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THE GLOBAL RETREAT FROM UNIVERSAL SUFFRAGE: CONSTITUTIONAL AND LEGAL TECHNIQUES FOR EXCLUDING CITIZENS FROM POLITICAL RIGHTS IN THE 21ST CENTURY

In the 21st century, a global, often subtle and piecemeal retreat from the principle of universal suffrage has been taking place. This article examines the constitutional and legislative techniques through which (nominally) democratic states restrict or deprive certain citizens of the right to vote and/or stand for election. The main techniques include: expanding grounds for disenfranchisement (criminal convictions, especially corruption, terrorism, organized crime, and “moral” offenses); introducing competency-based voting or candidacy tests (knowledge of the constitution, language proficiency, “economic citizenship”); disqualifications linked to unpaid taxes or public debt; restrictions targeting dual citizens; group-based exclusions (e.g., residents of overseas territories, internal migrants, homeless persons); de facto disenfranchisement through increasingly burdensome voter registration and identification procedures; new forms of political censorship and candidacy ban justified as “protection of democracy” (the so-called “militant democracy 2.0”). The author argues that, while the scale of these measures remains limited compared to the 19th century property or gender-based suffrage restrictions, there is a clear return to the logic of “common-sense” limitation of democracy by political and judicial elites. This process is typically framed as “defending democracy against its enemies”, allowing regression to be legitimized and the language of progress and security justifies it. The article draws on a comparative analysis of legislative changes and case law in over 30 countries between 2000 and 2025, with particular attention to Europe, Latin America, the United States, India, and selected states of Africa and Southeast Asia. The selection of over 30 countries was made using a comparative case study methodology, prioritizing states that represent diverse legal traditions and varying degrees of democratic backsliding to illustrate the global reach of these restrictive techniques.

Keywords: universal suffrage, democracy backsliding, militant democracy, competence-based disenfranchisement, electoral disqualifications, de-democratization, exclusionary constitutionalism.

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1. INTRODUCTION

At the beginning of the 21st century, universal suffrage, one of the greatest achievements of modern democracy, is experiencing a subtle but noticeable erosion. Although at first glance it seems that the principle of “one man, one vote” has been unquestionably adopted in most countries of the world, many countries introduce new or expand old mechanisms that deprive certain categories of citizens of their political rights or make it difficult for them to exercise their political rights. This trend is not as spectacular as a return to means-testing or racial segregation, but it is taking place gradually, through apparently technical, administrative or “security” changes.

The topicality of the subject stems from the broader phenomenon of democratic backsliding – the gradual weakening of democratic institutions and norms – which has been documented in the V-Dem reports (Democracy Report, 2024), Freedom House (Freedom House, 2025) and by other organizations since the beginning of the 2010s (IDEA, 2025). Levitsky and Ziblatt (2018) argue that protecting democracy requires defending voting rights, as restricting voting rights is a key method used to undermine democracy. They focus on how elected leaders undermine institutions by manipulating electoral processes, limiting opposition, and violating democratic norms. Suffrage is not formally abolished, but it can be restricted indirectly through institutional rules (Bormeo, 2016, p. 13.). Yascha Mounk (2018) analyzes in detail the tension between the democratic will of the majority and liberal institutions. In this context, he also discusses the idea of the so-called “epistocracy” (rule by politically “more competent” voters), which implies limiting or weighting the right to vote. This does not necessarily mean the formal abolition of suffrage but can lead to the exclusion of certain groups from the political process (e.g., opposition voters, minorities, or diasporas). According to Müller (2016), when populists come to power, they often try to delegitimize political opponents, change electoral rules in their favor, and redefine the political community.

2. THEORETICAL AND HISTORICAL FRAMEWORK

Universal suffrage means that every adult citizen, without discrimination based on sex, race, property, education, or other status, has the right to vote and the right to be elected. This principle developed gradually: from property tests and gender exclusion in the 19th century, through the abolition of racial restrictions in the USA (Voting Rights Act, 1965) and the introduction of women’s suffrage (by the 1940s–1950s in most of Europe), to the widespread affirmation of universal suffrage in the second half of the 20th century.

In the second half of the 20th century, universal suffrage became an internationally accepted standard, confirmed in key documents such as the International Covenant on Civil and Political Rights (Article 25) and Protocol 1 of the European Convention on Human Rights (Article 3). However, in the 21st century, there is an intellectual and theoretical re-examination of that principle, where more subtle criteria aimed at the “quality” of voters are introduced instead of open restrictions.

One of the most influential proponents of such an approach is American political philosopher Jason Brennan. In his seminal article “The Right to a Competent Electorate” Brennan directly argues that unlimited universal suffrage is unjust because it violates the right of citizens to competent government. He gives three key arguments. Citizens have a right

to competent government, i.e., that political power is exercised by competent people in a competent manner (Brennan, 2011, pp. 700–701). Universal suffrage allows incompetent, uninformed, or irrational voters to influence policy, which is analogous to allowing incompetent jurors or doctors to make decisions about the life and death of others (Brennan, 2011, pp. 702–704). Instead, a moderate epistocracy limits voting rights strictly to citizens who demonstrate sufficient political competence through knowledge tests, while ensuring the rest of the citizenry retains all other civil rights. (Brennan, 2011, pp. 704–710, 720–724). Brennan presents this proposal as a moral improvement of democracy, not its abolition: “To satisfy this right, universal suffrage in most cases must be replaced by a moderate epistocracy, in which suffrage is restricted to citizens of sufficient political competence.” (Brennan, 2011, p. 701) These ideas are expanded in his book *Against Democracy* (Princeton University Press, 2016), where Brennan further argues that democracy with universal suffrage leads to poor outcomes due to widespread misinformation and cognitive biases among citizens. He proposes various epistocratic models, including:

- restricted suffrage (limited voting rights only for those who pass a knowledge test),
- weighted voting (weighted votes according to competence),
- epistocratic veto (the competent can block bad decisions of the masses).

These proposals illustrate a modern variant of restrictive logic: competence (knowledge, rationality) becomes the new “census,” and the system is justified by empirical evidence of the average uninformedness of voters (e.g., political knowledge surveys) and instrumental reasons (better policy outcomes). Although Brennan’s views remain controversial and marginal in mainstream political theory, they have become a point of reference in debates about democratic decline, voter literacy tests, and similar “corrections” of democracy in the 21st century.

Brennan’s epistocratic model fundamentally conflicts with international human rights standards, such as Article 25 of the International Covenant on Civil and Political Rights, which mandates that suffrage must be granted without unreasonable or discriminatory restrictions. From a constitutional perspective, introducing competence-based filters transforms the right to vote from an inherent democratic guarantee into a conditional privilege, thereby undermining the essential principle of political equality upheld by the European Court of Human Rights.

The 21st century witnesses a return of restrictive logic, but in a “modernized” form: instead of the open exclusion based on class or gender, the criteria of “competence,” “responsibility,” and “loyalty” to the state are introduced. These measures are presented as “common-sense” corrections to democracy, not as its narrowing.

3. NORMATIVE AND CONCEPTUAL ANALYSIS

Is it a defense of democracy or a regression to the 19th century? The concept of militant democracy is evolving into a “2.0” version – more focused on protection against populism and disinformation than against totalitarianism. To distinguish this from classical militant democracy, which acted as an existential shield against totalitarianism through party bans, Militant Democracy 2.0 functions as a regulatory scalpel. It targets individual eligibility – using criminal records, tax status, or “competence” to filter the political community under the guise of protecting democratic integrity. This shifts the focus from defending the existence of democracy to managing the composition of its participants. Exclusion is legitimized by the language of security and progress, which creates a tension between equality, popular

sovereignty, and the protection of the constitutional order. The courts play an ambivalent role – sometimes restrained, sometimes activist in support of restrictions.

The modern understanding of the right to vote does not only derive from the constitutions and legislation of individual states, but also from international legal standards developed through international treaties and the practice of international courts. In modern international law, the right to vote is considered one of the fundamental political rights and a key element of the democratic order. It is normatively confirmed in numerous international documents, such as Article 25 of the International Covenant on Civil and Political Rights, adopted by the United Nations, which guarantees the right of every citizen to take part in the conduct of public affairs and to vote and be elected at periodic and free elections.

In the European legal space, Article 3 of the First Protocol to the European Convention on Human Rights, which guarantees the right to free elections, plays a particularly important role. The interpretation of this provision has been developed through the practice of the European Court of Human Rights, whose judgments have a significant impact on the national electoral systems of the Council of Europe member states. Through its practice, this court has developed a standard according to which states have a certain freedom to regulate the right to vote, but such restrictions must be proportionate and must not undermine the very essence of the right to political participation.

One of the most famous examples of the judicial review of restrictions on the right to vote is the case of *Hirst v. United Kingdom (No. 2)* (ECtHR Application no. 74025/01), in which the European Court of Human Rights in 2005 found that a general and automatic ban on voting for all prisoners in the United Kingdom was incompatible with the European Convention. The Court emphasized that states may restrict the right to vote for certain categories of persons, but such restrictions must be individualized and proportionate to a legitimate aim. The Court ruled that a general ban on British prisoners from exercising their right to vote was contrary to the European Convention on Human Rights. The Court did not state that all prisoners should be given the right to vote. Instead, it ruled that if the right to vote was to be abolished, then the measure must be compatible with Article 3 of Protocol No. 1, placing the burden on the United Kingdom to justify a departure from the principle of universal suffrage.

Similar issues have arisen in other cases before this Court, such as *Scoppola v. Italy* (No. 3) (ECtHR Application no. 126/05), in which the Court considered the proportionality of the loss of political rights as a consequence of a criminal conviction in Italy. These judgments confirm that international courts have an important role to play in defining the limits of permissible restrictions on the right to vote. The European Court of Human Rights upheld the judgment in the *Hirst* case and emphasized that a general, automatic, and indiscriminate deprivation of the right to vote for all prisoners, regardless of the length of their sentence, the gravity of the offense, and the individual circumstances, was incompatible with Article 3 of Protocol No. 1. The applicant argued that any decision to deprive prisoners of their right to vote, which was not taken by a court, was inherently disproportionate because it applied generally and automatically, and that only a judge could justify such a measure by examining the individual case. The Court rejected this view and concluded that disproportionality was not necessarily linked to the decision-maker, but that the proportionality of a penalty could also be ensured by the legislature by specifying precisely the conditions under which the right to vote was deprived. The Court found that the Italian system was not disproportionate because the ban on holding public office (and thus the deprivation of the right to vote) applied only to

persons convicted of certain criminal offenses and to those sentenced to a certain length of imprisonment. The duration of the deprivation of the right to vote in Italy depended on the gravity of the offense and the sentence imposed, which shows that the legislator wanted to adapt the measure to the specific circumstances of the case, taking into account the gravity of the offense and the conduct of the convict. Unlike the British law in the *Hirst* case, which deprived all prisoners of their right to vote without any distinction, the Italian legislation was not of a general, automatic, and non-discriminatory nature. The Court also took into account the possibility of rehabilitation, by which convicted persons could regain their right to vote, and ultimately concluded that the Italian system did not violate Article 3 of Protocol No. 1.

In addition to the European human rights system, other international mechanisms contribute to the development of standards in this area. For example, the United Nations Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights and, through its general comments, emphasizes that restrictions on the right to vote must be based on objective and reasonable criteria.

Despite the existence of these international standards, states continue to apply various legal and administrative mechanisms that can limit the political participation of certain categories of citizens. This is precisely why comparative constitutional law literature devotes significant attention to the analysis of various techniques of narrowing the right to vote, which can appear in various forms – from criminal disqualifications to administrative obstacles to the exercise of the right to vote. The following subsections analyze the most important contemporary forms of such restrictions from a comparative perspective.

4. COMPARATIVE ANALYSIS – EXAMPLES FROM PRACTICE

Although universal suffrage is now one of the fundamental principles of modern democracy, mechanisms that limit or narrow access to the electorate still exist in various political systems. These mechanisms can be formal, through legal and constitutional provisions, but also informal, through administrative procedures that make it difficult to exercise the right to vote. The comparative literature emphasizes that democratization processes often simultaneously involve redefining the boundaries of political membership, that is, determining who constitutes the electorate and under what conditions citizens can participate in the political process (Bateman, 2018, pp. 4–7).

The research employs a comparative legal and functional method, selecting jurisdictions based on the “most different cases” principle to demonstrate how similar exclusionary techniques – such as criminal and competence-based disqualifications – are being applied across diverse constitutional traditions. The analysis proceeds by identifying common patterns of autocratic legalism and militant democracy 2.0, allowing for comparative conclusions to be drawn regarding the global erosion of the “one man, one vote” principle.” By synthesizing case law from over 30 countries, the study moves from specific legal doctrines to a broader normative critique of the contemporary retreat from universal suffrage.

4.1. Expansion of grounds for the loss of voting rights due to criminal offenses

This institute implies that persons convicted of certain criminal offenses lose their right to vote while serving their sentence, and in some legal systems even after its completion (López-Guerra, 2014, pp. 21–24).

The most famous example is the United States, where some state laws provide for the loss of voting rights for persons convicted of serious crimes. In some states, such a ban could historically last after the sentence was served, while in other states it ends after release from prison. Such models are often cited as an example of the significant impact of criminal sanctions on the political participation of citizens (Beckman, 2026, pp. 52–55). In the United States, the legal basis for felony disenfranchisement is rooted in the Supreme Court’s decision in *Richardson v. Ramirez* (1974), which interpreted the 14th Amendment as allowing states to exclude citizens from voting based on “participation in rebellion, or other crime.”

Similar restrictions exist in some European countries. For example, prisoners serving prison sentences in the United Kingdom are not allowed to vote while in countries such as Russia and Poland the court can impose the loss of political rights as an additional punishment (Glenn, 2024, pp. 102–105).

4.2. Introduction of competency or ability tests

Another form of suffrage restriction involves the idea of introducing competency or ability tests as a requirement for political participation. Historically, literacy and political knowledge tests were used in the United States during the 19th and 20th centuries, particularly in the Southern states, to restrict the voting rights of certain social groups.

Although such practices have now been formally abandoned, contemporary political theory occasionally discusses the possibility of differentiating political rights based on the level of political knowledge or competence of voters (Brennan, 2016, pp. 15–18). In some political debates in countries such as Brazil and the Philippines, proposals to introduce certain forms of testing of political knowledge or civic competence have emerged, although such measures are generally not institutionalized.

4.3. Disqualifications related to financial debts

A third form of disenfranchisement concerns disqualifications related to financial debts to the state. In some legal systems, unpaid taxes, fines, or other financial obligations can constitute grounds for restricting political rights. Such mechanisms are often justified by fiscal responsibility arguments, but they can also have a significant impact on the political participation of citizens with lower financial status (Cottrell-Sundevall & Kristjánsdóttir, 2024, pp. 96–101).

Examples of such practices can be found in some states in the United States, notably Florida, where the reinstatement of voting rights after serving a sentence may be conditional on the payment of all financial obligations to the state. Similar models exist in some Latin American countries, including Peru and Chile, where certain court judgments or public debt may affect the right to run for office or political participation (Glenn, 2024, pp. 141–143).

4.4. Restrictions related to dual citizenship

Restrictions associated with dual citizenship represent another form of the narrowing of political rights. In some countries, citizens who hold the citizenship of another country may be restricted in exercising certain political rights, especially when it comes to candidacy for high public offices (Glenn, 2024, pp. 134–136).

Such provisions exist, among others, in countries such as Ukraine and Kazakhstan, where persons with dual citizenship cannot perform certain public functions. Similar questions have arisen in political discussions in countries such as Hungary and Serbia, especially in the

context of discussions about political loyalty and the influence of foreign countries on national political processes.

4.5. Group exclusions and special categories of citizens

A particular form of disenfranchisement is the exclusion of certain social groups from the political process. Such exclusions can be formal or informal. Examples include people with mental disabilities, the homeless, or residents of certain territories who face administrative obstacles in the voter registration process (López-Guerra, 2014, pp. 73–76).

For example, residents of overseas territories of France, the United Kingdom and the Netherlands have specific forms of political representation that differ from those in their home countries. Also, in some European countries, such as Germany, the Czech Republic, and Romania, persons who are legally incapacitated may lose their right to vote, although such provisions have been subject to reform in recent years.

4.6. De facto disenfranchisement through administrative barriers

One of the most widespread contemporary forms of narrowing the right to vote is the so-called de facto disenfranchisement through administrative obstacles. These obstacles do not imply a formal ban on voting but create procedural conditions that hinder or discourage citizens' participation in elections (Beckman, 2026, pp. 112–118).

Such measures include complex voter registration procedures, strict identification requirements, or changes to polling places. These practices have particularly been the subject of political and legal debate in the United States, where voter ID laws have been introduced in several states, including Texas, Georgia, and Wisconsin.

4.7. New forms of political censorship and banning of candidacy ("militant democracy 2.0")

Modern political systems also use legal instruments to disqualify political actors who are considered a threat to constitutional order. In Brazil, for example, a law known as the Lei da Ficha Limpa prohibits politicians who have been convicted of certain crimes from running for office. The implementation of Lei Complementar nº 135/2010 (Lei da Ficha Limpa) in Brazil was upheld by the Supreme Federal Court (STF) in 2012, establishing that the restriction of eligibility based on prior criminal convictions is a legitimate tool for protecting the "probity and morality" of the democratic process.

Similar mechanisms exist in Spain, where political parties linked to terrorism are banned – in this country the banning of political entities is governed by the Organic Law 6/2002 on Political Parties (Ley de Partidos), which was notably applied by the Supreme Court and the Constitutional Court to outlaw parties like Batasuna due to their structural links with a terrorist organization – and in Germany, where the constitutional order provides for the possibility of banning political parties that act against the democratic constitutional system (Bateman, 2018, pp. 210–214).

5. CONCLUSION

In the 21st century, we are witnessing a subtle but persistent and globally widespread departure from the principle of universal suffrage – one of the greatest civilizational achievements

of modern democracy. Although universal suffrage is formally retained in most countries, the reality shows a gradual narrowing of the electorate through a variety of constitutional, legislative, and administrative techniques. These measures – from the extension of criminal disqualifications (especially in the USA, where in 2024/2025 around 4 million people remained excluded due to criminal convictions), through financial conditions and restrictions on dual citizenship, to de facto exclusion through increasingly complex registration and identification procedures – are often presented as necessary measures of security, fiscal responsibility, or the protection of democracy from itself (“militant democracy 2.0”).

This logic reflects a shift toward the securitization of citizenship, where political membership is no longer an inherent right, but a conditional status earned through “competence” or loyalty. By utilizing the rhetoric of “protecting democracy,” political elites redefine the community to exclude marginalized groups, effectively transforming inclusive universalism into a “managed” and exclusionary form of participation. This trend is neither accidental nor marginal; it is taking place in the context of a broader democratic backsliding which has been ongoing for 25 years. By utilizing the rhetoric of “protecting democracy,” political elites redefine the community to exclude marginalized groups, effectively transforming inclusive universalism into a “managed” and exclusionary form of participation. This trend is neither accidental nor marginal; it is taking place in the context of a broader democratic backsliding which has been ongoing for 25 years. This logic is fundamentally linked to democratic backsliding, as political elites utilize the rhetoric of “protecting democracy” and “national security” to justify the exclusion of the marginalized groups that may challenge the populist or illiberal status quo. Consequently, these restrictive techniques serve as a tool for redefining the political community, moving away from inclusive universalism toward a more exclusionary and “managed” form of democratic participation.

Freedom of expression is declining in a record number of countries (44 in 2024), and global indices of representation and inclusive participation are reaching their lowest levels in two decades. These restrictions most often affect vulnerable and politically marginalized groups – convicts, minorities, diaspora, poorer strata, homeless, residents of remote territories – which indirectly changes the composition of the electorate in favor of political elites or majority groups.

Although contemporary exclusionary techniques are far less extensive and open-ended than those of the 19th century (property testing, racial or gender exclusion), they share the same logic: the idea that democracy is not self-sufficient and that it needs to be “corrected” in the name of competence, loyalty, security, or quality of decisions. Such an approach, supported by theoretical works such as Brennan’s intercessory epistocracy, allows the regression toward a more restrictive understanding of political law to be legitimized with a progressive and security vocabulary.

The consequences of this process are serious and multifaceted: weakening democratic legitimacy, deepening polarization, declining trust in electoral processes, declining turnout, and – in the long term – the erosion of the very concept of equal political membership. If the trend continues, there is a real danger that, instead of being the inviolable minimum of democracy, universal suffrage will become merely an ideal that we are increasingly approaching only on paper.

Therefore, urgent action is needed at several levels:

- strengthening international oversight (ECtHR, UN HRC, V-Dem, IDEA, Freedom House) and more consistent sanctioning of disproportionate restrictions,
- revision and narrowing of criminal disqualifications to strictly proportional and individualized measures,
- caution and resistance to all forms of “competence” filters and epistocratic experiments,
- removing administrative obstacles that disproportionately affect vulnerable groups,
- support for reforms that expand, not narrow, access to voting rights (e.g., facilitated diaspora voting, automatic registration).

Only by continuously resisting the subtle erosion of universal suffrage and by strengthening institutional and social mechanisms for the protection of political equality can we prevent the 21st century from entering history as a century of the silent but systematic dismantling – instead of consolidating – of democracy. Further research should monitor not only normative changes but also their real effects on turnout, representativeness, and long-term stability of democratic systems.

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