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Liberalism, Democracy and the Ethics of Voting

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It was with some surprise that I read Engelen's 'Why Liberals Can Favor Compulsory Attendance'. (Engelen 2009) According to Engelen, I claim that compulsory voting conflicts with 'free thought, free speech and privacy'. My article did not mention any of these, although I argued that compulsory voting is likely to fall foul of liberal commitments to respect reasonable disagreement over fundamental values when justifying public policy and state coercion. (Lever 2008) I made it clear that most proponents of compulsory voting, including Lacroix, (Lacroix 2007) believe that some legal exemptions would be justified on conscientious grounds and would allow – as current Australian law apparently would not – that the legal compulsion would be to 'turnout', rather than to cast a legally valid ballot. (Hill 2007, 9, 12) I also argued that proponents of compulsory voting would have to consider the justification for sending people to prison for not paying the fines for not-voting, (as has happened in Australia) but I never implied that liberal accounts of compulsion could be expected to justify imprisonment *simply* for failure to vote. Consequently, I find it hard to recognise my arguments against Lacroix in Engelen's defence of compulsory voting/turnout. (CV/T)

But rather than clarifying my critique of Lacroix, it may be more helpful to clarify my reasons for thinking that compulsory voting is generally at odds with democratic government. My views are the result of prior research on the secret ballot, which first made me realise how complicated the ethics of voting are – far more complex, in fact, than I had assumed. (Lever 2007a) My research on judicial review, on feminism, and on privacy and democracy suggests that we often exaggerate the importance of national elections to democratic theory and practice. (Lever 2005, 2006, 2007b, 2009a, b, c). Consequently, I believe that efforts to justify compulsory voting - whether in liberal

egalitarian terms, as with Lacroix, or more social democratic ones, as in Lijphart (1997) or Keaney and Rogers (2006) –overstate the importance of electoral participation to democratic conceptions of politics, and understate the complexity of democratic morality.

Some background clarifications may be helpful. Proponents of compulsory voting generally believe that people are morally obliged to vote unless they have conscientious objections to voting. No one thinks that there is a moral duty simply to *turn out* and tick your name off a list at election time unless people have a duty to *vote*. So, such justification as there is for compulsory turnout is *parasitic* on the justification of compulsory voting. It is therefore wrong to suppose that it is easier to justify compulsory turnout than compulsory voting. How compulsory voting is supposed to fix the problems of low and unequal turnout at elections is reasonably clear. (Lijphart, 1997; Lever 2009a) By contrast, it is unclear how compulsory turnout is going to solve these problems. Consequently, it is *harder*, not *easier*, to justify compulsory turnout than compulsory voting once we have allowed that people with conscientious objections to voting should be exempt from moral and legal duties to vote.

Secondly, I assume that people sometimes have moral duties to vote. (Lever 2008, 2009a and c). However, proponents of compulsion require more than that: they need to show that we are obliged to vote at every election (although characteristically they never explain which elections trigger the case for compulsion and why). So, while I am happy to say that political participation can be *intrinsically*, as well as *instrumentally* valuable, and that sometimes voting is morally required, we need far stronger assumptions about the duty to vote before treating it as compulsory – not least because such a duty implies *informed* not *random* voting.

Arguments for compulsory voting typically come in two parts. The first is a claim about *political morality*, the second is a claim about *morality more generally*. The first

holds that *citizens* have a moral duty to vote- whether because this is necessary to democratic legitimacy, or because the duty to vote is implicit in the justification for voting rights themselves. The second, more general, claim is that *fairness or reciprocity* supports compulsion, in order to stop non-voters from free-riding on, or exploiting voters. Let's take these in turn.

Modern views of democracy assume that competition for political power and opposition to the government of the day can both be justified. Failure to vote, or to vote for the winning candidate, may threaten us with serious losses. So the costs of democratic politics can be real, predictable and painful. But to suppose that we have a duty to prevent those costs is problematic. This is partly because these are risks to our interests that other people are *entitled* to impose on us via the exercise of their rights; but they are, as well, risks that we are entitled to impose on ourselves, by *altruistic* voting. This is likely to be true for most voters. Hence, democratic citizens will often have no duty to vote on either self-interested or altruistic grounds.

If compulsory voting is justified, then, we must suppose that one of the main political parties is so inconsistent with democratic values, or with basic human rights, that they could not constitute a legitimate government, however many people voted for them. I think that this is true of racist parties like the British National Party, (the BNP) and explains why most people have a duty to defeat and marginalise their candidates.¹ But in democracies, this should be the exception, not the rule. In short, because democratic legitimacy means that parties we think seriously mistaken are entitled to govern, the differences between the main candidates for political office will generally not justify moral duties to vote, let alone legal ones.

¹ I say 'most people' have such a duty, because I am not convinced that the BNP, despite its racist platform, can never be the legitimate receptacle of protest votes aimed at established parties. If some people are morally entitled to vote BNP, however, this means that those of us, (the vast majority of people), who have no such justification may have quite stringent duties to vote against the BNP- duties which include voting strategically rather than sincerely in some cases.

The ethics of voting has received little attention from philosophers and political scientists. Yet it is plain that they are no more self-evident than other ethical matters, on which attention is lavished. Reasonable people can have the same qualms about voting as they can about marrying, having children, joining a political party or a union. Such qualms can be moral as well as prudential: reflecting doubts about the extent and reliability of their knowledge or judgement; doubts about the consequences of their actions for other people; and doubts about how to reconcile their different duties. We have little control over the circumstances of our vote, and the ways in which it will be interpreted and used by others. So, the ethics of voting is by no means as simple as proponents of compulsion suppose.

Democracy means that we are entitled to participate in politics freely and as equals. However, this does not mean that we must exercise our political rights, however important it is that we should have them; nor does it require us to consider electoral politics more important than other endeavours. In established democracies, our political rights help to protect our interests in political participation whether or not we actually exercise them. Likewise, we need not refuse, accept, or offer to marry someone in order for our right to marry to be valuable and valued.

Rights can protect our interests, then, even if we do not use them. For example, they make certain practical possibilities unthinkable. Most of the time we never consider killing others in order to get our way. Nor do they consider killing us. So, while it is true that democracy requires people to be willing and able to vote, the empirics of legitimacy, as well as its theory, make turnout a poor proxy for legitimacy or for faith in democratic government. (Lever 2009 a, b)

These, in brief, are my reasons for doubting that democratic norms support compulsory voting. But what about norms of fairness or reciprocity? We have duties of fairness and reciprocity whether or not we are citizens. If these imply that people who

are entitled to vote *should* vote, we would have a remarkably robust justification for compulsory voting: one largely independent of our assumptions about political morality.

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. This is not because the latter are evidently more self-interested than other voters. Whether they are or not is an empirical question. The problem, rather, is that we are entitled to refuse, and actively to oppose, the benefits that the BNP seeks to promote.

Non-voters, then, are not exploiting the BNP. 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. So, reflection on how and why people vote casts doubt on the idea that non-voters are selfishly preying on the public-spirited efforts of voters. (Lever 2009 a,b) 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.

We can put the point more sharply. The idea that non-voters are free-riders, assumes that voting is a collective good – whether because high levels of turnout are necessary to democratic legitimacy or for some other reason. But this begs the question, whether high levels of turnout *are* a collective good. Turnout has partisan effects. So even if *some* level of turnout is a public good, voting is not a *pure* public good as long as it has some bearing on who wins or loses an election. To suppose that people

are morally wrong to abstain, therefore, requires us to assume that the cooperative aspect of voting is more important than the competitive. This is not a conceptual truth about elections, and may be false empirically. (Lever 2009 a,b)

We cannot evade the complexity of democratic politics and morality, then, by insisting that democratic elections are a public good. Indeed they are. But this no more requires us to vote than it requires us to join a political party or to stand for election ourselves. A sufficient range and quality of parties and leaders is a prerequisite for democratic legitimacy and, off-hand, seems at least as important as ensuring a sufficient quantity and *quality* of voter participation.² Moreover, morality sometimes requires people to assume positions of leadership and responsibility that they would otherwise choose to forego. Nonetheless, it is incredibly difficult to get from the idea that we may *sometimes* have such duties to the conclusion that we actually *do* have such duties.

What we are morally required to do in politics depends importantly on what other people do, what they are likely to do, and what they are entitled to do.³ Hence the complexities of democratic politics and morality. Political scientists, historians, novelists, playwrights and politicians have done an enormous amount to clarify that complexity. Political philosophers have much to learn from them.

. (1,894 words)

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² The evidence suggests that CV does nothing for the quality of voting. Because it increases random voting, it seems to have no predictable effect on electoral outcomes, either. (Ballinger, 2006; Selb and Lachat, 2007)

³ My hunch is that people's sense of duty in such cases, even when justified, has more to do with their moral response to *particular circumstances* than it does from deducing the consequences of *very general* claims about democratic rights and duties.

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