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SOCIAL DARWINISM AS THEORETICAL APPROACH TO DISCUSSION ABOUT UPPER LIMITS OF SUFFRAGE

Lukáš Vilímek – Daniela Škutová*

ABSTRACT

The question of the possibility to implement the upper limit of voting right is rather sensitive yet on the rise in democratic societies. The main goal of the research is to concentrate on moral and social consequences of eventual introduction of such limitation, and presentation of related pros and cons. Secondary, it aims to contribute to real and substantial professional discussion about this sensitive and specific topic. The article intends to provide a rational explanation of relevancy of our dilemma and its consequences for development of democracy and credibility of elections, as well as application of Social Darwinism theory and theory of public choice on the researched topic. Methodological framework in our work includes analysis of political scientists' and thinkers' works. The advocacy and criticism of the topic of our research is made by synthesis of their works. We are analyzing as well the legal documents, which create normative obstacles to our intention. Eventually, the authors reached coherent insights on this dilemma and conclude that even if risks are present, the upper limit of suffrage could lead to stability and credibility of elections.

Key words: citizen, active voting right, elections, Social Darwinism, Public Choice Theory

Introduction

Contemporary state of democracy and society created space leading to renewed discussion about topics such as politics and morality, especially when it comes to the topic, which is subject of our research. Suffrage in intentions of contemporary development of democracy represents many challenges, which we can try to solve. The approach of presented paper is twofold. In respect of the

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democracy, we are focusing on consequences of possible introduction of a new limitation of active suffrage, especially in area of participation of people in political affairs, i.e. in elections. We will explain dilemma, where we will describe both sides – pros and cons in the works of various relevant thinkers and representatives towards our chosen question. Second level represents social and moral consequences resulting from restriction of suffrage and focuses on a question: who should plausibly, as well as legally legitimise the power in the elections with regard to political rationalism and effective absence of the age limitation of citizenship in relation to right to vote, as enshrined in the Constitution. On this level we have an intention to review the possibility to clearly set up limitations in respect of universal suffrage. We are solving dilemma: Why should we set up any limitation at all? Is it possible to set up this limit and thus improve the quality of democracy, public choice and elections as such? The political elite is utilising institute of elections to reinforce their personal political ambitions, however, in order to do so it needs the consent of the people. The society is changing. People (citizens) prefer personal responsibility for forming their future (what we consider to be rational argument). This change can mean a detachment from old conservative structures and conventions of contemporary system.

We implement various views in order to proceed with our research, based on the residual concept of the problem. To our advocacy and criticism we implement approaches from various scientific disciplines, including Political Science, Philosophy, Economy, Law and Biology (**Darwin's** theory of evolution). Due to the fact that our paper is written from political science perspective, we are focusing our attention to contemporary state of elaboration of topics of citizenship and elections from the perspective of current authors and representatives, especially authors of public choice theory (together with Social Darwinism, we will try to make an analogy of them. This way we contribute to advocacy of our research). Basically, with our intentions and main goals of our work, we set up following hypothesis: 1. Establishment of upper limit on universal suffrage is not representing moral or legal problem; on the contrary, it can lead (paying attention to several risks, listed later in presented paper), to reinforcement of the stability and credibility of electoral process. 2. From the perspective of rationalism in political philosophy, is there conflict between morality and policy, with reference to Social Darwinism.

Validation of hypothesis will be fulfilled through method of synthesis of advocacy and criticism of our subject. This will have universal scope. The authors of the paper conducted also empirical research in this area. Research has focused on young

people and their electoral behaviour. Research will be evaluated in author's diploma thesis.

1 Social Darwinism as an approach to discussion about upper limits of suffrage

1.1 Subject and resources in application of investigation of suffrage

The right to vote or suffrage in its active form (included) represents one of the main pillars of democracy. The fight for its achievement was the subject of hundreds-year-long efforts, which finally brought us to contemporary form of democracy. The question arises here, if we can, in some way, advance the development of institutions such as the right to vote, elections and other derivatives of democracy. This paper shares common basis with the right to vote, however, the understanding of this right will be determined by ontology or approaches anchored not exclusively only in the political philosophy, which study man from a specific point of view. **Darwin's** theory of species, which has found its important substantiation in its view of a man in the philosophy as well, led us to the numerous questions in the spheres of morality, ethics and policy, too. Especially, the questions arising from the **Darwin's** theory, as well as the theories and views of other thinkers and philosophers, focused on the subject of policy, will be fundamental for the discussion of presented research. At first, it is necessary to explore the basis of discussion about the possible suffrage changes.

Let us start with a citizen. A citizen is a member of a particular state – he/she has citizenship of that state. Citizenship is either conferred automatically at birth, or it can be granted to a person. There is no age or another objective barrier, which does not allow individual person, whose parents are citizens of the state, to receive citizenship. On the other side, exercise of civil rights is restricted by age (or age barrier), or some other realities. These realities are set by law of a particular country (Kiczko, 1997). We can continue with the term suffrage. We differ active (right to vote) and passive (right to be voted) suffrage. In terms of the conditions of implementation of this law, well known principles apply: suffrage is universal, equal, direct, and confidential. The issue of universality emerges here, too. *“Nevertheless universality is restricted by age census, citizenship and legal capacity”* (Volner, 2009, p. 122). In our work we will be interested in the active suffrage, it means the right to vote – to participate

in elections and express our will by this way, thus – together with other citizens (and their votes) creating the representative body. This body is intended to represent citizen's interests (or interests of the majority). Realization of the suffrage is ensured by elections. *“Elections represent one of the norms of democratic political behaviour, which are nowadays often derived from human rights and their ensuring through the examination of the will of majority”* (Krejčí, 2006, p. 39). Elections provide regular exchange of governing representatives of the will of people who stem from elections carried out according to predetermined democratic rules. This is also one of the many possible characteristics or definitions. **Peter Kresák** understands elections not only as the processes of creation of representative bodies, but also as certain form of reflection of political opinions in society- which supports the creation of the whole image of society and its interests (Kresák, 1997). Naturally, these facts are indisputable in contemporary modern society, but they do not contain the meaning we want to focus on. We are interested in a specific meaning from the time perspective. The time is always progressing. For that reason the elected representatives of a state lead the state forward, to the future - either near, or distant. In this case, both aspects are important. Just like the main goal of a man (and civilization) is to give life to descendants, thus ensuring of the continuation of their own species (civilization), the main goal of a state as an institution is to survive (we can find inspiration in **Hobbes'** Leviathan). But the state should not be only intended to survive and a man should not only “preserve its own species”, but they should develop themselves. To develop the way they want. In the case of a state, key determinant is a majority. Therefore, who else has the right to decide about their own future in the state than citizens themselves? It is possible that these formulations have been the subject of discussions, but the aim of this work is to revive them and confront them with the problems and challenges of the modern era. The right of the citizens is indisputable in this case; however, does it relate to everybody in the same manner? More to the point, who in the society of citizens has the highest authority and right to decide about its own future? According to us, there is a following answer to this question – a man has the right to decide *a priori*, and *not ex post*, about his/her life and the way how individual person will live his/her life (including the creation of values). We can make a parallel with a state for this case. Which citizens have the most authority to decide about their own future? Those who are in pre-productive, productive or post-productive age? In the future, which category will be creating the values and participate in

development of society as well as development of a state? More questions stem from this: what do persons in pre-productive and productive age need to be able to do their work properly and dignified with reasonable appreciation? The answer is conditions. And who creates such conditions that the society inside a state is able to work towards development and progress, in the spirit of dignity and reasonable quality of life in order to allow the society to create values of its era? These conditions are almost entirely in competence of a state. Based on stated facts, it is clear that young people and people in productive age have the greatest legitimacy in decision making about a future direction of a state. So what is the reason that especially young people give up these rights and great power? Is it because they miss motivation? Alternatively, do they miss the interest, or belief in possibility of change for better conditions? This way we reached another aspect, which is suffrage (active). These basic points and mentioned reasons will represent the main subject of presented paper and we will try to find answers to the outlined questions.

Problems of voting behaviour, voter turnout and participation, as well as other forms stemming from democratic system focusing on young people, especially students, are analysed in the work *"How we learn democracy at school"* (2008) by **Ladislav Macháček**. In this publication, he deals with the questions of teaching of socio-scientific subjects (Citizenship Education, Civics, etc.), political awareness, motivation and interest in politics in general (with using examples of school councils and self-administration at schools and universities). In his another work called *"Civic participation and voting behaviours in Slovakia"* (2010) he analyses civic and political potential of the young people in Slovakia and voting behaviour of the first-time voters in the European Parliament elections (Macháček 2008, 2010). Both works as well as focus of their author on the issues of political participation of young people represent an important base for research of these issues in Slovakia. In our research, the topic of participation of young people on the political life and limitation of active suffrage, i.e. establishing its upper limit, represent some cleavage, which is a cornerstone of this paper. We will search support for our basis in philosophy of thinkers, who we *ad hoc* consider as key, until we end up with a thinker, who has a special meaning for our work. Finally, we will focus on parallels of perception of our question in rational choice theory.

1.2 Development of political thinking in searching of the right to vote

Thomas Hobbes, British thinker of the Social contract theories, with his book *Leviathan* represents the first basic point for us. His theory of mortal God (who is represented by the state or political body, respectively) provides the point of departure for our considerations. *Leviathan*, as a representative of authority and order, tries to survive in the time and space, or to preserve his existence by specific means. (Hobbes, 2009) For the needs of our work, we can transform *Leviathan* in a figurative meaning to the role of society (after all, the state itself is not entity, but it is an institution created and ruled by people). According to **Hobbes's** theory, the role of society is to survive. This fundamental goal of the society (humankind, humanity ...) can be reached by many ways. However, it is necessary to take into account the aspect of time, which is dynamic (it is changing and moving forward all the time). With its progress many new challenges, or their transformation, for the ways of surviving of society, are created. Suffrage is an example of such a transforming challenge. It interferes into the development of the society in this era, when, according to **Peter Kresák** and **Oskar Krejčí**, the democratic system represents systemic mirror reflecting interests and will of the general public. Nevertheless, do this "mirror" accept interests of the citizens really in a relevant way?

Another philosopher, whose thinking has impact to this issue, is **Georg Wilhelm Friedrich Hegel**. This German representative of the classical philosophy at the turn of the 18th and 19th Century has the key importance for our issue with his ideas and polemics about freedom, morality and ethics. From the view of a man and freedom, **Hegel** sees the freedom as the form of realisation or profiling of a personality. This freedom should be accepted and respected by other individuals. It led to the necessity of creation of an institution, which should make such development of freedom possible. As a theorist of state, he saw in this institution the highest element of society (precondition of the existence of society). In the question of setting the borders between legitimacy and morality he puts a state (and his authority) above all moral values. Morality represents partial segment and a man who disposes of morality, is this partial segment (Hegel, 1992). Morality and politics represent very broad and complicated chain of disputes and discussions among thinkers for many centuries. Probably the most famous theorist was **Niccolo**

Machiavelli, who divided morality from politics and analysed politics independently. Nevertheless, the morality is seen in philosophy again. We can use work of **Hegel** as evidence. Considering the aim of this work, it is useful to point out the high sensitivity, especially, when we *de facto* want to abridge some group of citizens of right to vote in the case of establishing the upper limit of suffrage. Consequently, we face the moral problem, which needs to be thoroughly analysed. What more, we need to think about the both sides of this problem. It means to think both about the morality of abridgement of right to vote versus the morality in the case of “possibility” to decide about the future primarily by the people who are close to productive age, or who are currently in productive age. National economy itself is made largely by working citizens whose interests in policy direction can be in opposition to the interests of citizens in post-productive age; and formation of representative council is influenced in any level by this. Moral split and threat emerges here. Adoption of such law could lead to demoralisation (or social exclusion of seniors from political and social life) and this would have without any doubt negative impact. Since **Hegel** puts state about morality (and moral values), we can come to a conclusion that state and its interest, or its *ad hoc* surviving, represents higher interest (higher will) and follows higher goal which should be fulfilled (or fulfilling). Surviving is probably a fundamental goal of living organisms and we will draw a conclusion, in a figurative meaning, throughout the application of this fact to the present and analysed issues. Nowadays, it is not enough to only survive the life, but there is a natural desire to live a good life (inside civic society, too). A man reflects his interest in the election of his representatives in the system of representative democratic form and he fulfils his desire in some level or tries to influence it by this. *“He is using voting as the way of taking decisions in searching of the most appropriate among several candidates and because in this vote among candidates some group chooses them, which transfers some of its original competencies on the future office holders by this vote. It means it is a bottom up selection ... elected person is granted by some power over these who elected him by the vote”* (Krejčí, 2006, p. 41). This is the nature of voting (elections) in current days. Civic surviving of a man is ensured by elections. Political elite creates policy, defines the course of it, affects public events domestically (and internationally, too) and determines the development of society by this. In this place, a man meets the aspect of “desire for a good life” and he sees his main interest in the fulfilment of this desire. Interests of various age categories are naturally different, but society has permanent

dynamic form (it is developing itself). For that reason, it has no logic to be decided about the future of society by an individual, who, with a high probability (from the objective reasons), will die before this future comes. However, it could be considered as immoral if such individual would be excluded to the edge of society as a result of this restriction. This is a dilemma that comes after the confrontation of the restriction of suffrage of one side and morality and ethics on another side. Alternatively, why not to grant suffrage to all people? To find the answers to all of these questions and sub-questions can be difficult and it would be necessary to use knowledge of psychology, electoral behaviour and branches, which focus on these issues.

Next we focus on **Auguste Comte**. His theory of positive philosophy and his view of society can provide us with some form of explanation of justness of implementation of the upper limit of suffrage. **Comte** sees society as an organic entity. This society is made up of units – social groups that all have their own role. Each role for each social group is unique, but they are connected by general goals, which lead to the creation of a state. **Comte** had an opinion that the term law should be excluded from politics. Social groups are regulated and connected only by obligation of all against all – everyone has obligations to all (it means he *de facto* prioritised the society before individual) (Kulašik, 2006). The development of society is determined by various factors, which he divides into primary (development of personality and soul), and *secondary* (we can talk about objective factors such as race, climate and life expectancy). These factors are able to influence the progress only by the aspect of time (accelerate or slow it). He divided progress to four categories – material (external environment), physical (human nature), intellectual (transition from religious and metaphysical opinion to positive opinion) and moral (development of collectivism and moral feelings) (Buocová, 2006)

For the purposes of our work we will at first specify social groups in more details. We will be interested in the group in pre-productive, productive and post-productive age. All of the groups are connected by general goals (for example to survive) and united in a state. Fundamental basics are understandably different in all groups, due to natural factors. For that reason, each group defends its own interests and its point of view. Dilemma comes at the moment, when we realise, from realistic perspective the fact, which is in the conflict with the development of society - and society is dynamic and moves forward. Therefore, it would be logical a social group that will feel the consequences of political decisions the most will have a primary role in deciding

about the course of development – i.e. the group in pre-productive age. Relevance of this claim comes from logical judgment, however, the majority of this group does not have suffrage or, if it does, it does not use it for different reasons (one of the reasons could be the turnout of a social group of people in post-productive age – the problem of motivation). Nevertheless, when this social group does not have suffrage according to relevance or has set some direct (restriction of suffrage by law) and indirect (motivation) obstacles by fulfilment of suffrage, how is it possible that the suffrage was not restricted in its upper limit? These considerations represent the same problems of moral and ethical character, but we can use the stated logical claim in the favour of the social group in pre-productive age. **Comte's** exclusion of law from politics and establishment of obligation of all against all together with the **Kant's** idea of moral imperative allow us to formulate following synthesis for the purposes of our paper. Obligation of social groups in pre-productive and productive age is to take care of social groups in post-productive age (their social and physical needs) and obligation of social groups in post-productive age is to leave the other social groups possibility to vote for their future which will be the most determining for them. In terms of progress and its categories, we can define the cleavage between material and moral progress. They are both in the antagonist position against each other in the question of restriction of suffrage. Politics has more materialistic character (enforcement of interests and distribution of goods); where the social groups in pre-productive and productive age have logically, in the spirit of our work, more authority to make decisions about the future of politics. Moral progress is set on the other hand. Material and logical (rational) character of politics is deformed by this moral progress and it makes from the exclusion of suffrage (of people in post-productive age) something that is usually taboo for the current society.

In the period he lived in, **Friedrich Nietzsche** opened some sensitive themes by his thoughts and his philosophy considerably influenced some other authors (mainly critics) and political representatives (Hitler) towards “more antisystem thinking”. We do not want to connect **Nietzsche** with the crimes against humanity, which has some basis in his thoughts, too. His thoughts had less conceptual form, but were considered as uncomfortable and rough. However, this thinking opened several themes (or continued in themes that had been opened already) and inspired thinkers to take his opinions into account. His view at the issues of moral values is obviously more radical: *“Criticism of moral values is necessary, the value of these values must be reviewed – and it*

is also necessary to know the conditions and circumstances how these values were created, evolving and developing.” (Nietzsche, 2002, p. 12) **Nietzsche** is continuing in his polemic in the work *Genealogy of morality* and raises an issue, whether morality is really guilty for the fact that mankind failed in reaching its highest development. He saw this development as possible. Furthermore, he talks about aspects that determine it – he sees a man as an animal - he was created by nature which gave some characteristics to him, which led to his morality – ability to make promises, forgetfulness, his will, memory of will and responsibility. These characteristic lead a man to “*morality of morals*”, which together with straitjacket makes a man *predictable*. Responsibility represents some eventual intermediate product, which leads a man to sovereignty and it leads to the dominant instinct – *conscience*. Moreover, it has the most coincidence with morality. (Nietzsche, 2002) **Nietzsche** provides strong arguments with his philosophy. We think that it would be possible to use them in favour of the main question of our work. It is not a surprise – **Nietzsche**, as well as the topic we are interested in, is very specific and evokes passions and antagonistic opinions. **Nietzsche**’s thinking can serve as a proof that morality and ethics can serve as an obstacle for adoption of law, which would restrict the suffrage of seniors. It is immoral to harm someone by this law and it is absolutely irresponsible. We could fulfil the premise of **Nietzsche** by this. By this premise, he claims that it is morality what causes that society cannot move to the higher level of its development. Nevertheless, is it possible to consider the deprivation of suffrage of some particular social group to be the “higher level of development”?

1.2.1 Social Darwinism and Rational Choice Theory

English biologist Charles Darwin caused great disputes and movement in the whole ontological thinking as well as sciences with his theory of animal species, their origins and mainly the origin of man itself, which was published in his works *On the Origin of Species by Natural Selection* (2007) and *The Descent of Man* (1970). Social Darwinism can serve as a proof that Darwin’s theory had important impact on humanistic and social sciences, too. To understand application of Social Darwinism to our topic, we offer the following quote: “*The more experience and intellect the one has, the sooner he understands more distant consequences of his acts. (sic) Our sense for morality or conscience has become very complicated feeling, which results from the*

social feelings ... he follows reason, his own interests and in the later era deep religious feeling and he strengthens himself by education and custom." (Darwin, 1970, p. 92) Fight for survival and assurance of reproduction was a part of human reproduction – but it is necessary to look at this fight from wider perspective. It includes dependence of one organism on another and it takes particular account of the life of individual itself as well as giving of descendants. The result of fight for survival is natural selection and survival of a stronger one. Darwin, as a biologist, explains his theory of natural selection on the example of lives of animals and objective conditions, which force animals to fight for survival (Darwin, 2006). One of the representatives inspired by Darwin was a thinker Herbert Spencer. *"Spencer made strong defence of laissez-faire doctrine, which stemmed from the ideas of British scientist Charles Darwin and his key work On the Origin of Species."* (Heywood, 1994, p. 44) The ideas of Spencer were based on considering of society as an organism evolving itself according to laws of evolution – it means society is biological organism. He saw the core of evolution as transition from homogeneity to heterogeneity – this change is connected with evolution and it was named Social Darwinism. The role of state is to sustain society – the industrial type of society based on free agreements, private initiatives and natural and fair distribution of social goods (Kulašik, 2006). Darwin himself acknowledged the interest of Spencer in Darwin's theory, and observed that *"the term "survival of the stronger one", often used by Mr. Herbert Spencer, is more accurate and sometimes it is equally appropriate. (sic) A human can reach great results by the selection and he can adopt organism to his own advantage by accumulation of slight, but useful variations which are given to him by hand of nature"* (Darwin, 2007, p. 86). We could take the terms "biological organism", "sustainability of society" and "free agreements" from the Spencer's thinking. These three terms become, after their entanglement, key for the solution of our problem. Society naturally represents a biological organism with all of its needs. The goal of the society is development, progress and mainly reproduction. Development and progress are factors that determine quality of life of this society and, reciprocally, good economical and political conditions of life of society make development and progress faster. State as a biological organism, with its role to prevent society, should be interested in having the best conditions of development regarding the current situation with reflection on current trends and prognosis of development. Because conservatism restrains progress the most often (on a level of thinking, traditions, conventions, morality, ethics and other factors), it would be good to

restrain these influences as much as possible – in favour of development and progress. On the other hand, it is appropriate to take into account these ideas and attitudes, too, but not in a degree as it used to be in the past. The term “free agreements” represents consensual basis in this theory. Reciprocal exchange would be a free agreement between social groups. A social group of citizen would leave its suffrage (and decision-making about future) to the social groups in pre-productive and productive age. In return, these groups would guarantee the people in post-productive age dignified and respectful rest of their lives with all necessities.

Rational choice theory represents another view of political science to our issue. Its founders – economists James Buchanan or Gordon Tullock analysed consumer behaviour. They concluded that this behaviour may be applied for behaviour of voters. In the work *Rational Choice Theory* of David B. Johnson we can see some facts which can be used for explanation of essence of our issue. Individual choice theorists see individuals as a basic unit of decision making, while a state is not individual body (separated), but it works as a group of individuals inside it. It means that its direction is based on preferences of all individuals – their public choice represents a will of movement. Their will (and subsequently their choice) can be understood as preferences of individuals. As a result, political parties work with their political programs in a way to maximize their profit – it means gained votes (politician, as a businessman, tries to gain profit represented by votes or mandates in parliament. Therefore, he needs to succeed with promoting his products to consumers, i.e. his voters. Of course, the both sides try to behave as rational as possible – they try to maximize their profit.). Decision-making can be considered as a corner-stone of policy-making – based on the rational choice theory. But it is dynamic and subject to constant change (for example in policy directions). If we see the outcome as a result of will (preferences of all voters) we must find a factor, which influences the will. Based on the theory we match these factors with the interests of individuals, that form their preferences (will) and the will is reflected in decisions (the citizen decides in elections, political leader with power in politics.) (Johnson, 1997). We intend to apply some patterns of the rational choice theory to our issues – mainly explanation of justification of implementation of the upper limit of suffrage and to show defects, which could be repaired. We will try to give another question inside rational choice theory, but from the perspective of Social Darwinism. Basis will be not made by economic terms, but by the rational biological part of a man (and humankind), which we want to extend to a state.

The goal of a state is to survive and develop. A state, as it is mentioned in the rational choice theory, is made up of citizens and it is also made up of decision resulting from common will of citizens, it means their interests, according to the theory. According to Social Darwinism, survival is the basic goal of a living organism (we can consider development to be secondary, but in the case of a state and citizenship it has an equal importance). Survival of society and state depends on many determinants (in the case of state it is mainly about all kinds of policies, which help to achieve the main political goal, in the case of man it is about the most quality of life and self-realization). Based on this parallels we will move to forming of the most credible decision. It is a decision about development, which will have the biggest impact in the future (it has a long-standing character). Forming of a decision depends on preferences of individual citizens, whose interests are naturally different (we presume that they have mainly short-term character with regard to themselves). These preferences (and their will) are represented by ballot in elections (where individuals can decide about those who will legitimately decide instead of them). For that reason, when we connect a basic interest of a state with a basic interest of an individual, we can come to a complicated irrational situation, when individuals look at the present, while a look at the future does not matter (the main impacts of their current decision). This is even more accentuated in a situation, when a person, who will not feel consequences of decision and who has no possibility to make feedback or assessment of his/her decision, participates in this decision. *“Consumers and manufacturers are not interested in the influence of economical decisions to availability or quality of the sources in the future, respectively”* (Johnson, 1997, p. 292). In a figurative sense, if we change the terms consumers and manufacturers for the terms voters and politicians, we will be able to confirm our claims. Therefore, if we want current decisions (although in the elections) to be the most rational and the most reflecting preferences of citizens, who will be in the future most affected by their outcome, it is appropriate to consider implementation of the upper limit of suffrage. Ultimately, structure of electorate is harmful for a political campaign itself, which interest is often focused on the citizens, who can be influenced easily. These realities lead to preferences, which are not objective and it leads to decisions (of the political elites especially), which are not objective, too. On the other hand, the complexity of our dilemma is also confirmed by Pareto's optimum, which is confirmed by the rational choice theory. Its text is written in Marek Loužek's article *Sociological theory of Vilfredo Pareto: “The situation where there is no way to make some people better off without making anyone worse off”*

(Loužek, 2010, p. 404).

1.3 Criticism and barriers of implementation of the issue in practice

Barriers and criticism of the general question of our work have several levels. One of them is a moral (and ethical) level, which was already mentioned and which leads human consciousness and conscience to distinction, what is *ad hoc* moral and good for itself. The second level is a positive level – normative, human rights and civil barriers formed in the last three centuries, while the 20th Century had the greatest contribution. Fact that suffrage as we know it today has its justification to be one of the most fundamental or even the most fundamental civil law enshrined in the international treaties in the UN or the European Union and in the Constitution of the Slovak Republic, too.

1.3.1 Legal and normative basis in criticism

The Universal Declaration of Human Rights, adopted in 1948 by the UN, contains in Article 1 the following statement: *“All human beings are born free and equal in dignity and rights”* (The Universal Declaration of Human Rights, 1948) – will we reckon civil (political) rights into these rights? They have rather specific position, because they are not unanimously adopted by all countries. Article 2: *“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”* (The Universal Declaration of Human Rights, 1948) . The question of age is not directly written in the text, it can be only subsumed indirectly in the part *other status*. In this case, it is interesting that some countries positively restrict suffrage for some social groups. For instance, in Slovakia suffrage is restricted for prisoners sentenced for particularly serious crimes states in the Penal Code, for which the lowest penalty is more than 10 years in prison), which is in contrast with Article 2, if we take into account for example age as other status. Both groups of rights – human rights and political rights are different (political rights are not adopted by all countries, even if they adopted human rights only formally). It applies that political rights and their form in particular country – the suffrage in our case, do not have rigid form of unalterable and imprescriptibly rights. After all, the question arises, whether prisoner who wants to vote (and use his right) while the restriction is imposed is only a “moral prisoner”, but also a “political prisoner” in a figurative sense. This question only serves to rational thinking about deformation

of law for the needs of state and society (mainly morally). It does not intend to compare *ad absurdum* the social group of prisoners with the social group of people in post-productive age, which would be touched by this restriction. This polemic would be in conflict with the moral and ethical character of humanism of current value thinking and it is not our intention to confront this polemic in reality. Furthermore, ageing is objective reality, while illegal acts of a prisoner, which led to the loss of his right according to the law, are subjective reality.

In 2000, the European Union adopted in Nice the Charter of Fundamental Rights of the European Union. Citizen's Rights are in the fifth title called the Citizenship. The right to vote is mentioned in the article 99 called *Right to vote and to be voted in the European parliament's election* and in the article 100 called *Right to vote and to be voted to the local self-government's election*. (The Charter of Fundamental Rights of the European Union, 2007, p.24). Even here, we do not find mandatory definition of an age range of civil rights. Some countries of the European Union have different limit of adulthood, or limit of civil rights (of their obtaining).

In the case of the Slovak Republic, civil (political) rights are stated in the basic document called the Constitution of the Slovak Republic (the Law No. 460/1992). Elections and suffrage are stated in the Second part, the Third section (the Section of political rights), Article 30. The Constitution does not define the conditions of exercise of suffrage. However, we can find there reference to a specific law (the Law No. 460/1992). The law, which is focused on the exercise of voting rights, is the *Law No. 180/2014 Collections of Laws on the conditions of exercise of voting rights and on amendment of certain laws as amended by Act 356/2015*. This law contains in § 3 the definition of person with suffrage – it is a person, who is at least 18 years old in a day of elections. In § 4 it further defines the barriers of voting rights – “*person sentenced for serious crimes, person deprived of legal capacity and limitation of personal freedom by reason of the protection of public health set by the law*” (the Law No. 180/2014 Collections of Laws). We can see normative restriction (definition) of suffrage and those, who have suffrage and those who do not have it. Civil rights can be amended by adoption of amendments to the Act and not by constitutional amendments, because the *Law No. 180/2014 Collection of Laws on the conditions of exercise of voting rights* is not constitutional law.¹

¹ In addition, text of this law (concretely restricted subjective conditions of suffrage) were recognized by Constitutional Court of Slovak republic as in conflict with Constitution (PL US 2/2016-108). On

Vladislav Birás in his article *Elections, suffrage and electoral duty* sets the suffrage, according to the Article 12, Section 1 of the Constitution of the Slovak Republic, into fundamental, above-positive rights, which are inalienable and which are not possible to renounce. He also mentions the fact that in some countries, including the countries of the European Union there is obligation to vote (Belgium, Luxemburg, Cyprus, countries of Latin America, etc.) and added that also in Czechoslovakia there had been the obligation to vote until 1954 and also *de facto* also during the following years according to the law (Birás, 2013). Pavel Molek in his book *Political rights* (2014) points out on suffrage in the first Czechoslovak Republic. *Electoral regulation No. 75/1919* defined electoral obligations, where all voters were obliged to participate in the elections, although there were some exceptions, or some persons were exempt from electoral obligations – persons older than 70 years, doctors, persons who were not able to vote because of their illness and other objective reasons were included there (Molek, 2014). Many other questions based on these facts arise. Let us discuss fundamental rights and freedoms. How to precisely define them? Is it possible to include civil and political rights into them in the case, when they are not universally homogeneously valid (in all countries) unlike human rights? After all, we can partly answer this dilemma by a practical example, which was stated by Birás. Regarding the problem of our paper we state that although the Constitution of the Slovak Republic also specifies political rights in the article 30, it let the definition of the conditions to another law. The Constitution stands in position of guarantee of this law, but on the other hand it adjusts the law. The article 32 of the Constitution is interesting, too. It is stated there “*the right to put up resistance against anyone who would try to abolish the democratic order of basic human rights and freedoms listed in this Constitution*” (the Law No. 460/1992). It regulates possible infringement of the rights, but it would be possible again to appeal to the essence of fundamental rights and freedom for the reasons stated above. In the case of the first Czechoslovak Republic, which was considered to be democratic, institution of the electoral obligation existed. In principle, it was almost the same situation – someone was forced to participate in the elections and to vote (to have the will), maybe against his belief, while on the other side, someone was limited in his right to vote, although he/she wanted to. In the end, we can state that this is not a new topic.

the other hand, age census as objective condition is still active.

1.3.2 Criticism from the conservative representatives

Because of the aim of our paper, which is rather philosophical – political view at our issue than manoeuvring in law terminology and currently valid law together with the assumption that the policy and its subject (power) creates law; we will consider law as elastic. Decisions (politics) are not created from the directives of law, but law is created from a political will (in a better case law is created by representative council, which have real and legitimate power; in a worse case it is created by elites or individuals, who have absolute power – dictatorships, sultanates, emirates ...). It would be difficult, or even impossible because of positivism (large amount of legal statutes), to enforce the issue from the law perspective, so we look at the issue from political and philosophical perspective. Rigorously, because of the focus of our work, we will continue with the criticism of our issue from the perspective of conservatism as one of the fundamental political theories. The choice of this theory has its rationale. There exist many different theories of conservatism, so we point out to generally known conclusion – we should label conservatism as situational ideology – it arises as opposite to something new, something that disrupts values and customs of society. We assume that inside this specific question, which has expressly revolutionary character, so it significantly disrupts values, customs as well as the whole thinking and importance of currently respected institutions (including the institutions of democracy). Félicité de Lamennais in his work *Essay on indifference* criticizes the century he lived in (19th Century) as a century full of mistakes from desires to make progress and move forward. In this sense, he criticizes contempt for the truth – in political and moral order we tend to destruction of the truth itself. James Stephen in his work *Doctrine of freedom and its application to morality* thinks, as a lawyer, about the civil laws, which promote power and prevent viciousness and immorality by it. Each branch of civil law logically presumes moral good and evil and it is the public, who has interest in their fulfilment (Ježovicová, 2003). Another theoretician whose thinking could be transformed to the criticism of our question is Michael Oakeshott with his characteristically named work *Rationalism in politics*. A characteristic feature of a rationalist, or rationally thinking human, is belief in idealism (or desire for it). In addition, it is possible to understand Oakeshott's thinking in his view of rationalist from sceptical and optimistic perspective. As he states, "His mental attitude is at once sceptical and optimistic: sceptical,

because there is no opinion, no habit, no belief, nothing so firmly rooted, or widely held that he hesitates to question it and to judge it by what he calls his "reason": optimistic, because the Rationalist never doubts the power of his "reason" (when properly applied) to determine the worth of a thing, the truth of an opinion, or the propriety of an action. Moreover, he is fortified by a belief in a "reason" common to all mankind, a common power of rational consideration, which is the ground and inspiration of argument: set up on his door is the precept of Parmenides- judge by rational argument." (Oakeshott, 1991, p. 6). In a figurative sense, we understand excessive rationality of our question, which believes in some kind of ideal, or believes in ideal circumstances, which determinate fulfilment of the restriction of suffrage. Following the Oakeshott's criticism of rationalism, the questions of morality, amorality and viciousness of a too postmodern thinking (Stephen) as well as the questions of indifference and consequences of realization of this change to something, that Lamennais named the truth, lead to problems.

The question, which we raised, and which was developed through the polemic, represents very specific meaning for the contemporary society – its society, customs and general view of the functioning of society. A solution of the question does not have to be adopted now, or in a short term, but it can be adopted in the future. Jean Francois Lyotard characterized a problem of applying unrealistic ideas on postmodernism in his work *The Postmodern Condition*. *"A postmodern artist or writer is in the position of philosopher: the text he writes, the work he produces is not in principle governed by established rules, and it cannot be judged by what Kant called a determining Judgment, by applying familiar categories to the text or to the work. Those rules and categories are what the work of art itself is looking for."* (Lyotard, 1993, p. 28) In a certain way the question of restriction of suffrage (and following agreed reciprocity between social groups) is a certain form of postmodernism.

Conclusion

Popper's open society provides possibility of criticism of commonly recognised and known structures, what cannot be still conformal, especially, if is there criticism and solving of dilemma, related of sensitive topics, or human rights. Our issue is not exception, but we consider that solving of this dilemma is necessary. We cannot regard democracy as a perfect regime, without mistakes and risks resulting from that. Main goal of our work was not impeachment or

yaw of legislative frameworks and frameworks of democracy (although, democracy does not work without concrete obstacles). We tried to found effective ways, which can reinforce quality of suffrage and this way the quality of governing as process of decision-making as well. For this case, we used rational view on dilemma, together with support and application of Social Darwinism. Since the work may not only generate advocacy, used in favour of general question, we showed criticism and real obstacles, too. These are standing against this idea (or theory). Validation of hypothesis, which were verified in our work, we may consider as fulfilled, however in case of first hypothesis we must respect especially rational side. Upper limit of suffrage is not moral or non-legitimacy modus, but it can lead to stability and credibility of elections (of course, we must respect some risks). In work we have shown on facts, which are supporting our hypothesis because of democracy, system of citizenship and elections are located in own defined borders. How can we overcome this disproportion? Annul the limits absolutely, or set up the limits on another end? Our work provides enough justification for this dilemma. Second hypothesis solved discourse of morality and policy in result of rationalism. Work demonstrated notable moral discourse, especially defended by legal norms and conventions. This discourse would bring into a reality a realization of this limit. Again, we used dual view on what is moral in one side and what is immoral on second side. For this case we can demonstrated again **Pareto's** optimum, however with changed protagonists - the work showed handicap of citizen's social groups in pre-productive and productive age in relation toward social group in post-productive age (seniors). To discourse of morality and policy is real, what we have understood, but from view of reciprocity it lead to amorality toward handicapped social groups. Contentions were supported by residual view on solving of dilemma; however, from view of contemporary political philosophy and theories, we have chosen theory of Public choice, where we connected this theory with Social Darwinism. By this intention was created specific view on our question (or dilemma).

Intention of work was also to answer the questions posed in introduction. We have shown enough, the legitimacy of upper border of suffrage, also by hypothesis. The aim of second question was to address the consequences of setting up upper limit of suffrage and its influence to process of elections and generally, the best qualitative choice of citizens. In work, we have introduced any examples and rational explanations, which on this question answered positively. Future of our dilemma is markedly dependent from society, in which

this dilemma will be discussed. Development of political system, citizenship and democracy is qualitatively different from a human one. Human, regardless citizen's involvement, is finding also other meaning of life. It has roots in his humanity (recognition, respect, love etc.) In our paper, we identified the threat, which in case of practical application of upper limit to suffrage may lead to social exclusion of seniors. Here it is necessary to point out that if only active suffrage determines value of human (in whatever age), then problem is not based on our effort of development of democracy and suffrage, but in behaviour of society in general. This is not problem of policy or suffrage (active, or passive).

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