B.J.Pol.S. **40**, 897–915 *Copyright © Cambridge University Press, 2010*
doi:10.1017/S0007123410000050
First published online 14 May 2010

Compulsory Voting: A Critical Perspective

ANNABELLE LEVER*

Compulsory voting is sometimes thought to be justified in democracies because it promotes high levels of voting and mitigates inequalities of turnout amongst social groups. Proponents of compulsory voting also argue that it helps to prevent the free-riding of non-voters on voters. This article casts a sceptical eye on both arguments. Democratic citizens do not have a duty to promote their self-interest, and their duties to others do not generally require them to vote, or to attend the polls. So, while people are sometimes morally obliged to vote, and to vote one way rather than another, legal compulsion to vote or to turn out is generally unjustified and inconsistent with democratic government.

Should voting be compulsory? This question has recently gained the attention of political scientists, politicians and philosophers, many of whom believe that countries, like Britain, which have never had compulsion, ought to adopt it.[1] The arguments are a mixture of principle and political calculation, reflecting the idea that compulsory voting is morally right *and* that it is will prove beneficial. This article casts a sceptical eye on both claims, by emphasizing how complex political morality and strategy can be. Hence, I show that, while there are good reasons to worry about voter turnout in established democracies, and to worry about inequalities of turnout as well, the case for compulsory voting is unpersuasive.

* Institute for Science, Ethics and Innovation, The University of Manchester Law School (email: Annabelle.lever@manchester.ac.uk). This article was originally prepared for the ECPR Joint Sessions workshop on 'Compulsory Voting: Principles and Practice', Helsinki, 2007, with funding from the Department of Politics and International Relations, University of Reading; and the ECPR, itself. It was presented at the Institute of Philosophy, Roehampton, the 8th Priority in Practice Workshop in London, and at LSE's Colloquium in Philosophy and Public Policy in 2007. It was also presented to the Nuffield Political Theory Colloquium, and to the Political Theory seminar at UCL's School of Public Policy in 2008. The author thanks all those involved and, particularly, Richard Bellamy, Chris Ballinger, Cecile Laborde, Justine Lacroix, David Miller and Jonathan Wolff. Thanks also are due to Dennis Thompson and Albert Weale who kindly read previous versions; and to Jan Rovensky who sent her his doctoral thesis. Finally, many thanks to the reviewers of the *Journal* who helped sort out the different strands of the argument.

[1] The key paper which sparked contemporary interest in the topic is Arend Lijphart's 'Unequal Participation: Democracy's Unresolved Dilemma', *American Political Science Review*, 91 (1997), 1–14. A recent British argument for compulsory voting is by Emily Keaney and Ben Rogers, 'A Citizen's Duty: Voter Inequality and the Case for Compulsory Turnout', *Institute of Public Policy Report*, May 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* on Monday, 4 July 2005, claimed that Hoon had the support of Peter Hain and the former education minister Stephen Twigg. Examples of philosophical arguments for compulsion are Alan Wertheimer, 'In Defense of Compulsory Voting', in J. Roland Pennock and John V. Chapman, eds, *Participation in Politics* (New York: Lieber-Atherton, 1975), chap. 14, pp. 276–96, and Justine Lacroix, 'A Liberal Defence of Compulsory Voting', *Politics*, 27 (2007), 190–5. Mikolay Czesnik discusses recent interest in compulsory voting in Eastern Europe, and the reasons behind it, in 'Is Compulsory Voting a Remedy? Evidence from the 2001 Polish Parliamentary Elections' (paper presented to the ECPR Joint Sessions Workshop on Compulsory Voting, Helskinki, 2007).

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

I will start with some terminological points about what is meant by compulsory voting, before turning to the arguments in its favour. As we will see, the principled arguments for compulsion rely 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 a collective good – a democratic political system – and, unless curbed, is likely to undermine it. The pragmatic arguments are that compulsion is necessary to combat inequalities in voting, which disadvantage the political left, because the propensity to vote is overwhelmingly characteristic of the more established and better educated members of society. I will then evaluate the strengths and weaknesses of these claims, concluding with their implications for democracy.

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 that 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 follow each of the steps in the argument below, or follow them in the order in which I present them. However, this reconstruction is meant to illuminate not only the moral and political concerns that animate democratic arguments for compulsory voting, but also to illuminate their logical connections. These arguments have predominantly been advanced by those who support social democratic policies as they are broadly understood. So, I have followed Arend Lijphart in supposing that concerns for political equality, as well as political legitimacy, are important to the contemporary case for compulsion, although, historically, proponents of compulsory voting in Europe seem to have come from the right, rather than the left.[4]

[2] Arend Lijphart refers to compulsory turnout in his article. Sarah Birch refers to compulsory participation in 'Conceptualising Electoral Obligation' (prepared for the Workshop on 'Compulsory Voting – Principles and Practice', ECPR Joint Sessions Workshops, Helsinki, 2007). See also Sarah Birch, *Full Participation: A Comparative Study of Compulsory Voting* (Manchester: Manchester University Press, 2008), and as an example of the defence of compulsory voting, Sarah Birch, 'The Case for Compulsory Voting', *Public Policy Research*, Vol (2009), 21–7. There is also a response to Birch, see Annabelle Lever, 'Democratic Choice, Legitimacy and the Case Against Compulsory Voting' (see www.ippr.org.uk/uploadedfiles/publicpolicyresearch/democratic choice.pdf).

[3] Examples of democracies with compulsory voting include Australia, Belgium, Luxembourg, Cyprus and Greece; examples of non-democratic 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 Lisa Hill, 'Compulsory Voting in Australia: History, Public Acceptance and Justifiability' (paper presented to the ECPR Joint Sessions Workshop on Compulsory Voting, Helsinki, 2007), p. 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.

[4] Jean-Benoit Pilet, 'Choosing Compulsory Voting in Belgium: Strategy and Ideas Combined' (paper presented to the ECPR Joint Sessions Workshop on Compulsory Voting, Helsinki, 2007). The Netherlands adopted compulsory voting in 1917, along with universal suffrage for men and proportional representation

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

THE CASE FOR COMPULSORY VOTING

The case for compulsory voting proceeds in six steps or stages. I will start by outlining the six steps before describing each in more detail. The first stage in the chain is to note that low turnout at election time is a pervasive problem in most advanced democracies, and that low turnout is associated with unequal turnout. The second step notes that unequal turnout reflects, or is correlated with, socio-economic disadvantage of various sorts, and reproduces it by disadvantaging parties of the Left. While there are several potential cures for low and unequal turnout, the third step shows that none is as immediate and as successful in tackling both problems as compulsory voting. The fourth step notes that there are some speculative benefits of compulsion beyond improving and equalizing turnout. The fifth step maintains that compulsion does not violate any liberties, because we are really considering compulsory turnout rather than compulsory voting. The sixth step compares non-voters to free-riders, and thus implies that non-voters are behaving in ways that are selfish and morally wrong, so forcing them to vote can scarcely be described as immoral. Hence, the conclusion goes that compulsory voting is justified because no liberties are threatened, although compulsory voting very significantly removes the problem of low and unequal turnout.

Step One: Low Turnout is Unequal Turnout

Participation in elections is declining in most advanced industrial countries. *Lower* turnout, moreover, is *more unequal* turnout and these two facts, taken together, underpin the case for compulsion.[5] 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 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'.[6]

(Fnote continued)
(PR); women got the vote in 1919. The PR system in use at the time apparently required 100 per cent turnout for the results to be truly proportional. I am curious about 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 Maria Gratschew, 'Compulsory Voting in Western Europe', in Rafael López Pintor and Maria Gratschew, *Voter Turnout in Western Europe Since 1945: A Regional Report* (Stockholm: International International Institute for Democracy and Electoral Assistance, 2004), chap. 3, at p. 29.

[5] Lijphart, 'Unequal Participation', p. 2 – 'low voter turnout means unequal and socioeconomically biased turnout'. Lijphart seems to have been one of the first people to link the two systematically and repeatedly. Two excellent works on turnout are Martin P. Wattenberg, *Is Voting for Young People?* (New York: Pearson Longman, 2007); and André Blais, *To Vote or Not to Vote: The Merits and Limitations of Rational Choice* Theory (Pittsburg, Pa.: University of Pittsburg Press, 2000). Gerry Stocker, 'Explaining Political Disenchantment, Finding Pathways to Democratic Renewal', *Political Quarterly*, 77 (2006), 184–94, emphasizes that the problem of declining turnout, while widespread, is particularly acute for established democracies.

[6] Ferdinand Mount, 'The Power Inquiry: Making Politics Breathe', Open Democracy website, 28 February 2006 (see http://www.opendemocracy.net/globalization-institutions_government/power_inquiry_331). The Power Inquiry itself was chaired by Dame Helena Kennedy. Its report, *Power to the*

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

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, the participation gap between manual and non-manual workers more than doubled from around 5 per cent in 1997 to around 11 per cent in 2005. Likewise, between the 1960s and 2005, the difference in turnout between the top and bottom quartile of earners grew from 7 per cent to around 13 per cent.[7] These results are not dissimilar in other countries.

Moreover, each generation seems to be participating at a decreased rate. So, it is possible that expectations and social norms that, in the past, created high turnouts, have now been significantly, perhaps fatally, weakened. This, indeed, is Geoff Hoon's fear, and explains his support of compulsory voting. The *Guardian* quotes him as saying: 'My fear is that as the older, more regular voters die, we will be left with a significant number of people for whom voting is neither a habit, nor a duty'.[8] The figures appear to bear him out, as turnout among the first low turnout generation in Britain, the one that came of age in 1992, has fallen with each election, although subsequent cohorts vote at even lower rates.[9] So, it looks as though the problems of low and unequal turnout can be expected to get worse, rather than better, in future.[10]

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 significant factor – at least in Britain … 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.[11]

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 re-elected. Inequalities

(F'note continued)

People: An Independent Inquiry into Britain's Democracy was published in March 2006, and painted a damning picture of people's distrust and alienation from established political institutions and parties (available at. www.powerinquiry.org). However, Tim Bale *et al.* argue that the Report 'overdoes the seriousness of the symptoms that so concern it' and underplays key features of the cure (see Tim Bale, Paul Taggart and Paul Walsh, 'You Can't Always Get What You Want: Populism and the Power Inquiry', *Political Quarterly*, 77 (2006), 195–203). Charles Pattie and Ron Johnston are more sympathetic to the Report's description of the symptoms, but dispute its account of the causes and the cure in 'Power to the People Through "Real Power and True Elections"? The Power Report and Revitalising British Democracy', *Parliamentary Affairs*, 60 (2007), 253–78.

[7] These figures can be found on the Institute for Public Policy Report's 'Press Release' of 1 May 2006, in its report on compulsory voting (see http://www.ippr.org.uk/pressreleases/?id=2083).

[8] See 'Hoon calls for compulsory voting' by Patrick Wintour, *Guardian*, Monday, 4 July 2005, available online at http://politics.guardian.co.uk/apathy/story/0,12822.1520779,00.html.

[9] Keaney and Rogers, 'A Citizen's Duty', pp. 11–12.

[10] However, see Mark N. Franklin, 'You Want to Vote When Everybody Knows Your Name: Anonymity, Campaign Context and Turnout Among Young Adults' (unpublished paper, European University Institute, Florence, 2008).

[11] Keaney and Rogers, 'A Citizen's Duty', p. 12.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

in turnout are troubling, then, because they suggest a vicious circle in which the most marginal members of society are further marginalized.[12] 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 re-elected. 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.[13]

Now, as it happens, in countries like Britain it is *age*, rather than wealth or income, which is the best predictor of who votes. 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, education.[14] Indeed, Keaney and Rogers say of age that 'it is the single most significant of socio-demographic factors – more significant even than socioeconomic status'.[15]

The fact that it is age and education, rather than race, income and wealth that directly determine voting – and this seems true of other countries as well[16] – 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

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,

[12] Lijphart ('Unequal Participation', p. 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'.

[13] Lijphart ('Unequal Participation', p. 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 fn. 8, p. 5, he refers to a study of Britain, 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.

[14] Keaney and Rogers, 'A Citizen's Duty', p. 11. Apparently, MORI estimates from 2001 suggest that only 39 per cent of 18 to 25-year-olds voted, compared to 70 per cent of the over 65s. See also Blais, *To Vote or Not to Vote*, pp. 49–54.

[15] Keaney and Rogers, 'A Citizen's Duty', p. 11.

[16] Blais, *To Vote or Not to Vote*, p. 51, reports that Franklin's 1996 study of twenty-two countries shows that age comes out as the most important socio-economic variable. Blais's own analysis of the Comparative Study of Electoral Systems (CSES) survey of nine countries confirmed that age and education are the two critical variables (pp. 51–2).

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

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.[17] 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.[18] For example, in the twenty-four elections since 1946, Australia has an average turnout of 94.5 per cent; and in the nineteen elections since 1947, Belgium averaged 92.7 per cent 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.[19] It may cut down the cost of campaigns, encourage politicians to engage with those who are least interested in politics, and it may minimize negative campaigning as well. 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. So, 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),[20] but to ensure that of those who turn out, as many vote for you as possible. 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.[21]

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 downsides 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 turn out.[22] 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 is sufficient to turn it into the major

[17] Lijphart, 'Unequal Participation', p. 7, quotes 15 per cent as the maximum benefit that registration reform would have in the United States, and notes that it is irrelevant to most Western democracies that have fairly high rates of registration to begin with. PR may stimulate turnout by 9–12 per cent, but, as fn. 14, p. 7 makes plain, 'multipartism, which is strongly associated with PR, depresses turnout – thus undoing some of PR's 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.

[18] Lijphart, 'Unequal Participation', p. 8. Apparently, compulsion can raise turnout in the range of 7–16 per cent, even when the penalties for voting are low.

[19] Lijphart, 'Unequal Participation', pp. 10–11.

[20] S. Anolabehere and S. Iyengar, *Going Negative: How Attack Ads Shrink and Polarize the Electorate*, (New York: The Free Press, 1995), cited by Lijphart, 'Unequal Participation', p. 10.

[21] Keaney and Rogers, 'A Citizen's Duty', p. 7

[22] Lijphart, 'Unequal Participation', p. 11, fn. 23. Lijphart is interesting in that he seems to believe that there is a right not to vote, by contrast with Wertheimer, 'In Defense of Compulsory Voting', and claims that there is a good case to have the option of voting for 'none of the above', and 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'.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

'opposition' party.[23] The IPPR, indeed, seems willing to forbid people from campaigning for a 'none of the above' option, although explicitly supporting the provision of such an option on the ballot.[24] So, while it is clear that considerably more thought has to go into 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 competitive electoral system – and, we might add, of a *democratic* one – without doing their part to maintain it. This claim can be found in most arguments for compulsory voting, although it is rarely spelled out in any detail.[25]

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 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'.[26]

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.

[23] I have 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 the provincial level. A new election is then called. In considering whether or not we should adopt this option, it is necessary to recognize that the result necessarily extends the life of the government that 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.

[24] Keaney and Rogers, 'A Citizen's Duty', p. 32, fn. 15: 'It will of course be important to prevent the formation of an "Against All" or "None of the Above" party'. How this is to be done, consistent with the freedom of political association and expression, is not discussed. It is true that it would be necessary to stop parties naming themselves after the 'none of the above' option, in order to secure those votes. However, it seems possible – though undesirable pragmatically – for people to form one or more political parties in order to persuade people to vote for 'none of the above'. So how to handle the issue would require some thought.

[25] Wertheimer ('In Defense of Compulsory Voting') is a notable exception; see pp. 280–2, and the summary of his argument at p. 290.

[26] Lijphart, 'Unequal Participation', p. 11.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

Compulsion has no significant costs, because the compulsion is to turn out, 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 non-voters 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.

As we can see, the case for compulsion is meant to be democratic in two ways. Its concern with low and unequal turnout reflects democratic ideas about the nature and value of representation, equality and legitimacy. Thus, Lijphart notes that equality typically requires floors, below which people cannot fall, as well as ceilings that prevent them rising too high above their fellows.[27] 'One person, one vote,' he explains, puts a ceiling on voting, and the importance of this ceiling is well acknowledged and figures prominently in critiques of those, like John Stuart Mill, who hoped to combine universal suffrage with extra votes for the educated and wise. However, Lijphart complains that most democracies do not place a floor under electoral participation and that, in its absence, electoral participation has become seriously unequal. Compulsory voting, he thinks, can be seen as such a floor and, therefore, as the egalitarian counterpart to 'one person, one vote'. Moreover, Lijphart believes – as do other recent proponents of compulsion – that compulsory voting will have social democratic consequences, in addition to strengthening democratic rights and duties. This will foster democratic competition for political power and mitigate the disadvantages facing political parties that seek to represent the poorer and less educated members of society. Thus, whether we look at the concerns that motivate it, or the outcomes that it hopes to achieve, the case for compulsory voting is designed to be democratic and to be clearly distinguishable from authoritarian or totalitarian alternatives.

This aspect of the case for compulsion makes 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 that has extraordinary and enduring levels of support in Australia – a country with a reputation for individualism, rather than the reverse.[28] 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 that the democratic case for compulsion has not been made, and that it is far harder to make than its proponents believe. People's interests in non-participation are intimately tied to the justification of democratic rights of choice, expression and association. They are, therefore, not trivial, as proponents of compulsion assume, but have a comparable weight and justification to people's interests in political participation itself. The value of political participation, on any democratic view of politics is, importantly, voluntary – or an expression of the free choice, beliefs, interests and efforts of people taken individually and collectively. So even if it were clear that compulsory voting

[27] Lijphart, 'Unequal Participation', p. 2.

[28] In Belgium compulsory voting was introduced in 1893, prior to universal suffrage; Italy and Austria introduced it after the Second World War, although Austria has since ceased to do so, and in Italy sanctions are now informal. Cyprus, Greece, Lichtenstein, Luxembourg and one canton in Switzerland still retain compulsory voting. Australia introduced compulsion in 1924, and surveys suggest that about three-quarters of the electorate are satisfied with the practice. See Lisa Hill, 'Compulsory Voting in Australia: History, Public Acceptance and Justifiability' (paper presented to the ECPR Joint Sessions Workshop on Compulsory Voting, Helsinki, 2007), p. 4.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

would have beneficial effects – which it is not[29] – the case for compulsion is generally at odds with democracy. I will assume that we are concerned with the legal compulsion to vote, although people can be exempted for reasons of conscience or incapacity, as they are broadly understood. I will then show that the reasons why we should reject this option are reasons to reject compulsory turnout as well. Hence, even on the most benign interpretations of mandatory voting, I will show that it is at odds with democratic principles.[30]

THE CASE AGAINST COMPULSION

The Right to Vote

People have a variety of interests that justify the right to vote. Two, in particular, help to capture the instrumental and intrinsic interests in political participation, which justify democratic voting rights. Following Mill, we can call the first an interest in self-protection, and the second, an interest in self-government – although Mill, himself, preferred the term 'self-development'.[31] The former highlights the importance of our ability to peacefully remove unsatisfactory or untrustworthy leaders; the latter highlights our interests in developing and exercising our capacities for collective choice and responsibility. Both sets of interests are logically consistent with the idea that people have moral duties to vote.[32]

Thus, there is no conceptual problem with supposing that people have duties as well as rights to vote. However, the moral considerations that justify democratic voting rights imply that prudential, as well as moral, considerations can justify political abstention. Hence, while people can have duties to vote at different times and on different grounds, the reasons why people are entitled to vote, and why they are entitled to an equally weighted vote, are inconsistent with the compulsion to vote.

[29] 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 means of doing this, too. Recent work suggests that compulsory voting has no noticeable effect on political knowledge or interest, or, more surprisingly, any evident effect on electoral outcomes, or on the conduct of political campaigns. Hence, Ballinger concludes, 'Compulsory turnout does not guarantee inclusiveness; nor does it guarantee political equality'. See Chris Ballinger, 'Compulsory Turnout: A Solution to Disengagement?' in *Democracy and Voting* (The Hansard Society's Democracy Series, 2006), pp. 5–22, p.13. See also Jan Rovensky, 'Voting: A Citizen's Right, or Duty? The Case Against Compulsory Voting' (doctoral dissertation, Faculty of Political Science, LUISS Guido Carli, Rome, 2007–08), pp. 42–75 on the difficulties of interpreting figures on voter turnout, and pp. 76–93 on the difficulties of connecting low turnout to unequal representation.

[30] In Australia, it would seem voters are legally required to cast a valid ballot, see Hill, 'Compulsory Voting in Australia', p. 9, and though Australia allows religious-based conscientious objections to voting, it has prosecuted people who have refused to vote because they thought the alternatives morally unacceptable on non-religious grounds. Moreover, the Australian Electoral Commission successfully fought a freedom of information case in order to prevent the full list of legal exemptions from voting to be disclosed (p. 12). So, actual cases of compulsory voting may be much less generous than this 'best case' assumption implies.

[31] John Stuart Mill, *Considerations on Representative Government*, chap. 10.

[32] This is partly because there is no reason to suppose that the only justification for voting rights is rights-based, and partly because there is nothing in the idea of a right to vote that implies that people cannot *also* have duties to vote, even if those duties have no distinctive role in justifying voting rights. See Joseph Raz, 'Rights-Based Moralities', in J. Waldron, ed., *Theories of Rights* (Oxford: Oxford University Press, 1984), chap. 9, pp. 182–200. For a nice summary of different justifications for universal suffrage, see Albert Weale, *Democracy* (New York: St Martin's Press, 1999), chap. 3, pp. 40–60.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

Self-Protection, Voting and Abstention

People have interests in protecting themselves from spite and negligence and from the well-meaning, but demeaning and intrusive, actions of others. Where they are otherwise capable of looking after themselves, these interests in self-protection have an important role to play in justifying democratic voting rights, as well as rights to form, join and leave political parties, rights to stand as a political representative of others, rights to express one's political opinions, to demonstrate one's political dissatisfaction, and to refuse to identify or justify one's political beliefs, interests and loyalties.

People are not always good judges of their own interests, individually or collectively. Still, respect for people's freedom and equality and capacities for reasoned judgement generally tells against forcing them to exercise their rights, or to make the most of their liberties and opportunities. This is partly because there are normally other, less intrusive, ways to promote people's self-interest than forcing them to act in a self-interested manner.[33] But the difficulty with forcing people to pursue their self interest is also that informed, intelligent and reasonable people can disagree about the importance of self-interested ends relative to altruistic ones; and can disagree about the merits of self-interested behaviour in particular, as well as in general. Consequently, unless people have a duty to pursue their self-interest by voting, there is no justification for forcing them to vote, simply because voting would be good for them.

Voting is not always in people's interest. So even if people have a duty to vote *when* voting is in their self-interest, we still need some reason to believe that voting *is* in their interests. This is less easy then we might expect. As voters, we can only protect our interests by choosing between the available political candidates or parties who solicit our vote. If none are in our interests, there is no self-interested case for voting. If they are all compatible with our interests, it may still not be in our interests to vote, even if some of these would be better at protecting our interests than others. Unless our vote is necessary to secure the election of the candidate who is best for us – or to prevent the election of the one who is the worst – we may have no self-interested reason actually to go out and vote. This, of course, is why the rational choice literature insists that it is irrational to vote in circumstances where millions of otherwise reasonable men and women are clearly ready, even eager, to do so.[34] So, even if we have a duty to promote our self-interest by voting, it is by no means clear that this translates into a duty to vote at most, let alone all, elections.

Democratic voting rights protect our interests as individuals even when we do not exercise them. This, in part, is why it can be so important *that* people have legal rights to vote, whether or not they actually exercise them. In and of themselves, both moral and

[33] Helen Margetts notes that moving from First Past the Post to Proportional Representation in Britain would raise turnout by about 12 per cent, which is in line with the 10–15 per cent increase ascribed to compulsory voting. See Helen Margetts, 'Citizens Cannot be Compelled to Engage with Political Organisations', in Ballinger, ed., *Democracy and Voting*, pp. 29–35, at p. 29. Indeed, in 1997, the Joint Standing Committee on Electoral Matters in Australia recommended that compulsory voting be repealed for federal elections and referendums. It claimed: 'If Australia is to consider itself a mature democracy, compulsory voting should now be abolished' (quoted in Hill, 'Compulsory Voting in Australia', pp. 4–5).

[34] For a discussion of this literature, see Richard Tuck, *Free Riding* (Cambridge, Mass.: Harvard University Press, 2008), especially chap. 2, pp. 30–62. Following Tuck, I would distinguish the rationality of contributing to an outcome/decision from being the *decisive* actor in securing a particular outcome. However, once there are enough votes to secure one's desired outcome, it is no longer rational to participate. So, as Tuck notes, even if you use a 'threshold' view of voting to test rationality, it is not always rational for people to vote. David Runciman has a helpful review of Tuck's book and its relevance to voting in, 'Why Not Eat an Éclair?' *London Review of Books*, 9 October 2008, pp. 11–14.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

legal rights raise the threshold over which arguments for coercion must leap in order to be justified.[35] In this, the right to vote is no different from the right to marry: it protects our self-interest even where we do not exercise it, by helping to ensure that we are not married off against our will, or denied a voice in collectively binding decisions.[36] In the case of the right to vote, it is only when used in co-ordination with strangers that its exercise is likely to significantly advance our interests over the baseline protection secured by its bare *existence*. By ourselves, however, we cannot ensure that others will be willing to co-operate and co-ordinate politically, and the effort to organize such co-operation may not be worth it. So even if *having* an equally weighted vote can be critical to our freedom and equality, it is an open question if and when its *exercise* will promote our interests.

People's self-interest, then, is unlikely to provide a justification for forcing them to vote, even though an important justification for democratic voting rights is that these are helpful, often necessary, to protect people. However, the difficulty with compulsory voting is more fundamental than that. To force people to vote, on paternalist grounds, is to suppose that the election of one of the candidates predictably threatens them with serious harms, which they morally ought to avoid. But while democratic politicians pursue policies whose costs and benefits are unequally distributed, it will be hard to construe those unequal costs and benefits as constituting such harms – at least as long as we suppose that the candidates/political parties from whom we must choose our government are genuinely democratic.[37] So, while we may have a duty to resist racist and undemocratic political candidates, and that this may require us to vote against them, a more general duty to vote on self-interested grounds is inconsistent with core assumptions about democratic politics. These hold that legitimate differences of opinion can manifest themselves in opposing political associations and candidates for office, as well as in opposing political beliefs and ideas.

Failure to vote, or to vote for the winning candidate, in democratic elections may threaten you with serious losses – loss of your political hopes and prospects, the likelihood of certain burdens that you had hoped to avoid, and so on. It may mean that you face unemployment, business failure, the loss of state benefits and much higher taxes. It may also have predictable and, from your perspective, misguided and unjustified consequences for foreign and domestic policy.

The costs of democratic politics, in other words, can be real, predictable and painful. But to suppose that we have a duty to prevent those costs is problematic on democratic grounds, as well as on liberal ones. 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,

[35] David Lyons refers to an 'argumentative threshold' created by rights, see 'Utility and Rights', in Waldron, ed., *Theories of Rights*, pp. 114–15.

[36] This is partly why Lijphart's claim that equality requires floors as well as ceilings is problematic: not only is it unclear what is to constitute the floor (the right or its exercise), it is not true that equality always requires floors and ceilings. In some cases, it simply requires standards (one person, one vote); on sufficiency views of equality, it requires floors only; and in some cases, as with campaign finance, one might wish only to prescribe ceilings (a limit on the amount that candidates or parties can spend). For a helpful discussion of competing conceptions of equality, see Matthew Clayton and Andrew Williams, eds, *The Ideal of Equality* (Basingstoke, Hants.: Palgrave Macmillan, 2002), especially pp. 1–20.

[37] Albert Weale discusses the way democracies limit loss in *Democracy*, p. 139, and chap. 7 on majority rule, and chap. 10 on the obligations of democracy – especially, pp. 195–200 on 'being outvoted'. See also C. J. Anderson, André Blais, Shaun Bowler and Todd Donovan, *Losers' Consent: Elections and Democratic Legitimacy* (Oxford: Oxford University Press, 2007), especially chaps 1 and 10.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

as well, risks that *we* are entitled to impose on ourselves, by altruistic voting. So, even if we think Mill's anti-paternalism too strong and therefore suppose that risks of death and serious injury may justify paternalist legislation, we will want to deny that the risks posed by democratic elections are of that type. We will want to do so not because democratic politics is or should be risk-free, and certainly not because people are, or should be, indifferent to the costs of their choices. Rather, we should do so because we value democratic government. This means that we have reasons to accept and even to support governments that we did not elect.[38] It means that we have reason to expect that governments we did not choose will, nonetheless, protect our interests; that they will have a duty to do so, even if we did not vote; and that in pursuit of that duty, they may be justified in imposing sacrifices we would not have had to bear had they lost, rather than won, the election.

If these arguments are right, we have some reason to suppose that compulsory voting is generally inconsistent with democratic government. You do not have to suppose that voting must be self-interested in order to believe that instrumental considerations explain why people should be entitled to vote. However, the instrumental justification of democratic rights provides no warrant for the idea that people should be forced to vote, even if it is in their own interest. On the contrary, to suppose that they are bound to vote is to imply that some of the candidates for office, even in established democracies, cannot be trusted with political power and cannot be trusted to function as a democratic opposition to the government of the day. This may, of course, be true as a matter of empirical reality, not just of overheated rhetoric. In those circumstances, we may have a duty to defeat and to marginalize undemocratic political parties and/or candidates. But if morality sometimes requires us to vote in such cases, it provides no warrant for the conclusion that mandatory voting is justified.

Political Judgement, Participation and Abstention

If we look at our interests in self-protection, legal compulsion to vote seems hard to justify for, so it seems, at least one set of interests in democratic government imply that people ought to be able to refrain from political expression, association and participation whether or not they have conscientious objections to voting. However, the case for compulsory voting might look stronger if we turn from self-preservation to our interests in self-government. While we sometimes need the help of others in order to protect ourselves, this seems to be a contingent (if common) feature of self-protection, rather than a necessary truth. By contrast, the ideal of self-government seems importantly collective in nature. So, while the right to vote can reflect my particular, or distinctive, interests in self-government, the ideal of self-government seems constitutively political and collective in a way that self-protection does not. This might make it easier to see why compulsion might be justified, given our interests in democratic government.

However, arguments for compulsory voting face two main difficulties from our interests in self-government. The first is that voting is, at best, only one form of democratic political participation and, from some perspectives, not an especially important or attractive one.[39] So, from the fact that political participation is valuable, it remains to be seen what importance we should attach to *electoral* participation. The second difficulty is

[38] Bernard Manin, 'On Legitimacy and Political Deliberation', *Political Theory*, 15 (1987), 338–68.

[39] Carol Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970); Archon Fung, *Empowered Participation: Reinventing Urban Democracy* (Princeton, N.J.: Princeton University Press, 2004).

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

that people who value self-government can have moral as well as pragmatic reasons not to vote. Consequently, while democratic citizens have moral duties that, but for their citizenship, they would lack, and while some of these duties may be legally enforced, these have no predictable implications for the way they should vote, or whether, indeed, they should vote at all.

Democratic government can be valuable in itself, and not merely as a means to other good things. It can be valuable as an expression of our capacities for freedom, equality and reasoned judgement. Because democratic government implies that people like us, who may lack any distinctive virtues, interests or capacities for politics, are nonetheless entitled to govern ourselves, democracy can be valuable whether or not it is better than the alternatives at protecting our interests.[40] We can value the opportunities for political choice and responsibility that it provides; the equality of status that it secures; and the ideals of collective deliberation and decision that it instantiates, albeit imperfectly.[41] So, our interests in sharing in the making of collectively binding decisions, and in defining and pursuing collective, as well as personal, interests are reasons why people who are capable of voting should be entitled to vote, and to stand for positions of political leadership and power in their societies.

Still, from the fact that our interests in self-government are sufficiently important to impose moral and legal duties on others, it does not follow that we have duties to develop and exercise our political capacities in any particular way. As a general matter, democracies provide a variety of arenas and ways in which we can act collectively as citizens, and develop our abilities to define and pursue collective, as well as personal, interests. The more participatory our democracy, the more such opportunities there will be – in business, in culture, sport and the arts, in education, healthcare, public administration, law, the military. Indeed, feminists have insisted that families, if they are just, are both schools and models of democracy, providing some of our most compelling experiences of mutuality, solidarity and responsibility, as well as some of the greatest challenges to our ideals of freedom, equality and deliberation.[42] So, while we often associate self-government with engagement in legislative politics, it is an important fact about democracies that there are opportunities for public responsibility, and for collective choice and action in all areas of life, and that these are in principle as capable of developing and expressing our capacities for self-government as more familiar forms of politics.

One difficulty with the idea that voting should be compulsory, therefore, is that its importance to democratic political ideals is uncertain, even on representative conceptions of democracy. Elections in representative democracies help to ensure that, of the different people who may want to hold political office and to act on our behalf, the ones who are chosen are the ones we judge best for the task. It does not follow, however, that we think the selection of these candidates more important than other ways of defining and pursuing collective interests. Duly elected representatives are entitled to pass laws on our behalf, to undo those that have been made, to appoint people to act for us, to enforce collectively binding decisions and so on. But important though these tasks are, they are not obviously

[40] It is this aspect of democracy, I think, that makes it so radical and which is so distressing to those who want rulers to have special wisdom or qualifications. Weale captures this nicely in *Democracy*, p. 14, when he distinguishes the role of opinion, rather than knowledge, in democracies.

[41] See, for example, Joshua Cohen, 'Procedure and Substance in Deliberative Democracy', in T. Christiano, ed., *Philosophy and Democracy* (Oxford: Oxford University Press, Oxford, 2003), pp. 1–17.

[42] Susan Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989), chaps 6–8.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

more important than other forms of collective choice and action, be they administrative, judicial, executive or benevolent.[43]

If these points are correct, it is hard to see how our interests in self-government are going to justify the legal duties to vote. On occasion, your special political talents and virtues may mean that you ought to take on political responsibilities that you would rather avoid, whether through modesty or because they conflict with other things that you value, and had been hoping to pursue. Moreover, democracies can quite properly require citizens to share in the provision of public goods and services that are burdensome, necessary and difficult to supply adequately by voluntary means.[44] So, recognizing the benefits and virtues of democratic government can require us fairly to share in public burdens and to be ready and willing to make personal sacrifices, even if others are unable or unwilling to do so. It does not follow, however, that democratic citizens can be legally required to vote.

Forcing people to vote, whether they want to or not, undercuts the idea that voluntary political participation is a distinctive human good, and that democracies are justified in part by their ability to realize that good, and to make it available to most, nearly all, of their populations. Forcing people to vote undercuts a democratic conception of equality, too: for it implies that there is something uniquely important about electing representatives to a legislature, although intelligent, informed and experienced people evidently disagree on the matter. To mandate voting, in the face of this disagreement, is effectively to say that some people's views are entitled to more respect and weight than others – though neither reason nor necessity normally require us to reach a collective judgement on the importance of voting, let alone of voting in national, rather than other, elections.[45]

I am sceptical, therefore, that compulsory voting can be reconciled with democratic ideals of free, equal and reasoned collective action, even if we abstract from people's legitimate interests in political abstention. But once we recognize that people who value self-government may, *for that very reason*, seek to abstain from politics, or to withhold political judgement, the case for compulsory voting collapses.

We have an equally weighted vote regardless of our stakes in a particular election, or our understanding of the issues that it raises. 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. Precisely because we have so little control over the circumstances of our vote, and the ways in which it will be interpreted and used by others, the ethics of voting is by no means as simple as proponents of compulsion suppose.

[43] I think this is the difficulty with 'procedural' critiques of judicial review, such as those of Jeremy Waldron and Richard Bellamy, which argue that, whether or not judges are better than legislators at protecting rights, it is undemocratic procedurally for the decisions of judges to override those of legislators. See A. Lever, 'Democracy and Judicial Review: Are they Really Incompatible?' *Perspectives on Politics*, 7 (2009), 805–22.

[44] See Weale, *Democracy*, chap. 10, pp. 191–9. See also A. Lever, 'Is Compulsory Voting Justified', *Public Reason*, 1 (2009), 57–74.

[45] See Joshua Cohen, 'Moral Pluralism and Political Consensus', in David Copp, Jean Hampton and John E. Roemer, *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993), pp. 270–91, especially pp. 281–5 on reasonable pluralism.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

Take, for instance, the option of voting for 'none of the above'. In one important respect, it is more determinate than not voting, although in most ways it no more illuminates the motivations, beliefs and interests of voters than abstention. It is more determinate, because people who abstain may not think that all the parties are equally bad. On the contrary, they may think that they are equally good – or, at least, acceptable – and that they therefore lack a reason to choose one rather than another. People who abstain for this reason would not want to vote for 'none of the above'. Forcing them to do so, or to choose a candidate, would be to preempt their own judgements about how they should vote. So, even people who have no conscientious objections to voting might have compelling reasons to prefer abstention to 'none of the above'.

So, too, people might have compelling reasons to prefer abstention to ticking their names off a list, and then going home. There is something unpleasant and disrespectful about forcing people to turn up simply to tick their names off a list, rather than letting them abstain. Putting that aside, the different ways in which such an act might be interpreted are hardly a matter of indifference to voters who take seriously the strategic and moral aspects of voting.[46] So it is far from clear that people have duties to vote as long as they have no conscientious objections, and are not forced to register a political preference.

The idea that compulsory voting violates no significant rights or liberties, then, is mistaken and at odds with democratic ideas about the justification of rights, duties and power amongst citizens. Rights to abstain, to withhold assent, to refrain from making a statement or from participating may not be very glamorous, but can nonetheless be important for all that. Rights to abstain, no less than rights of anonymous participation, enable the weak, timid and unpopular to protest in ways that feel safe, and that require little co-ordination and few resources. These rights are necessary if politics is to protect people's freedom and equality, and therefore to reflect their duties as well as their interests.[47]

True, such forms of protest 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.[48] 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. This is why the interpretation of political action (or inaction) is complex, whether we are talking about votes or demonstrations,

[46] For example, David Miller suggested to me that compulsory turnout might be justified as a means for citizens to show support for their society, even if they did not want to choose anyone for their government. Ticking your name off the list would then count as 'supporting' something, rather than simply 'being present'.

[47] A. Lever, 'Privacy Rights and Democracy: A Contradiction in Terms?' *Contemporary Political Theory*, 5 (2006), 142–62, and 'Mill and the Secret Ballot: Beyond Coercion and Corruption', *Utilitas*, 9 (2007), 354–78.

[48] Keaney and Rogers 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' ('A Citizen's Duty', p. 30). Obviously, this requires people to vote, rather than just to turn up. Apart from that, of course, it is easy to imagine the rejoinder to this, which is that people are being lazy when they vote 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.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

and why the consequences of political action can be hard both to predict and to interpret.[49] People must, therefore, have rights to limit their participation in politics and, at the limit, to abstain, not simply 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.

Democratic Citizenship and Duties

Before examining the claim that non-voters are free-riders, it may be helpful to briefly summarize the argument thus far, and the claims about democratic duties that have figured in it. I have argued that democratic citizens have a variety of duties, which sometimes require them to vote. They have duties to protest injustice, to repel threats to the freedom, equality and citizenship of their fellows, and to share in the provision of public goods financially, and in person. These are duties they share as citizens, and, I have argued, these sometimes mean that people are morally obliged to vote, and to vote one way rather than another.

Democratic government is an imperfect instrument for pursuing the human good. However, in a world where people can be expelled from their homes at any moment and where malice, whim, fear and the quest for advantage can deprive them of possessions, employment, lives and limbs, people can count themselves fortunate to be members of a democratic society. There is no reason, therefore, why the duties of citizens should be light, infrequent or reducible to duties we would have were we not members of a democracy. Democratic government means that we may have to grant legitimacy to governments we did not elect, do not like, and believe to be immoral. As citizens, we have duties to educate children to see others as fellows in a common enterprise, involving the ability to rule, and to be ruled. This is different from, and potentially more demanding than the duties we *also* have to ensure that they are able to see people as ends in themselves, and as beings capable of suffering and happiness.

Democratic duties, then, can be significant and burdensome. However, I have argued that they do not generally include a duty to vote. This is partly because the consequences of voting are too uncertain for voting to be a necessary implication of our duties, and because people are entitled to abstain for prudential and moral reasons. There are many reasons why people might think that voting is mistaken, undesirable, unnecessary or immoral, just as there are for thinking that it is worthwhile, commendable or obligatory. A priori, there is no reason to suppose that one set is intrinsically more reasonable, moral or democratic than the other. Whether or not voting is a duty, whether or not it is reasonable, and whether or not it is democratic depends, in part, on the different duties we have, and on the choices we face. Hence, I have argued that the justification of democratic rights is inconsistent with mandatory voting, and explains why it is often so hard to determine when, if ever, people are morally obliged to vote.

Some people believe that democratic citizenship entails a prima facie duty to vote.[50] I do not share this view, but see no reason why it should be incompatible with the arguments I have presented here. People who think citizens have a prima facie duty to vote may believe that conscientious objections, as well as maltreatment by the state, can release

[49] See, for example, Weale, *Democracy*, p. 200, on the difficulty of interpreting voting.
[50] I owe these points to Cecile Laborde, whose view this is.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

one from this duty. They can also hold that, even where the duty has force, it can be overridden by more pressing concerns. Hence, it would be morally wrong to force people to vote. So, the idea of a prima facie duty to vote is consistent with my arguments against legal compulsion, and with my claim that it is an open question when, if ever, our duties as citizens actually require us to vote. However, once we accept that moral duties, like moral rights, can conflict, I am not sure what is gained conceptually, or in moral and political judgement, by referring to prima facie rights and duties.[51] I therefore prefer to say that people do not generally have a duty to vote simply because they are citizens, rather than to say that those citizens have a prima facie duty to vote whose consequences for voting are simply indeterminate.

FREE-RIDING, FAIRNESS AND VOTING

It is now time to turn from the idea that we have *political* duties to vote, to the idea that *moral* concerns for fairness justify compulsory voting. As we have seen, proponents of compulsory voting often claim that non-voters are free-riders who are selfishly benefiting from the public good of a competitive electoral system. One of the main attractions of the free-rider argument is that it seems to depend on no controversial assumptions of value – for example, there is no need to suppose that political participation has special value – nor does it seem necessary to make controversial assumptions about how people should vote. Moreover, the use of legal compulsion to solve collective action problems is commonly thought to be justified and consistent with democratic concerns for the freedom and equality of citizens. The proponents of compulsory voting often note that the compulsion involved in this case seems trivial compared to the burdens of tax-paying, jury service and military service. So, if duties of fairness imply a duty to vote, we have a remarkably robust and persuasive argument for legal compulsion.

However, it is difficult to see how democratic principles support the claim that compulsory voting is justified on grounds of fairness to voters. One obvious difficulty is the realism of the portrait of voters and non-voters that this argument presupposes. The fairness argument requires us to suppose that non-voters are selfish exploiters of voters, who are selflessly contributing to the common good. I have some doubts whether this picture of non-voters really is consistent with Lijphart's concern for unequal turnout. But, be that as it may, this picture of poor exploited voters is hard to square with what we know about self-interested voting. At all events, it will take some doing to show that non-voters in Britain, France and Italy are selfishly exploiting the public-spirited supporters of the BNP and their ilk.

The normative problems with the free-riding argument are serious, too. The most obvious one, as we have seen, is that people are entitled and even morally obliged to abstain on occasion. Non-voting on such grounds cannot be equated with unfairness or exploitation. However, even when people are morally wrong to abstain, and even when that wrong consists in *harming* others,[52] it is odd to think of voters as the primary victims of harm. Rather, it seems that when non-voting harms others, it harms those who are

[51] Judith Jarvis Thomson, in William Parent, ed., *Rights, Restitution and Risk: Essays in Moral Theory* (Cambridge, Mass.: Harvard University Press, 1986), chap. 4, pp. 50–65; see also Jeremy Waldron, *Liberal Rights: Collected Papers 1981–1991* (Cambridge: Cambridge University Press, 1993), chap. 1, pp. 1–34.

[52] Not all moral wrongs are violations of rights, as we see in the case of ingratitude, unkindness and selfishness.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

unable to vote, because they are too young, too old, disabled, or simply because they are foreign. Democratic citizens do, I imagine, have duties to represent the interests of those who can be harmed by their decisions, even though they are unable to participate in them. This is compatible with the idea that morally wrongful non-voting may also harm some voters, by letting them down, or making it harder for them to realize their legitimate ends. But, even where this is so, these harms seem much less serious than those suffered by the voiceless and the voteless, who may lack democratic rights in their own country, or enough people willing and able to act on their behalf.[53]

Non-voting, then, can be morally wrong, although that wrong seems to be indifference or contempt for the weak and dependent, rather than unfairness to the compatriots who vote. 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. Unfortunately, even when we do not intend to cause harm, and when we are acting morally, the effects of our actions can be disastrous for others. So, from the fact that non-voting is sometimes immoral, we cannot conclude that people are morally obliged to vote, let alone that compulsory voting is justified as a way to prevent, or to punish, immorality.[54]

This argument reflects a familiar liberal point about the differences between law and morality, although the point bears repeating, and is not exclusively liberal.[55] However, the normative problems with the free-riding argument are apparent also from a democratic perspective. The free-riding argument for compulsion implies that high turnout is a public good, which non-voters threaten by free-riding. The problem is not simply that what counts as 'high' or 'low' turnout is a matter of context – hence, American turnout is high compared to Poland, though low compared to Britain, Western Europe and Australia. The problem is the description of high turnout as a public good. Rates of turnout can determine who wins or loses an election, even if these are less predictable in occurrence and direction than Lijphart supposed.[56] This makes it difficult to see high turnout purely as a public good, even if we assume that *some* determinate level of turnout is required for legitimacy.[57]

But we cannot make such an assumption. In principle, non-voting can reflect contentment with the available political choices, or at least confidence, that the winner, whoever it is, will be worthy of support. Even when people are unenthusiastic about their political

[53] For a similar argument in response to Mill's arguments for open voting, see Lever, 'Mill and the Secret Ballot', esp. pp. 360, 375 and 367–71.

[54] For similar reasons, people cannot be forced publicly to describe and justify their voting intentions, even if this would prevent morally wrongful voting, and hence the difficulties with Brennan and Pettit's arguments for 'unveiling the vote' (see Lever, 'Mill and the Secret Ballot', pp. 354–78; and Geoffrey Brennan and Philip Pettit, 'Unveiling the Vote', *British Journal of Political Science*, 20 (1990), 311–33.

[55] For a classic effort to articulate and use this distinction in the analysis of public policy, see, H. L. A. Hart, *Law, Liberty and Morality* (Palo Alto, Calif.: Stanford University Press, 1963) , especially chap. 1, pp. 1–24. Even though Devlin rejects the idea that law and morality can be sharply distinguished, he holds that 'Nothing should be punished by law that does not lie beyond the limits of tolerance' (Patrick Devlin, *The Enforcement of Morals* (Oxford: Oxford University Press, 1965), chap. 1, especially pp. 16–17). And the idea that the law should not seek to punish all forms of immorality is an old and familiar one.

[56] Hence, it is possible that compulsory voting favours the far right in Belgium, and that its removal will not have the disastrous consequences which some people on the left have thought (see Koenraad De Ceuninck, Carl Devos, Herwig Reynaert, Tony Valcke and Dries Verlet, 'To Vote or Not to Vote, That Is the Question!' (presented to the ECPR Joint Sessions Workshop on Compulsory Voting, Helsinki, 2007).

[57] See also A. Lever, 'Liberalism, Democracy and the Ethics of Voting', *Politics*, 29 (2009), 223–7.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press

options, and therefore fail to vote, they may rightly deem their government legitimate. Governments can be legitimate even if some of their policies are reprehensible, their ministers incompetent or dishonest, or the political system in need of reform. It is not complacent or unjust, therefore, to note how difficult it is to show that high turnout is a public good. Rather, it is to remind ourselves that democratic politics is a competitive, as well as a co-operative, enterprise. This makes turnout a poor proxy for legitimacy.

CONCLUSION

Democratic politics is both a competitive and a co-operative business, and this dual character helps to explain why the ethics of voting are so complicated. I have argued that this complexity means that people are entitled to abstain from democratic politics and so compulsory voting cannot be justified as a response to morally culpable abstention.

Moreover, I have argued that the dual character of democratic politics means that voting is not morally superior to not-voting, in and of itself. The propensity to vote, like the right to vote, implies no special virtue, insight or knowledge. Conversely, non-voters do not neatly divide into hapless victims of fate, or parasites preying on the goodness and energy of others.

It is the great merit of arguments for compulsory voting that they force us to confront the complexities and peculiarities of democratic politics. They do so, however, by appealing to our desire for simplicity. But democracy is not simple. The idea that it is, or should be, is mistaken, and we have seen that it is a poor guide to democratic ethics and politics.

This does not mean that compulsory voting is never justified by principles of democracy, but that these will be exceptional cases, not 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.

https://doi.org/10.1017/S0007123410000050 Published online by Cambridge University Press