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Is Compulsory Voting Justified?

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Abstract:

Should voting be compulsory? Many people believe that it should, and that countries, like Britain, which have never had compulsion, ought to adopt it. As is common with such things, the arguments are a mixture of principle and political calculation, reflecting the idea that compulsory voting is morally right *and* that it is likely to prove politically beneficial. This article casts a sceptical eye on both types of argument. It shows that compulsory voting is generally unjustified although there are good reasons to worry about declining voter turnout in established democracies, and to worry about inequalities of turnout as well.

Key Words: Democracy, Voting, Equality, Liberty, Duties, Rights

Should voting be compulsory? A surprising number of people seem to believe that it should, and that countries like Britain, which have never had compulsion, ought to adopt it.¹ As is common with such things, the arguments are a mixture of principle and political calculation, reflecting the idea that compulsory voting is morally right *and* that it is likely to prove politically beneficial. This article casts a sceptical eye on both types of argument. It seeks to show that the idea of a moral duty to vote is far less clear than proponents of compulsion believe, as is the case for turning a moral obligation into a legal one. It also suggests that the evidence of beneficial consequences from compulsion is weak. Hence, I show, while there are good reasons to worry about declining voter turnout in established democracies, and to worry about inequalities of turnout as well, the case for compulsory voting is not proven.

As we will see, the principled arguments for compulsion tend to turn on the claim that compulsion is justified as a way to combat the free-riding of non-voters on voters. Such free-riding, it is claimed, is an unjustified exploitation of the provision of a collective good – a democratic party system – and, unless curbed, is likely to undermine it. The pragmatic arguments are that compulsion is necessary to combat inequality in voting, which disadvantages the political left, because the propensity to vote is, overwhelmingly, characteristic of the more established and better educated members of society.

¹ The key paper which sparked contemporary interest in the topic is Lijphart, 1997. A recent British argument for CV is Keaney and Rogers, 2006, available online at www.ippr.org/publicationsandreports. Geoff Hoon, former Defence Minister in the Labour Government, espoused compulsory voting in 2005, and the *Guardian* newspaper for Monday, July 4, 2005, claimed that Hoon had the support of Peter Hain, and the former education minister Stephen Twigg. Examples of philosophical arguments for compulsion are Wertheimer, 1975 and Lacroix, 2007. See Czesnik, 2007 for recent interest in compulsory voting in Eastern Europe, and the reasons behind it..

Preliminaries

The term ‘compulsory voting’ can be a bit misleading, at least in democracies, where the secret ballot obtains. Because of secrecy, it is impossible to verify whether or not anyone has cast a legally valid ballot. Consequently, compulsory voting generally means compulsory turnout or, as some call it, compulsory participation.² However, because the purpose of compulsion is to get people to *vote*, rather than just to *turn out* or to *participate* in some generic way, talk of compulsory voting strikes me as less misleading than these other terms, and is the term that I will be using here.

The case for compulsory voting can be reconstructed in six steps which highlight its connections to democratic theory and practice. Not all countries with compulsory voting are democratic, nor are all arguments in its favour.³ However, the ones that I am concerned with seek to show that compulsory voting is consistent with democratic norms, institutions and values and may, indeed, be required by them. Not every proponent of compulsory voting will make each of the steps in the argument below, nor make them in the order in which I present them. However, this reconstruction is meant to illuminate the moral and political concerns which animate democratic arguments for compulsory voting, and to illuminate their logical connections. These arguments have,

² Arend Lijphart refers to compulsory turnout in Lijphart, 1997. Sarah Birch refers to compulsory participation in Birch, 2007. This paper is drawn from her book, *Full Participation: A Comparative Study of Compulsory Voting*, which is due to be published in 2008.

³ Examples of democracies with compulsory voting include Australia, Belgium, Luxembourg, Cyprus and Greece; examples of nondemocratic instances of compulsory voting are Egypt and Singapore. Australia introduced compulsion in 1924, and surveys suggest that about three quarters of the electorate are satisfied with the practice. See Hill, 2007, 4. Compulsory voting was introduced in Belgium with the introduction of universal male suffrage. Not only did women then lack the vote, but the male franchise was unequal as additional votes were available based on one’s education and status.

predominantly, been advanced by those who support social democratic policies, broadly understood. So, I have followed Arend Lijphart in supposing that concerns for political equality, as well as political legitimacy, are important to the case for compulsion although, historically, proponents of compulsory voting in Europe seem to have come from the right, rather than the left. (Pilet, 2007)⁴

A. THE CASE FOR COMPULSORY VOTING

Step One: Low Turnout is Unequal Turnout

Participation in elections is declining in most advanced industrial countries.⁵ Lower turnout, moreover, is *more unequal* turnout and these two facts, taken together, underpin the case for compulsion.⁶ Lower turnout seems to threaten the legitimacy of a country's government and electoral system, because it significantly increases the likelihood that governments will reflect a minority, rather than a majority, of registered voters, and of the voting-population, itself. As Ferdinand Mount said, commenting on the report of the Power Inquiry, in Britain, 'when little more than 20% of the electorate has voted for the winning party, as in the United Kingdom general election of May 2005, legitimacy begins to drain away'. He adds, 'If only just over half of us bother to vote at all in national elections and scarcely a third in local elections, the bureaucracy begins to

⁴ The Netherlands adopted compulsory voting in 1917, along with universal suffrage for men and PR. (women got the vote in 1919). The PR system in use at the time apparently required 100% turnout for the results to be truly proportional. I am curious why this was the system of PR that was adopted, and what connection the adoption of PR had to worries about the consequences of universal suffrage. See Gratschew, 2004, 29.

⁵ Two excellent recent books on voter turnout are Wattenberg, 2002 and Blais, 2000. Gerry Stocker, 2006 emphasises that the problem of declining turnout, while widespread, is particularly acute for established democracies.

⁶ Lijphart says that 'low voter turnout means unequal and socioeconomically biased turnout'. (Lijphart, 2) He seems to have been one of the first people to link the two systematically and repeatedly.

think of elections as a tiresome and increasingly insignificant interruption in its continuous exercise of power. What develops is...‘executive democracy’ and....more rudely described... “elective dictatorship””. (Mount, 2006)

It is not news that turnout has been declining in most democracies since the Second World War. However, the association of low turnout with unequal turnout may be less well known and its significance less clearly appreciated. For example, in the last two General Elections in Britain the participation gap between manual and non-manual workers more than doubled: from around 5% in 1997 to around 11% in 2005. Likewise, between the 1960s and 2005 the difference in turnout between the top and bottom quartile of earners grew from 7% to around 13%.⁷ The results are not dissimilar in other countries, and are particularly pronounced in the United States, where turnout at presidential elections for the college educated can be over 25% higher than that of the population as a whole, while those who lack a high-school diploma are 16% less likely to vote than the general population. (Rose, 2000, 316-7)

Second Step: Unequal Turnout Reflects and Reinforces Social Disadvantage

The fact that lower turnout means increasingly unequal turnout is troubling, because those least likely to turn out are overwhelmingly drawn from the least privileged social groups in a polity. Thus, the IPPR report notes that though ‘socio-economic status - whether measured by income, class or education – is not as significant a factor as age in determining whether a person will vote or not, it has nevertheless become an increasingly

⁷ These figures can be found on the IPPR’s ‘Press Release’ of May 1, 2006, for its report on compulsory voting. See <http://www.ippr.org.uk/pressreleases/?id=2083>.

significant factor – at least in the UK.although there has been some decline in turnout among all income categories since 1964, the decline is most rapid for those with the lowest income'. (Kearney and Rogers, 12)

So, it looks as though those people who do least well in our societies are least likely to vote; and in what seems to be a vicious circle, those least likely to vote are least likely to attract sympathetic attention from politicians eager to get elected or reelected. So inequalities in turnout are troubling, because they suggest a vicious circle in which the most marginal members of society are further marginalized.⁸ Not only that: in so far as these non-voters are more likely to vote for social democratic polities than other people, and particularly likely to benefit from them, inequalities in turnout seem to deprive the left of a significant political constituency and make it easier for the right to get reelected. Hence, as Lijphart makes plain, social democrats should be particularly concerned about declining voter turnout because it makes it more difficult to elect social democratic governments and, therefore, to pass social democratic legislation or public policies.⁹

⁸ Lijphart, 6 notes that 'the decline in turnout has been accompanied by a "participatory revolution" in Western Europe with regard to more intensive forms of political participation in which class bias is very strong'.

⁹ Lijphart, 5 cites evidence that 'the left share of the total vote increases by almost one-third of a percentage point for every percentage point increase in turnout'. However, in footnote 8, p.5, he refers to a study of the UK, where "high turnout has meant a consistent disadvantage for the conservatives, a modest gain for the Liberals, and no appreciable advantage for Labour – but, of course, a relative advantage for Labour as a result of the Conservatives' disadvantage'. This study is from 1986, and so the results may have been affected by the relative scarcity of Labour victories in the period and might look rather different if one extended the results up to 2005.

Now, as it happens, in Britain, as in most other countries, it is *age*, rather than wealth or income, which is the best predictor of who votes.¹⁰ Interestingly, in Britain, race is not a significant variable in explaining turnout, nor is wealth *per se*. In so far as they matter to turnout, in other words, it is because they are correlated to age and to the second most important factor to explain turnout, namely, education¹¹ Indeed, Keaney and Rogers say of age that ‘it is the single most significant of socio-demographic factors – more significant even than socioeconomic status’. (11)

The fact that it is age and education, rather than race, income and wealth that directly determine voting, makes it harder to know how troubling disparities in turnout really are. In principle, young people can be expected to have older people who care about them, and who are likely to vote bearing their interests in mind. In practice this may not be the case. In so far as young people are born to young parents – which is particularly likely if they are relatively uneducated and socio-economically deprived – young non-voters may, in fact, have young non-voting parents, family members and friends. In those circumstances, they may well lack anyone amongst those who vote who shares their interests and concerns.

The Third Step: Compulsion is the Best Cure

¹⁰ Blais reports that Franklin’s 1996 of 22 countries shows that age comes out as the most important socio-economic variable Blais’ own analysis of the Comparative Study of Electoral Systems (CSES) survey of 9 countries confirmed that age and education are the two critical variables, (Blais, 2000, 51-2).

¹¹ Apparently MORI estimates from 2001 suggest that only 39% of 18 – 25 year olds voted, compared to 70% of the over 65s. (Keaney and Rogers, 11 and 49-54).

If the first steps in the argument for compulsory voting are, typically, an expression of concern about declining and increasingly unequal turnout, the next step notes that there are a variety of plausible remedies for these problems. However, none seems as immediate, or as effective as compulsion in rectifying *both* low and unequal turnouts. Thus, while it is common to suggest that registration and voting should be made easier, that voting should take place at weekends, and that more active campaigning of all voters should be promoted, none of these is guaranteed to have any significant effect on turnouts, or on inequality. Such effects, in any case, are likely to be medium to long term.¹² By contrast, compulsory voting has immediate and dramatic effects on turnout, and the results are most dramatic the lower the rate of turnout to begin with.¹³ For example, in the 24 elections since 1946, Australia has average turnout of 94.5%; and in the 19 elections since 1947, Belgium averaged 92.7% turnout. So, compulsion in and of itself can turn around low turnout and, even though it cannot wholly remove inequalities of turnout, it can dramatically lessen these, too.

Fourth Step: Possible Additional Benefits to Compulsion

The next step in the case for compulsory voting is to note that compulsion may have other good effects, beyond immediate and significant increases in turnout. (Lijphart, 10 – 11) It may cut down the cost of campaigns, encourage politicians to

¹² Lijphart, 7 quotes 15% as the maximum benefit that registration reform would have in the US, and notes that it is irrelevant to most Western democracies, who have fairly high rates of registration to begin with. Proportional Representation may stimulate turnout by 9-12%, but, as footnote 14, p. 7 makes plain, 'multipartism, which is strongly associated with PR, depresses turnout – thus undoing some of PRs beneficial influence – and..bicameralism lowers turnout as well'. At p. 8 he notes that weekend voting increases turnout by 5 – 6 percentage points in first order elections, and in second order European Parliament elections, weekend voting raised turnout by more than 9 percentage points.

¹³ Apparently compulsion can raise turnout from 7 - -16 percent, even when the penalties for voting are low. (Lijphart, 8)

engage with those who are least interested in politics, and it may minimize negative campaigning, as well. The idea behind these potentially attractive features of compulsion is that if everyone has to vote, politicians can largely take turnout for granted, but have an especial interest in ensuring that those who turn out do not vote for the other side. In short, compulsion means that the battle is not, any more, to make sure that your supporters actually get to the polls, or to deter those of your opponents from doing so, (apparently the chief effect of negative campaigns), but to ensure that of those who turn out, as many vote for you as possible. (Ansolabehere and Iyengar, 1995; Lijphart, 10)

Lijphart makes it plain that these benefits are speculative. Unfortunately, the IPPR report treats them as fact, although failing to cite any evidence on their behalf. (Kearney and Rogers, 7)

Fifth Step: No Liberties Violated Because of Turnout/Voting Distinction

The final stages in the argument for compulsion aim to show that there are no significant down-sides to compulsory voting. The first move in this process is to claim that compulsory voting does not violate any significant liberties, because it does not actually force people to vote, as opposed to requiring them to turnout. (Lijphart, 11)¹⁴

Most proponents of compulsory voting believe that voters should have the option to vote for “none of the above”, although none of them ever discuss what should happen if that option turns out to have the largest share of the vote in an election, or sufficient to turn it

¹⁴ Lijphart is interesting in that he seems to believe that there is a right not to vote, by contrast with Wertheimer, and claims that there is a good case to have the option of voting for ‘none of the above’, that that the right to refuse to accept a ballot ‘is an even more effective method to assure that the right not to vote is not infringed’. (Lijphart, 11, Footnote 23)

into the major “opposition” party.¹⁵ The IPPR, indeed, notes in a footnote that it would forbid people from campaigning for a “none of the above” option, although explicitly supporting the provision of such an option on the ballot.¹⁶ So, while it is clear that considerably more thought has to go into the deciding what a “none of the above” option entails, and whether it is, in fact, desirable, the core idea is clear: compulsory turnout must be distinguished from compulsory voting, out of concern for civil and political liberties. Compulsory turnout seems to violate no liberties, and so it seems that there can be democratic forms of compulsory voting, and that these can be readily distinguished from authoritarian or totalitarian variants.

Step Six: Non-voters are Free-Riders and Free-Riding is Morally Wrong

The final, and crucial, step in the case for compulsion is the claim that non-voters are free-riding on voters. They are, it is claimed, selfishly benefiting from the public good of a democratic electoral system without doing their part to maintain it. This claim can be found in every argument for compulsory voting, although it is rarely spelled out in any detail.¹⁷

The key idea here is that a democratic electoral system is a public good, in that all citizens get to benefit from it, even if they do nothing to contribute to it. Because it is

¹⁵ I’ve been told that in Russia, where people can vote for ‘none of the above’, and are still under various forms of pressure to vote, this is a not-infrequent occurrence at provincial level. A new election is then called. In considering whether or not we should adopt this option, it is necessary to recognise that the result necessarily extends the life of the government who called the election. Consequently, there seems to be a form of ‘bias towards the status-quo’ in adopting this solution to problems of low turnout.

¹⁶ Kearney and Rogers say ‘It will of course be important to prevent the formation of an “Against All” or “None of the Above” party’, though how this is to be done, consistent with freedom of political association and expression is not discussed. (Kearney and Rogers, 32, footnote 15).

¹⁷ Alan Wertheimer is a notable exception. See pp. 280-282, and the summary of his argument at p. 290

a public good, it is possible to free-ride, or to enjoy the benefits of that good, without contributing oneself and, indeed, most people will have an interest in doing precisely that. Non-voters, therefore, can be seen as free-riders, selfishly and immorally exploiting voters. The moral force of this point is two-fold. First, it reinforces the idea that no morally significant liberties are threatened by compulsory turnout and, secondly, it carries the battle into the enemy camp. It is selfish and exploitative to benefit from the efforts of other people without making any effort to contribute. So, far from compulsion being unjustified, or even morally neutral, it seems positively desirable, as a curb on selfish and exploitative behaviour. As Lijphart puts it, 'It must be remembered that nonvoting is a form of free riding – and that free riding of any kind may be rational but is also selfish and immoral. The normative objection to compulsory voting has an immediate intuitive appeal that is not persuasive when considered more carefully'. (Lijphart, 11)

Summary of the Case for Compulsory Voting

The case for compulsory voting, then, is this: that it is the best means we have to combat the twin evils of low turnout and unequal turnout, and to do so with no significant costs. Compulsion has no significant costs, because the compulsion is to turnout, not to vote; and so no liberties of thought, expression or participation are threatened; nor are people treated in any way that is morally unjustified. Moreover, because nonvoters are, essentially, free-riding on the efforts of others, and because a democratic electoral system is an extremely valuable collective good, we are justified in preventing such free-riding,

by compulsion if necessary. The justification for compulsory voting, then, is meant to be democratic and to be clearly distinguishable from authoritarian or totalitarian alternatives.

The democratic concerns animating the case for compulsory voting make it attractive even to those, like me, who intuitively find the idea of compulsory voting distasteful. Moreover, as proponents of compulsion rightly point out, compulsory voting is a feature of several democratic countries, and has extraordinary and enduring levels of support in Australia – a country with a reputation for individualism, rather than the reverse. In fact, the democratic case for compulsion can be seen as an effort to make explicit and to systematize the experiences of several democracies.

Nonetheless, I will argue, the democratic case for compulsion has not been made, and is far harder to make than its proponents believe. I will lay out my concerns in five steps, arguing that the supposed benefits of compulsion are more speculative and uncertain than proponents believe, and that compulsion threatens people's freedom and equality in ways they have overlooked.

B. THE CASE AGAINST COMPULSION

Step One: The Evidence

The connection between compulsory voting and social democratic politics is more speculative and uncertain than Lijphart suggests. Those paradigmatic instances of social

democracy – Sweden,¹⁸ Norway¹⁹ and Finland – do not have compulsory voting and, indeed, appear to suffer from the same worries about declining voter turnout and indifference to the major political parties which trouble countries with more free-market economies, such as the United States and Britain. Moreover, while the Netherlands used to have compulsory voting, one of the reasons given for rejecting it was, precisely, the belief that the practice is undemocratic. (Gratschew, 29) Empirically, therefore, there seems to be little affinity between social democratic politics and compulsory voting. Nor is there any theoretical reason why the link should be tight. Voters do not always vote on their self-interest- for good and ill- so from the fact that social democrats assume that it would be in the interest of the socially disadvantaged to vote ‘left’ it does not follow that that is how the socially disadvantaged will vote, when they vote. So, with due deference to Lijphart’s expertise, I do not share his optimism about the likely voting patterns of current nonvoters. Instead I fear that if voters cannot spontaneously see the case for voting for a social democratic party or its nearest equivalent, the compulsion to turnout is unlikely to make it plainer.

Indeed, the evidence suggests that compulsory voting does nothing other than raise turnout – and there are, in fact, some questions about how far it is better than other

¹⁸ According to Gratschew, 30 the mere mention of compulsory voting by the Minister for Democracy, in 1999, as a way to increase turnout in Sweden, occasioned heated rejections of it by the media, political scientists and politicians.

¹⁹ See Ringen 2004. As the *TLS* cover to his article announced, ‘A remarkable study of democracy has reached its conclusion: rule by popular consent is disintegrating before our eyes’. The report referred to is “The Norwegian Study of Power and Democracy”, and the English language version can be found at www.sv.uio.no/mutr/english/index.html.

means of doing this, too.²⁰ Recent work suggests that compulsory voting has no noticeable effect on political knowledge or interest, (Engelen and Hooghe, 2007)²¹ nor, more surprisingly, any evident effect on electoral outcomes.(Selb and Lachat, 2007)²² Unfortunately, it also does not seem to force parties to compete for the votes of the poor, the weak or the marginalized, as Lijphart hoped, or even reduce the costs of electoral campaigns. Hence, Ballinger concludes, ‘Compulsory turnout does not guarantee inclusiveness; nor does it guarantee political equality’. (Ballinger, 2006, 13)²³

Step Two: the Normative Aspects of Low and Unequal Turnout

My second concern with the case for compulsion is that it seems to imply that all forms of low and unequal turnout are ethically troubling, though this is not obviously so. There is no reason to suppose that people should be equally interested in politics at all times, or that all people should find voting equally satisfactory.²⁴ Above all, it is morally

²⁰ Helen Margetts notes that moving from First Past the Post to a system of Proportional Representation in Britain would increase turnout by about 12%, which is in line with the 10 – 15% increase ascribed to compulsory voting in countries where it has been introduced. (Margetts, 2006, 29)

²¹ Ballinger notes that while ‘The Australian Election Commission works tirelessly to ensure that the Australian electors are as informed as possible about their system of voting’, knowledge about the workings of their political system is low. (Ballinger, 13)

²² Selb and Lachat show is that compulsory voting forces people to vote even if they are uninterested in politics, and have no consistent political beliefs or preferences. Hence, there is no predictable partisan result from the inclusion of such voters in elections. For a discussion of the Polish case, see Czesnik 2007..

²³ Mackerras and McAllister, (1999) 219. *Young people enroll far less often than older people*: for 18 – 24 year olds the estimate is 78% to 93% for the eligible population as a whole. If voting is then estimated based on this figure, turnout in 1990s would prove to be around 83.7% rather than 96.2% that follows from taking enrollment as the baseline. Needless to say, this is a very significant difference, and suggests a fairly high degree of noncompliance, as well as of inequalities in voting. See footnote 6, p.219 See also Ballinger, pp. 16-18. Ballinger also notes that while Australia made voting compulsory in 1924, Aborigines were only entitled to vote in 1962 and were not compelled to participate until 1983. Even now, their participation rates can be as low as 77.71% even in areas where they are a politically significant minority, and 5% of that 77% are invalid.

²⁴ Gerry Stoker suggests that there is something inherently disappointing and frustrating about democratic politics, precisely because it is difficult and requires one to accommodate the interests of those with whom one disagrees. Indeed, he thinks that unreasonable expectations of personal satisfaction may partly be to blame for political disenchantment in established democracies. (Stoker, 184-194).

and politically important to distinguish amongst different types of non-voters. There may be reasons to be troubled by those who do not vote because they are not particularly excited by any candidates, or because they are disenchanted by their favoured political party – as the failure to vote may point to deep-seated weaknesses in the competitive party system, and in the organization and ideology of the main political parties. But these problems, real as they are, seem far less urgent than those of the people who do not vote because voting and political participation of any form seem as alien and remote as university education, stable, well-paid work, decent housing, safe streets, and respect from other members of society. The difficulty in such cases is to see how compulsory voting will address, rather than exacerbate, the alienation of these non-voters, who are typically the objects, not the subjects, of political debate and policy, and who typically constitute the ‘problems’ that politicians are competing to solve.²⁵

This worry seems particularly acute because the evidence does not support Lijphart’s hope that compulsory voting will force parties to compete for all sections of the electorate, rather than targeting only a critical subsection. Compulsory voting largely takes the guesswork out of electoral turnout, and this makes it easier to target swing seats or constituencies, and easier to identify the key voter groups within marginal seats, themselves - even under systems of proportional representation. (Ballinger, 16-17) So, even if we abstract from voter dissatisfaction with the electoral choices that they face, and the platforms with which they are presented – both plausible reasons for political

²⁵ As Irwin and Holsteyn say, ‘It is clear ... that many respondents opposed compulsory voting [in the Netherlands in the 1960s] because they were alienated from the political system in general’, although compulsory voting seems to have had broad, though weak, support right up until its abolition. (Irwin and Holsteyn, 2005).

alienation and low turnout – compulsory voting seems unlikely to address the profound feelings of political powerlessness and inefficacy that seem to trouble the UK, and other established democracies. The worry, as Ballinger says, is that compulsory voting will exacerbate these feelings of alienation and powerlessness, even as the compulsion to vote removes ‘the very indicator which has helped kick-start the current debate about political engagement’.²⁶

The Third Step: Penalties for Nonvoting and their Enforcement

Proponents of compulsory voting tend to say that the penalties for non-voting are, typically, no higher than a relatively low fine. According to Ballinger, ‘High penalties are often thought not to be appropriate: such penalties disproportionately affect the poor, and can lead to heavy costs on an electoral commission’. (11) But even where that is true, it is important to realise that people can, and do, go to prison for failing to pay fines, and that this is the case, as well, for those who fail to pay fines for non-voting.

For example, in 1999 Melissa Manson was sentenced to one day in prison for failing to pay the fines incurred by her failure to vote in the 1993 and 1996 Federal elections. Manson, apparently, believed that there were no candidates worth voting for, and therefore objected both to voting, and to paying the resulting fine, on principle. (Hill, 6 – 7 and 17) Before holding that compulsory voting is justified, therefore, we need to be prepared to make criminals of people who do not pay their fines for not voting – and need

²⁶ Ballinger is talking about the UK, but there is no reason to suppose that this worry would not apply elsewhere. (Ballinger, 22)

to be confident that doing so is consistent with the democratic values and objectives that animate this case for compulsion.²⁷

The penalties for not voting in many democracies are fairly slight and the striking thing about countries such as Australia and Belgium is that people still vote although in Belgium fines are rarely enforced, and in Australia, excuses for not voting seem to be readily accepted.²⁸ But that does not mean that all penalties are low. In Italy, non-voters originally had their cards of good conduct marked and people feared that they would lose their chances of civil employment if they did not vote at the many different elections and referenda that were required. Likewise, in Belgium, the penalties on paper are quite severe, although rarely enforced. In principle, failure to vote four or more times within a 15 year period will lead to exclusion from the electoral register for 10 years and, if one is a civil servant, it will also mean disqualification from the chance of promotion.

(Gratschew, 27-29) Even now, apparently, people in Italy can be denied places at state childcare facilities, under what is misleadingly called ‘the innocuous sanction’.²⁹ For those whose employment depends on state-funded childcare of various sorts, the mere threat of losing a place would be far more alarming than the prospect of even a hefty fine.

²⁷ Perhaps concerns of this sort explain the recommendation of the 1997 Joint Standing Committee on Electoral Matters, in Australia, that compulsory voting be repealed for federal elections and referenda. It claimed that “if Australia is to consider itself a mature democracy, compulsory voting should now be abolished”. Quoted in Hill, 4-5

²⁸ Hill says that in Australia most excuses for not voting are readily accepted, and no documentation is required. (Hill, 12) However, the Australian Electoral Commission successfully fought a freedom of information case in order to prevent the full list of exemptions from being disclosed, so there is not way for citizens to check that exemptions are being fairly granted nor, indeed, that the criteria for exemptions are adequate. Anecdotal evidence for Belgium suggests that people may be unaware that enforcement is rare.

²⁹ Birch notes that until December 1993, Italian law required that the names of non-voters be posted at local municipal offices, (Birch, 10 footnote 13) and ‘before the removal of sanctions for non-voting in the mid 1990s, the fact of not having voted was noted on official documents, and there are reports that this may have made it difficult to obtain services such as childcare’. (Birch, 12 footnote 17).

What seems like a trivial penalty to some people, then, is a very grave threat to others; and there is nothing about compulsory voting that means the penalties for non-voting must be trivial.

Step 4: The Right Not to Vote is Not a Trivial One

Despite the claims of proponents of compulsory voting, I am not persuaded that the right not to vote is a trivial one, whether we consider ‘voting’ to mean ‘turnout’ or something more demanding.³⁰ The right to abstain, or to refrain from political self-identification and participation is an important one, symbolically and practically. It captures two ideas that are central to democracy. The first is that government is there for the benefit of the governed, not the other way round. The second is that the duties and rights of citizens are importantly different from those of their representatives, because the latter have powers and responsibilities that the former do not.

Citizens do not owe their government electoral support or legitimacy. This is one reason to doubt that citizens have a duty to vote even though, as Rawls claims, people have a natural duty to support just, or nearly just, institutions.(Rawls, 1971)³¹ In some circumstances this natural duty might place citizens under a moral obligation to vote and, even, to vote one way rather than another. For example, if there was a real danger that a

³⁰ Lisa Hill simply says ‘The claim that compulsion violates the liberal-democratic principles of choice and freedom is without doubt a valid one. But there are other important liberal-democratic principles at stake here, among them: legitimacy, representativeness, political equality, inclusiveness and minimization of elite power, all of which are served by compulsory voting’. (5) But it remains to be seen how these democratic values are served by forcing people to queue to tick their names off an electoral register or, indeed, to pick up a ballot.

³¹ Rawls says that ‘...From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions...’ (Rawls, 1971 Para. 51, 334) I look at the implications of Rawls’ views for Justine Lacroix’s ‘liberal’ justification of compulsory voting in Lever, 2008.

racist candidate would be elected in a constituency where one has the vote, one might have a natural duty to vote in favour of the best of the alternatives, however unappealing. Such a natural duty would, I imagine, exist *in addition* to whatever duties of solidarity and support one has- as a citizen, or as a member of a socially advantaged group - to those who are threatened by such an electoral prospect. Still, it will not be easy to ground a general duty to vote on this natural duty, because in general it is unclear why support for just institutions should take the form of 'electoral participation', rather than anything else. Reasonable people can disagree about the value of political participation relative to other forms of social participation and support, and even those who value political participation may disagree about the value of voting, compared to other forms of political activity. So it is doubtful that the natural duty to support just institutions can justify legal duties to vote, even though it may sometimes give us morally compelling reasons to vote in some elections.

Democratic conceptions of freedom and equality also cast doubt on the idea that citizens have a general duty to vote that should be legally enforced. Differences in power and responsibility between citizens and legislators properly affect the rights and duties of each. Party discipline may justly require legislators to vote, and to vote one way rather than another.³² Democratic conceptions of responsibility, accountability and equality may also require legislators to vote openly, rather than secretly, although legislators, like

³² Birch reports that in France public officials are required to vote in elections to fill the Senate, although, for ordinary citizens electoral participation is voluntary. The difference is justified on the grounds that Senators are elected by public servants, (mostly elected legislators), rather than by individuals. 'Electing Senators is therefore for these officials a public duty which cannot be shirked'. Birch, 4

citizens, can suffer from bribery and intimidation.³³ By contrast, it is hard to justify a general duty to vote simply because one is a citizen and has a right to vote. No such duty is implied by the case for universal suffrage, which simply supposes that people are equally entitled to vote and to stand as candidates for public office. So the idea that the right not to vote is a trivial right or liberty seems to trivialize the differences in power and responsibility of democratic citizens and legislators and to overlook the legitimate reasons why people might wish to abstain.

The ethics of voting have received little attention from philosophers and political scientists, yet it is plain that they are no more self-evident than other ethical matters. People can doubt the extent and reliability of their knowledge and judgement, or be unsure of the proper grounds on which to make their decision. They may feel that it would be arbitrary and invidious to favour one of the candidates when several or all of them are acceptable and they may, of course, worry about the way that their vote will be interpreted and used by politicians and the media. So, even people who have no conscientious objections to voting might have compelling reasons to prefer abstention to voting in at least some elections, and to do so even if they have the option of voting for 'none of the above'.

³³ For a legal case that has influenced my thinking on the importance of distinguishing the rights and duties of leaders and ordinary members, see *NAACP v. Alabama*, 357 U.S. 449 (1958). The crux of the Supreme Court decision is that ordinary members of the National Association for the Advancement of Colored People, and other organizations, do not have duties of accountability that require them to sacrifice their anonymity. By contrast, leaders of organizations do. The implication is that organizations with no formal leadership will either have to appoint some members who can be held accountable for the behaviour of members, or that all members will have to share in accountability and any loss of privacy that this involves. I look at the implications of equality and responsibility for the case against mandatory public voting in Lever, 2007.

Moreover, the case for forcing turnout, but not voting, is obscure. After all, it is low and unequal *voting*, not *turnout*, that is the cause of moral and political concern. While it is likely that many people who have been forced to turn out will then go on to cast legally valid votes, we are here talking psychological probabilities, rather than any conceptual or normative connection between enforced turnout and democratic voting.³⁴ That is, the reason why people are likely to vote, if they are forced to turn out, is that most people do not like to waste their time. So, if they are forced to queue at polling stations, in order to tick their name off a list, they may well go on to vote, although otherwise they would not have bothered. But from the fact that people do not like to waste their time, and therefore tend to vote, it does not follow that we are justified in forcing them to queue in order to tick their names off an electoral register.

Queuing simply to tick your name off an electoral register seems pretty pointless and annoying. Nor are its pointless and annoying features in any way alleviated because they have been turned into a legal duty. Such a duty, indeed, seems pretty insulting and demeaning, and ill suited to promoting the idea that voting is an important civic duty. Sharply distinguishing the duty to turnout from the duty to vote might meet some moral objections to compulsory voting the duty to vote. However, the duty to vote, so understood, is no moral duty at all.

Step 5: non-Voting, Free Riding and the Danger of False Analogies

³⁴ Actually, there is an empirical question about how far the stated ‘gains’ produced by compulsion refer to *turnout* rather than voting, and how far they depend on legal requirements to *vote* rather than to turnout. Ambiguity here makes it important to sort out what, exactly, different figures refer to and what legal background they presuppose.

As we have seen, the case for compulsory voting turns, importantly, on the thought that non-voters are free-riders, selfishly exploiting the public-spirited efforts of voters. There is, therefore, no moral objection to forcing them to do their share to maintain a democratic system by making voting a legal duty, as well as a right. There are two main problems with this argument. The first is an internal one, of consistency with other aspects of the case for compulsion; the second is the difficulty of showing that legal compulsion is justified even if some voters are free-riders.

The idea that non-voters are selfish exploiters of voters is hard to square with the picture of political inequality that underpins other aspects of the case for compulsory voting. At the start of the case, as we have seen, non-voters are conceptualized as socially deprived in various ways, and as appropriate objects of social democratic concern. Nonvoters, on this picture, find it difficult to protect their own interests- they are, after all, less educated, less experienced and less well-organised than other people - and so are liable to exploitation by the more powerful, knowledgeable and politically astute. The case for compulsion, indeed, verges on the paternalist, at least as regards this social group, because non-voting is here presented as a threat to their interests, albeit a partially self-induced threat. By contrast, the free-riding justification of compulsion assumes that non-voters are behaving in a self-interested fashion, and seeking to enjoy the benefits of a democratic electoral system without doing their fair share to maintain it. They seem, therefore, to be exploiting the good will, public spirit and sense of duty of voters, and to be behaving in ways that are selfish and immoral.

These two pictures of non-voters seem to be inconsistent although proponents of compulsion, such as Lijphart, seem not to have noticed the tension between them. Conversely, while we might want to describe those who voted for Le Pen in France, or the British National Party in the U.K., as selfless contributors to a democratic public good. But this will require considerable argument and cannot be treated as an *apriori* truth. Nor should we forget that individuals who vote ‘tend to have an inflated sense of the potential influence of their vote – just as people tend to vastly overestimate their chances of winning lotteries’.(Rose, 317) ³⁵ Hence, there are difficulties with the moral characterization of both voters and non-voters, assumed by free-rider arguments for compulsion.

The second difficulty with the free-riding argument turns on the difficulty of describing the public good which compulsion is supposed to protect. The case for compulsory voting is frequently characterized by analogies between compulsion in the case of voting and compulsion in the case of military service, the education of children, or in the cases of taxation and jury duty.³⁶ Democratic societies often require people to contribute to some public good and, in the case of compulsory voting, the level of sacrifice or effort required is comparatively small.

The argument turns on the assumption that compulsory voting is necessary to protect a public good. But how that good should be characterized is uncertain, given that

³⁵ See, also, Blais, 69, and the suggestion that the tendency to overestimate the significance of one’s vote is particularly likely in close elections.

³⁶ My impression is that most people are just copying Lijphart here. See Lijphart, 11; Hill, 5; and Kearney and Rogers, 30. However, unlike Hill, Kearney and Rogers do not cite Lijphart as their inspiration.

the extent of turnout one decides upon may have predictable implications for who wins or loses an election, as Lijphart assumes. It might be said that the public good in question is ‘legitimacy’ or a ‘democratic electoral system’ or ‘a representative political system’. But to make such claims looks like over-kill, and is clearly inconsistent with the idea that there are democratic and legitimate political systems which lack compulsory voting. As these, indeed, seem to be the majority of ‘actually existing’ democracies, there is clearly something wrong with the idea that democratic legitimacy or representation turns on achieving turnouts in the 90th percentile, or even in the 80s. The first difficulty with these analogies, therefore, is the idea that compulsory voting is necessary or justified in order to protect a public good *even if* some voters are free-riders.

But the difficulty with these analogies is more fundamental. Legal requirements to serve on juries, to serve in the army, to pay taxes and to educate our children may help to protect a public good from the temptations posed by free-riding. But it is doubtful that such ideas play a significant role in explaining why such legal duties are justified when they are, as they seem to obscure the very considerable differences in the content, weight and justification of these different duties, as well as to obscure the differences between justified and unjustified forms of each.

For example, the duty to pay taxes applies whether or not one is a citizen, and seems to be characterized by ideas of ‘ability to pay’, proportionality, and even redistributive justice that are absent from the case for compulsory voting. It is also worth noting that compulsory voting implies that everyone has a legal duty to vote although

people will be excused their failure to fulfill that duty if they have conscientious objections to voting. By contrast, the duty to pay income tax below a specified threshold is no legal duty at all – although the poor, notoriously, have to pay consumption taxes, so that concerns for distributive justice may sometimes justify raising money from taxes on income rather than consumption.

Likewise, the duty to serve on a jury, in systems with jury trials, appeals to moral and political notions of equality, fairness and justice that go well beyond the idea that the state can solve collective action problems via coercion. The duty to serve on a jury importantly reflects the obligation to provide defendants with a jury of their peers – that is, a jury that is made up of people like them, suitably defined. Compulsion is necessary because voluntary participation is likely to lead to juries skewed in all sorts of undesirable ways. So, the main reason why compulsion is justified in the case of jury duty is because we have duties of justice to defendants which constrain what will count as a free and fair trial.

Without belabouring the point, therefore, it looks as though the case for compulsory voting cannot be made to seem innocuous or democratic by comparing it to other duties which we generally accept. The difficulty is that these latter duties have an evident and agreed point to them, whereas whether or not it is desirable to raise and equalize voting, or to use legal compulsion to do so, has still to be established. Moreover, duties to pay taxes, to educate one's children, to serve in the defence of one's country or to serve on juries, are all very different duties, with significantly different

justifications. What makes them morally and politically significant and distinct is, inevitably, lost in any attempt to treat them as examples of justified coercion in response to collective action problems. Perhaps we can illuminate these duties by treating them as solutions to the problem of providing and maintaining public goods, given rational self-interest. But my hunch is that such a perspective is likely to obscure, rather to illuminate, the morally significant features of these different duties and may, indeed, lead to radically undemocratic versions of them.³⁷

C. CONCLUSION

In this paper I have argued that the case for compulsory voting is unproven. It is unproven because the claim that compulsion will have beneficial results rests on speculation about the way that nonvoters will vote if they are forced to vote, and there is considerable, and justified, controversy on this matter. Nor is it clear that compulsory voting is well-suited to combating those forms of low and unequal turnout that are, genuinely, troubling. On the contrary, it may make them worse by distracting politicians and voters from the task of combating persistent, damaging, and pervasive forms of unfreedom and inequality in our societies.

Moreover, I have argued, the idea that compulsory voting violates no significant rights or liberties is mistaken and is at odds with democratic ideas about the proper

³⁷ The theory of rational choice and the theory of moral choice are not the same, just because the requirement of reasoned justification generally attaches to the latter. Depending on background circumstances, it can be rational to exploit or to be exploited; it can be rational to deceive, coerce and blackmail, or to put up with being deceived, coerced and blackmailed. So unless one is careful to build in suitably moral assumptions, there is nothing about an individually or collectively rational decision that requires it to be consistent with democratic norms.

distribution of power and responsibility in a society. It is also at odds with concern for the politically inexperienced and alienated, which itself motivates the case for compulsion.

Rights to abstain, to withhold assent, to refrain from making a statement, or from participating, may not be very glamorous, but can be nonetheless important for that.

They are necessary to protect people from paternalist and authoritarian government, and from efforts to enlist them in the service of ideals that they do not share. Rights of non-participation, no less than rights of anonymous participation, enable the weak, timid and unpopular to protest in ways that feel safe and that are consistent with their sense of duty, as well as self-interest.

True, such forms of protest are can be misinterpreted, and by themselves are unlikely to be wholly successful. But that is true of most forms of protest, and would be true of compulsory voting, itself.³⁸ After all, it is unclear what meaning we should give to those who queue to tick their names off an electoral register, but then go home without voting. Nor is it evident what we should say about those who voted for “none of the above”, other than that they preferred this option to the others that were available. Most protest, and all voting, depends for its success on the behaviour of other people, many of whom we will not know, many of whom will have interests and beliefs quite at odds with our own, and over whose behaviour we have no influence. People must, therefore, have rights to limit their participation in politics and, at the limit, to abstain, not simply

³⁸ Kearney and Roger seem to think that the ability to vote for ‘none of the above’ ‘would in fact be a far more effective means of withdrawing democratic legitimacy than abstention, as it could not be misread as apathy’. Obviously, this requires people to vote, rather than just to turn up. Apart from that, of course, it is easy to imagine the obvious rejoinder to this, which is that people are being lazy when they voted and it is not going to be at all clear that people ticking this option are not protesting compulsion to vote, rather than the options available.

because such rights can be crucial to prevent coercion by neighbours, family, employers or the state, but because they are necessary for people to decide what they are entitled to do, what they have a duty to do, and how best to act on their respective duties and rights.

That is not to say that compulsory voting can never be democratic, merely that these are likely to be exceptions, rather than the norm. Legal duties to vote may be necessary to protect the right to vote where the state is weak, and inequalities of power leave peasants at the mercy of landowners, or workers vulnerable to employers. It is also possible that in very large countries, or those riven by ethnic divisions, compulsory voting is necessary to gain support for a system of proportional representation that is fair to all social groups. But these are rather different justifications for compulsion than the ones that we have looked at here, and though they have affinities with arguments that have been made for compulsion in the past, it is unclear what forms of compulsion or of proportionality they would actually justify. For now, the point is simply that the difficulties with the democratic case for compulsion do not mean that compulsory voting cannot serve an important remedial purpose. However, that is rather different from advocating its adoption by long established, stable and seemingly functional democracies.

Bibliography

Ansolabehere. S and Iyengar. S. 1995. *Going Negative: How Attack Ads Shrink and Polarize the Electorate*. New York. Free Press.

- Bale, T et al. 2006. You Can't Always Get What you Want: Populism and the Power Inquiry. *The Political Quarterly*. 77.2.
- Ballinger. C. 2006. Compulsory Turnout: A solution to Disengagement? in C. Ballinger *Democracy and Voting*. London. Hansard Society. Emocracy Series. 5-22
- Birch, S. 2007. Conceptualising Electoral Obligation. Paper presented to the ECPR Joint Sessions Workshop on "Compulsory Voting: Principles and Practice", Helsinki, May 7 – 12.
- Blais, A. 2000. *To Vote or Not to vote: the Merits and Limitations of Rational Choice Theory*. Pittsburg. University of Pittsburg Press.
- Czesnik, M. 2007 Is Compulsory Voting a Remedy? Evidence Form the 2001 Polish Parliamentary Elections. Paper presented to the ECPR Joint Sessions Workshop on "Compulsory Voting: Principles and Practice", Helsinki, May 7 – 12.
- Engelen.b and Hooghe. M. 2007. Compulsory Voting and its Effects on Political Particiaption, Interest and Efficacy. Paper presented to the ECPR Joint Sessions Workshop on "Compulsory Voting: Principles and Practice", Helsinki, May 7 – 12.
- Gratschew, M. 2004. "Compulsory Voting in Western Europe" in *Voter Turnout in Western Europe Since 1945: A Regional Report*. Ch. 3. Rafael Lopez Pintor and Maria Gratschew. International IDEA
- Hill, Lisa, 2007. Compulsory Voting in Australia: History, Public Acceptance and Justifiability. Paper presented to the ECPR Joint Sessions Workshop on "Compulsory Voting: Principles and Practice", Helsinki, May 7 – 12.

Irwin...and Holsteyn...Scarfmán's Parcel: Old and New Thoughts on the Abolition of Compulsory Voting in the Netherlands.

Kearney, E and Rogers, B. 2006. A Citizen's Duty: Voter Inequality and the Case for Compulsory Turnout. *Institute of Public Policy Report*,
www.ippr.org/publicationsandreports.

Lacroix, J. 2007. In Defense of Compulsory Voting. *Politics* 27.3: 190-195.

Lever, A. 2007. Mill and the Secret Ballot: Beyond Coercion and Corruption. *Utilitas*.
 20.2. 354-378

Lever, A. 2008. "A Liberal Defence of Compulsory Voting": some Reasons For Scepticism. *Politics*. 28.1 61 – 64.

Lijphart, A. 1997. Unequal Participation: Democracy's Unresolved Dilemma. *American Political Science Review* 91.2: 1 – 14

Mackerras, M. and McAllister, I. (1999) Compulsory Voting, Party Stability and Electoral Advantage in Australia. *Electoral Studies* 18. 217-233

Margetts, H. 2006. Citizens Cannot Be Compelled to Engage with Political Organisations. In C. Ballinger. *Democracy and Voting*. London. Hansard Society. Democracy Series. 29-35

Mount, F. 2006. The Power Inquiry: Making Politics Breathe. *Open Democracy website*.
www.opendemocracy.net/globalisation-institutions_government/power_inquiry_331.

Pattie, C and Johnston, R. "Real Power and True Elections?" The Power Report and Revitalising British Democracy. *Parliamentary Affairs*, 60.2. 253-278.

Pilet. Jean-Benoit. 2007. Choosing Compulsory Voting in Belgium: Strategy and Ideas Combined. Paper presented to the ECPR Joint Sessions Workshop on “Compulsory Voting: Principles and Practice”, Helsinki, May 7 – 12.

Rawls. J. 1971. *A Theory of Justice*. Massachusetts. Harvard University Press.

Ringen.S. 2004. The Message From Norway. *Times Literary Supplement*. Feb.13.

Rose. R. ed. 2000. *The International Encyclopedia of Elections*. CQ Press

Selb. P and Lachat. R. 2007. The More, The Better? Paper presented to the ECPR Joint Sessions Workshop on “Compulsory Voting: Principles and Practice”, Helsinki, May 7 – 12.

Stoker, G. 2006. Explaining Political Disenchantment: finding Pathways to Democratic Renewal. *The Political Quarterly*. 77. 2. 184-194.

Wertheimer. A. 1975. “In Defense of Compulsory Voting”. In *Participation in Politics*, ed. J. Roland Pennock and John V.Chapman, 276-296, New York. Lieber-Atherton.