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Democratic Choice, Legitimacy and the Case Against Compulsory Voting

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In the last issue of *Public Policy Review* Sarah Birch argued that Britain should make voting compulsory, and that the law should actively enforce legal duties to turnout at elections.¹ She argues that ‘governments need to have democratic legitimacy to pull countries through difficult times’, and that low turnout threatens that legitimacy. Moreover, she claims, ‘economic stress exacerbates perceptions of social inequality’, and suggests that if alienated groups do not see Parliament as a means to improve their lot, they will turn to extra-parliamentary ways of doing so.

These arguments rest an enormous weight on high levels of voting at elections, and overlook the fact that if enough people vote for the opposition, high turnout may undermine, rather than enhance, the legitimacy of a government. Fortunately, the crux of Birch’s argument is that commitments to political fairness, social fairness and procedural fairness require Britain to adopt mandatory voting, and these look more plausible. Nonetheless, as we will see, they fail to justify compulsory voting or turnout.

The Democratic Case for Compulsory Voting

The heart of the democratic case for compulsory voting, which Birch summarises in her article, is that equality, fairness and legitimacy require voting to be compulsory, not voluntary.² Voluntary electoral turnout in advanced democracies has tended to fall quite dramatically since the Second World War, and declining turnout exacerbates disparities in turnout between more and less socially favoured groups, because it is the youngest, least educated and least wealthy who are least likely to vote.

The key steps in the argument, then, are these: first, that declining and unequal turnout threatens the legitimacy of democratic governments, and makes it harder for the political left to get elected. Second, that while there are a variety of ways to raise turnout, compulsory voting is the only means both to raise and to equalise turnout, and to do so immediately. Third, proponents argue, compulsory voting threatens no fundamental

¹ S. Birch, ‘The Case For Compulsory Voting’, *PPR* March-May 2009, 21 - 27.

² Not all arguments for compulsory voting are democratic in intent or justification. Arend Lijphart is the inspiration for the contemporary discussion of its social democratic potential. A. Lijphart, ‘Unequal Participation: Democracy’s Unresolved Dilemma’, *American Political Science Review*, 91.2. (1997) 1 - 14. The IPPR report on compulsory voting picks up and applies his arguments to the British case. E. Kearney and B. Rogers, ‘A Citizens’ Duty: Voter Inequality and the Case for Compulsory Turnout’, *Institute of Public Policy Report* (2006), available at www.ippr.org/publicationsandreports.

liberties, because the legal duty is to turnout, not to cast a valid vote.³ Finally, they argue, non-voters are free-riding on voters, and are therefore behaving unfairly and immorally.

I have presented and evaluated these arguments in more detail elsewhere.⁴ The gist of my concerns are these: (1) while we do have moral duties to vote in some circumstances, and sometimes even to vote one way rather than another, citizens are under no moral obligation to vote at all elections. Consequently there is no moral duty to vote that would justify legal compulsion to turn out at election time. (2) It is also doubtful that compulsory turnout does anything to increase people's interest in electoral politics, knowledge about it, or faith in those involved in it.⁵ So while compulsory voting can certainly remove the most obvious symptoms of political alienation, it seems incapable of addressing its causes and may well exacerbate them. I will briefly explain these objections to compulsory voting before reflecting on where this leaves us.

The Democratic Case Against

According to Birch 'current electoral events fail to grant everyone equal voice, because they fail to record all voices. And without a record of everyone's view, it is not possible to formulate a collective view that reflects the perspectives of all citizens'. Were this true, we would have to wonder whether political equality was really desirable, because it would certainly be impossible. Not even compulsory voting secures 100% voting by those eligible to vote. In fact, once you allow for disparities in registration, there may not be much difference in turnout between Australia and the UK.⁶ Fortunately, the point of democratic elections is to enable people to choose a government, not to voice their political opinions, their dissent, their hopes, aspirations, or convictions. We do not need to participate in an election in order to express ourselves politically or to express

³ As a general matter, this means something like ticking your name off an electoral role and then going home without voting. This used to happen in the Netherlands, before they abandoned compulsory voting in the 1970s. There is no such provision in Australia or many of the countries that actually make voting legally compulsory. How compulsory turnout is meant to increase the legitimacy of a government escapes me; nor do I see how it supports faith in democracy. Compulsory turnout is not easier to justify than compulsory voting, it is actually *harder* to justify. The case for compulsory turnout is parasitic on arguments for compulsory voting, but then needs an explanation for why some people should be required to 'turnout', and some explanation of whether this is meant to supplement or replace legal exemptions for conscientious objection.

⁴ A. Lever, 'Is Compulsory Voting Justified?' *Public Reason* 1 (1) 45 - 62. available at <http://www.publicreason.ro/home>. I also have a short article, 'Liberalism, Democracy and the Ethics of Voting', forthcoming in *Politics* 29 (3) 223-227.(Oct. 2009), and a longer article, 'Compulsory Voting: A Critical Perspective' forthcoming in the *British Journal of Political Science* 40 (1) Jan. 2010 (manuscript available on request, or available to download from www.alever.net).

⁵ P. Selb and R. Lachat 'The More, the Better? Counterfactual Evidence on the Effect of Compulsory Voting on the Consistency of Party Choice' in *European Journal of Political Research* 48.5. (2009) 573-597; B. Engelhen and M. Hooghe, 'Compulsory Voting and its Effects on Political Participation, Interest and Efficacy', *Unpublished Paper* presented to the ECPR Joint Sessions Workshop on 'Compulsory Voting: Principles and Practice', May 7 - 12 (2007), Heksinki, Finland; C. Ballinger, 'Compulsory Turnout: A Solution to Disengagement?' in *Democracy and Voting*, ed. C. Ballinger, (Hansard Society Democracy Series, London, 2002), 5-22.

⁶ C. Ballinger, *supra*.

ourselves effectively. Nor can electoral participation fulfil all our needs for political expression. That is why the right to vote is no substitute for rights to other forms of political choice, expression and association.

Once one grants that the main point of elections is to choose governments from those parties or individuals competing for power, it becomes apparent both that we generally lack a duty to vote in national (or other) elections, and often have reasons to abstain. We typically lack a duty to vote because, in established democracies, any of the major parties could form a morally acceptable government, and claim our allegiance if elected. That is why Labour voters can feel bound to accept a duly elected Conservative government, and vice-versa. This makes it hard to see that there is a general duty to vote: for the non-partisan may, quite reasonably, believe that the similarities between the main candidates for office - qua democrats - are more significant than their partisan differences. So people may have no moral duty to vote, even if they have no conscientious objections to doing so.

Things are obviously different where there is a likelihood of electing a racist candidate - let alone a racist government. There, I believe, most of us have a duty to vote and to vote strategically, not sincerely.⁷ Moreover, it is sometimes the case that elections are clearly focused on one or two critical questions, of defining importance for the future of our country, or for other countries. In such cases, we may be morally bound to vote unless we have conscientious reasons to abstain. As a general matter, however, democratic elections are not of that sort, and voters may therefore have no moral reason to prefer one candidate to another.

Some people think that elections are not just about choosing a government, but about showing our support for democracy itself, or affirming the legitimacy of our political system. This idea underpins the claim that those who do not vote are 'free-riding' on the democratic efforts of voters, and can therefore be legally required to turnout at election time, even if it would be morally wrong to force them to vote.⁸ A democratic government and political system is a public good, in that we all get to enjoy its benefits whether or not we do our part to support it. Just as we can be required to pay our taxes, serve on juries and help in the defence of our country, so it might seem, we can

⁷ I say 'most of us' have such a duty, in order to leave open the possibility that the BNP, despite its racist platform, can be the legitimate receptacle of protest votes aimed at established parties. But if some people are morally entitled to vote BNP this means that most of us who have no such justification, may have quite stringent duties to vote against them, which may well mean voting strategically, not sincerely - as the French so successfully did in local mayoral elections recently.

⁸ In Australia, so it seems, registered voters are legally required to cast a valid ballot, unless they qualify for an exemption. The government, however, has successfully fought attempts to publish the grounds for legal exemptions. There is, therefore, no way of knowing precisely what they are nor, importantly, of whether they exemptions are fairly granted or not. L. Hill, 'Compulsory Voting in Australia: History, Public Acceptance and Justifiability', *Unpublished Paper* presented to the ECPR Joint Sessions Workshop on 'Compulsory Voting: Principles and Practice', Helsinki, May 7 - 12 (2007). Belgium recently announced that it will no longer fine or imprison those who fail to turn up to vote.

http://www.nrc.nl/buitenland/article2263399.ece/Belgie_vervolgt_niet-stemmers_niet_meer. (Dr. Alex Voorhoeve of the LSE sent me this link, and told me what it says, as I don't read Dutch).

be required to participate in elections: because we all stand to gain from democratic government, but will often be tempted to avoid its burdens.

Democratic elections are, certainly, a public good and an important one. But *is* non-voting the equivalent of free-riding, or of unfairly seeking to benefit from the efforts and sacrifices of others? Political realism suggests that it is not. Whatever is wrong with not-voting, it cannot be that non-voters are selfishly exploiting the idealism, energy and public-spirited efforts of the BNP and their ilk. Nor are they exploiting self-interested voters, however respectable and democratic the parties for which they voted. It is not obvious, either, that they are *exploiting* altruistic voters simply because they are *not helping* them. When abstention is morally wrong, therefore, this seems to be because of its consequences for those who are incapable of voting – whether because they are too old, too young, because they are foreign, not yet born and so on- rather than because it is unfair to compatriots who voted. In either case, however, compulsory voting is unjustified. It may be morally wrong to abstain, but morally wrongful abstention may not be especially harmful. Such harms as it causes, moreover, can be caused by careless, ignorant and prejudiced voting. So, from the fact that non-voting is sometimes immoral, we cannot conclude that people are under a general obligation to vote, let alone that compulsory voting/ turnout is justified as a way to prevent or to punish immorality.

It is, then, hard to justify compulsory voting on democratic grounds, even if we ignore those with conscientious objections to voting, and the practicalities of enforcement. We can be morally wrong to abstain from voting; but we can also be morally wrong to vote the way we do. Off-hand, there is no reason to suppose that the former more troubling than the other, morally or politically. Nor should we overlook the fact that democratic politics is a competitive as well as a cooperative business, and this makes the ethics of voting - and of political morality more generally - far more complex than proponents of compulsion suppose. Even if we vote and are morally right to do so, we may be morally obliged to accept someone else as our legitimate government. We may also be morally required to vote strategically, rather than sincerely, and there is a longstanding debate amongst political philosophers about how far self-interest, the national interest, personal preferences, identities and loyalties should determine our votes. It is not surprising, then, that we generally lack a duty to vote - because we may be morally permitted to do a number of different, even contradictory, things in an election.

This does not mean that voting - or democracy more generally- are unimportant. It does mean that we need a more nuanced and sophisticated view of the place of national elections in democratic politics. Elections decide which of several candidates for government are entitled to our allegiance. Beyond that, it is notoriously hard to know what an election ‘means’, or what voters ‘said’. We should therefore beware of asking elections to bear more moral and political weight than they can withstand - whether in terms of legitimising political programmes, particular acts, or even particular people. By themselves, elections rarely justify confident claims about the popular support, let alone the legitimacy, of any of these. Instead, it is in conjunction with other things - subsequent decisions by elected and appointed bodies and interest groups; protests and

discussion by citizens; even repeated polls - that popularity and/or legitimacy are conferred on the actions, policies and personnel of governments with an electoral mandate to rule.

In short, a preoccupation with national elections over other ways for citizens to govern themselves sits uneasily with social-democratic commitments to empowering citizens, as well as with participatory ideals of democracy. Social democrats should certainly be concerned with current alienation from electoral parties and politics. But self-government cannot be reduced to participation in national elections every few years, whatever the forms of voting or representation involved, and whatever the precise constitution and balance of powers.⁹

Indeed, our failure to explain what else democracy might involve seems to underpin the disenchantment with established parties found in all established democracies.¹⁰ At a time when, in Britain, we are rightly preoccupied with constitutional questions and the merits of different types of electoral system, it is as well to remind ourselves that the ability to empower and legitimise governments is one of many reasons to care about democracy, and only one of many ways for us to act as citizens.

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⁹ For a discussion of some alternative forms of participation, and their significance, see 'After Neo-Liberalism: Republican Democracy in New Times', by Stuart White in *Public Policy Research* (March-May 2009), 14-20. Frankly, I am not as taken by republican political theory at White, but as he makes clear, any type of participatory democrat can appreciate the importance of these efforts.

¹⁰ Stein Ringen, 'The Message From Norway', *Times Literary Supplement*, Feb. 13, 2004.

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