for the maintenance of the institution on grounds of the greater legitimacy it afforded (Pilet, 2005, 9). Socialists and Christian-democrat forces wanted to maintain compulsory voting because it represented their ideological heritage and it was one of the main struggles they had been engaged in when first becoming a major force in politics (Pilet, 2005, 10).

If we compare the political approach concerning mandatory participation, it becomes obvious that supporters and opponents, the argumentation of pros and cons, is almost the same in 1893 and 1990s. For example, in 1893, the liberals and Catholics were highly divided, one century later the picture is fairly alike; the proponents and the opponents are the same parties and the arguments are also the same.

Electoral participation was introduced in Belgium as a combination of normative and partisan reasons; it was initially viewed as an expansion of the franchise, and it has remained in force for two main reasons: due to lack of a strongly coordinated opposition and uncertainty as to the likely effects of making electoral participation voluntary (Birch, 2009).

1.1.2. Compulsory Voting in Modern Belgium

In Belgium, every 18-year resident citizen with the right to vote is obliged to participate in elections (Belgian constitution, article 62). Different rules are applied to the Belgian citizens living abroad, in particular, voting after the registration in their embassy. Since 1999 EU citizens, and from 2004, non-EU citizens, living in Belgium for at least 5 years, have the right to vote in local elections (Loi du 23 mars 1989 relative à l'élection du Parlement européen, article 39). After the registration process, the compulsory voting system concerns them as well.

Thus, a voter can be fined for nonparticipation: they will receive a letter from Judiciary asking them an explanation for not showing up (Pilet, 2005, 2). In case of a fine, it goes from 25 to 50 euro for the first absence and may increase up to 125 euro for the second. In case of not voting 4 times during 15 years, the voter will be dismissed and won't be able to vote for the next 10 years. As well as he will not be able to apply for an appointment in the civil service. Legal constraints are very rarely used since most electorate always meet their duties. For example, in 1985 only 62 out of 450,000 voters (0.015%) did not fulfill their civic duty to vote and therefore were sanctioned (Vanmaercke, 1993). These sanctions are not often used, like compulsory voting in Belgium is more of a moral obligation than a legal one. Due to this reason, a majority of voters always go to the polls. According to statistics from the 1981 to 2019 elections, the number of citizens who participated in the elections has never been less than 88% (Pilet, 2005, 3).

Turnout results for Parliamentary elections in Belgium (European Union):

Parliamentary Elections		
Year	Voter Turnout	Invalid Votes
2019	88%	6%
2014	89%	6%
2010	89%	6%
2007	91%	5%
2003	92%	4%

Based on the above-given table, we can say that Belgium is on top in European Union in terms of turnout. The high rate of attendance in Belgium can be justified by voters' belief that the legislation is efficiently applied. On the days before the election, all media advert that voting is compulsory, and that citizens can be fined for non-attendance (Pilet, 2005, 3).

1.2. Argentina

The different regional trends can be identified in Latin American Countries, 11 of them exercise compulsory voting. Argentina introduced this institution in 1912 as a part of the so-called “Sáenz Peña Law” that democratized some aspects of suffrage; according to mentioned law, it was the beginning of modern electoral competition in Argentina.

Before 1912, the elections in Argentina were characterized by an elevated level of corruption, and the left-wing parties had little chance of electoral success. Electoral fraud and abuse were the reason for questioning the legitimacy of the political system. It was followed by regular protests and boycotts led by the radicals, whose demands were secret and compulsory voting (Díaz, 1983, 9).

As the result of negotiations between Yrigoyen² and Sáenz Peña³ the law was adopted that ensured effective universal suffrage, together with secret voting and mandatory participation. The obligatory nature of the franchise was one of the aspects of the law that was most contentious during parliamentary debates; some thought that it would only serve to disguise the true extent of electoral indifference, though it was also argued that such a measure would help to overcome apathy. The latest argument finally won the day when penalties for non-participation were reduced in the final version of the law (Díaz, 1983, 77-78).

The result of the reforms was not only the integration of the mass public into politics and increased political stability, but the radicals became the dominant political party, and Yrigoyen was elected as a president in 1916, 1922, and 1928 (Birch, 2009, 64). It worth mentioning, that effective sanctions for non-participation have never been applied; so we could not conclude, that compulsory voting significantly contributed to the mentioned result.

According to Birch, the Argentine case highlights the role of legitimacy crises in bringing about reforms that are not in the immediate political interest of those who introduce them. “The situation had by the first years of the twentieth century grown so tense that legally incorporating the mass population into electoral politics was seen as preferable to retaining the status quo of violent protest and non-participation, even if it meant that those who introduced the measure lost politically as a result” (Birch, 2009, 64-65).

Based on the statistical information of the Institute of Democracy and Electoral Assistance, the turnout in Argentina for Parliamentary and Presidential elections from 2001 to 2019 is as follows (Institute for Democracy and Electoral Assistance (IDEA)):

²Juan Hipólito del Sagrado Corazón de Jesús Yrigoyen, the first president of Argentina, elected with secret and compulsory voting (1916 – 1920, 1922-1928).

³Roque Saenz Pena, president of Argentina from 1910-1914.

Parliamentary Elections		
Year	Voter Turnout	Invalid Votes
2019	81%	7%
2017	77%	4%
2015	81%	3%
2013	77%	4%
2011	79%	5%
2009	72%	5%
2007	73%	9%
2005	71%	8%
2001	75%	21%

Presidential Elections		
Year	Voter Turnout	Invalid Votes
2019	81%	3%
2015	81%	3%
2011	79%	5%
2007	72%	6%
2003	77%	2%

1.3.Australia

1.3.1. Historical Overview

As mentioned in previous chapters, compulsory voting exists at either the national or the regional level in 23 countries, although its enforcement and effectiveness vary considerably between them (UK Electoral Commission, 2006; Institute for Democracy and Electoral Assistance, 2012). Australia is unusual in having introduced compulsory electoral participation as an isolated measure, not linked to other changes to the electoral system (Gow, 1971, 207).

Compulsory voting was first proposed in Australia in 1912 (Commonwealth Electoral Act 1911. 27/03/1912.). At the federal level, the Compulsory Voting Act 1915 introduced compulsory voting for referenda but was restricted to those referenda that were proposed to take place in 1915 (Twomey, 2013, 286).

The low attendance at the 1922 federal election, just under 58%, became the catalyst for the establishment of compulsory voting at the national level. The experiment in

Queensland had proved that it was successful: over 82% of electors in Queensland voted at the 1922 federal election, without legal compulsion (Crisp, 1950, 84-85). Other states adopted compulsory voting:

- Victoria – 1926;
- New South Wales and Tasmania – 1928;
- Western Australia – 1936;
- South Australia – 1942 (Bennett, 2005, 4).

Compulsory voting was supported for several reasons. According to Hughes, "the left (the Labor party) already used a form of social compulsion (via trade unions) to get its supporters to the polls, with the implication that legal compulsion would rectify the partisan imbalance" (Hughes, 1966, 82). Party costs could be reduced because voters would no longer be in a position to demand transport to the polls (Gow, 1971, 207-209). Other arguments in favor were "a means of raising turnout, achieving greater legitimacy and better democratic decisions, as a tool of political education, and they viewed voting as a duty not only a right" (Hughes, 1966, 81-83). The opponents argued that it was an infringement of liberty, that it would be difficult to enforce, and that it would lead to a higher number of invalid ballots (Birch, 2009, 61-62).

Compulsory voting still appears to have been widely accepted in Australia; nowhere in Australia have been attempts to abolish compulsory voting once even 90 years later, in contradistinction to Belgium, where its abolition is frequently debated.

According to Statistical information (Institute for Democracy and Electoral Assistance (IDEA)), the turnout for Parliamentary Elections in Australia is as follows:

Parliamentary Elections		
Year	Voter Turnout	Invalid Votes
2019	91%	5%
2016	91%	5%
2013	93%	6%
2010	93%	6%
2007	94%	4%
2004	94%	5%
2001	94%	5%

1.3.2. Interpretation of the term "To Vote" and Australian Judicial Practice

There are some questions because of a lack of clarity in the federal legislative provisions and an apparent disjunction between legal obligation and the practical enforceability of the law.

It should be noted that the term "compulsory voting" means that only registration and attendance at a polling place are compulsory (Hill, 2004, 481). According to Subsection 245(1) of the Commonwealth Electoral Act 1918, "the duty of every elector to vote at each election." Subsection 245(15) makes it an offense if an elector does not vote. No offense is committed if an elector has a justified reason for not voting, such as sickness, incapacity, or the belief that he or she has a religious duty to abstain from voting (Horn, 2010; Victorian Electoral Commission v. Hinch, 2012). In practice, the elderly,

prisoners, and those living in remote places are not fined for not voting (Kelly, 2011, 99, 110).

There are different cases regarding the term "to vote". The question arises whether it means to mark the candidate on the ballot, or just show up on elections and do not mark anyone. There was a complaint, that sometimes electors breach the compulsory voting provisions by "(a) receiving a ballot paper and immediately placing it in the garbage bin; (b) receiving a ballot paper and placing it immediately in the ballot box without marking it; or (c) marking an informal vote on a ballot paper and then depositing it in the ballot box" (Starke, (ed), 1985, 129-131). It was argued whether they should be prosecuted or not, while those who had not attended the polling booth had been prosecuted.

In a case *Faderson*, Crockett J of the Supreme Court of Victoria stated that it is not an offense to record an informal vote; failure "to vote" meant failure "to obtain a ballot paper". In reaching this conclusion court distinguish the wording of subsection 128A (1), which imposed an obligation on an elector "to record his vote" and subsection 128A (12), which made it an offense to fail "to vote" (Twomey, 2013, 290). This distinction in wording no longer exists under the current provision.

2. Compulsory voting in the contemporary world

Except for Eastern Europe and the former Soviet Union, there are several states with a compulsory voting system. According to statistics, 23 states⁴ currently enjoy compulsory voting; half of them are from Latin America. It is also noteworthy that about 50% of these states have adopted it since World War II. Some of them impose sanctions for non-participation, and about two-thirds consider it as a legal liability guaranteed in the constitution:

- According to Article 67 of the Constitution of Turkey, participating in elections is a right, though voting is mandatory. A fine of 22 Turkish liras is foreseen for

⁴Argentina, Bolivia, Brazil, Chile, Mexico, Peru, Venezuela, Belgium, Thailand, Singapore, Australia, Turkey, etc.

failure to fulfill this obligation. However, this sanction is not applied in practice (Constitution of Republic of Turkey, 1982, article 67).

- In Singapore, voting is also an obligation. Like in other countries, in the absence of a valid reason, a person is fined \$50 and removed from the electoral list for subsequent elections. He/she will be re-registered upon his/her application after payment of the fine (Electoral Department of Singapore).
- In case of failure to fulfill the obligation, the voter is obliged to submit an explanation indicating the legitimate reason for the absence to avoid imposing sanctions. Otherwise, a fine with the amount of 20 Australian dollars is established (Commonwealth Electoral Act 1918, Section 245).

Since these countries vary in terms of geography and temporal context, it is difficult to make a general statement about the institution, in particular about the specifics of the institution.

The development and results are affected by regional patterns as well as other factors. According to some scientists, most of these states have Catholic majorities, and "they speculate that it is natural for Catholics to believe that citizens have moral obligations not only towards the God but also towards the State" (Massicotte, Blais, and Yoshinaka, 2004, 7). These mentioned states are mostly allocated in Latin America. Outside Latin America, the only states with Catholic majorities that have compulsory voting are Belgium and Luxembourg.

One of the main factors mentioned by scientists is colonial heritage. The presented institution is not found in some British colonies; meanwhile, they are mostly adopted in Spanish colonies before it was introduced even in Spain (1907).

Genetic factors also are significant in determining the use of this institution in the contemporary world. According to Birtch, "it was adopted in various places at different times, usually in association with other democratic reforms. Frequently this involved a change to the constitution that was then difficult to alter" (Birch, 2009, 72-73). It should be highlighted that the adoption of the institution is mainly made in developed rather

than new states; hence, we find it in states with the longest traditions of statehood (Birch, 2009, 72-73).

CONCLUSION

The presented paper provides a review of states and reasons regarding mandatory electoral participation. It became clear that the institution has been used in a very wide variety of contexts; it has been adopted under a wide variety of different political circumstances and seen as the solution to a range of different problems.

Following fundamental human rights, the individual is granted the choice to decide whether to participate in the electoral process or not.

Despite that, the degree of legitimacy of the government depends on the number of voters, how legitimate can be considered the government elected by voters, who went to polls against their own will. Various researches have shown that there are blanker and error ballots during compulsory voting than in countries where there is no compulsory voting rule.

According to the analysis of the electoral practices of different countries, it was found that at different times the ruling political force used certain new methods, which, according to their position, served to maximally regulate the electoral process and eliminate the gaps. However, these methods served to control the electoral process and thus violated the principle of free elections.

Supporters of compulsory voting argue that a large number of voters in the elections ensures the high degree of legitimacy of the decisions made by the democratically elected government. Political parties do not have to spend a large number of finances to convince the population of the necessity to participate in elections. In their view, if democracy means people's governance, all citizens must go to the elections and elect their representatives. According to their opinion, supported by Australian and Belgium cases, accurately administered compulsory voting can provide an economical and

genuine solution to the problem of low involvement, which if rationally managed, may be well tolerated by citizens.

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