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FOR COMPULSORY VOTING¹

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¹ This working paper is based on an ERRN Sponsored Debate between Professors Lisa Hill (University of Adelaide) and Don Debats (Flinders University) held at the Parliament of South Australia, December 3, 2014.

Abstract

This working paper is based on an ERRN Sponsored Debate between Professors Lisa Hill (University of Adelaide) and Don Debats (Flinders University) held at the Parliament of South Australia, December 3, 2014. In this working paper Professor Hill offers a defence of defence of compulsory voting by referring to its benefits and responding to the most common arguments marshalled against it.

Today I'm going to offer a general defence of compulsory voting by referring to its benefits and responding to the most common arguments marshalled against it. But before continuing, an important qualification should be made: the arguments offered in the following talk apply only to voting within *properly functioning and authentic democracies*. In other words, I am not defending all types of compulsory regimes; only those that meet certain quite high standards and where compulsory voting is—or has a good chance of being—administered properly. For a compulsory voting regime to be both effective, in terms of assuring high turnout and enjoying high levels of public acceptance, and appropriate, insofar as it is not being used as a mechanism to forge consent or legitimize one-party contests, a number of conditions need to be met. Chief among them is a well-established system of democratic institutions with adequate civil and political rights protection (including universal suffrage); the apparatus of constitutionalism; limits on political power; and free, competitive and fair elections. From an administrative point of view, the following is also desirable: a developed national infrastructure (Power and Roberts 1995: 819); reasonable levels of co-operation between regional and central governments, particularly within Federal structures; and professional, well-funded, independent and accountable electoral commissions.

In order to ensure that the obligation is not burdensome, voting should be relatively easy with few opportunity and transactions costs to voters. Further, sanctions should be applied consistently but without zealotry.² Where any of these conditions fail to be satisfied, the effectiveness and/or legitimacy of the compulsion may be in question.

In order to offset the compulsion it is also preferable if there is some degree of genuine choice reflected in the candidates on offer and the voting system in use.³ It makes no sense to compel people to vote when there is a lack of meaningful choice or where institutional constraints such as a plurality voting system are motivating abstention in the first place.

Today I have 10 general points to make in defence of compulsory voting, points that I have expanded on in my published work on the topic.⁴ Unfortunately, time is restricted so I will need to be brief. However, I will expand a little on some of the more controversial points (3, 4 and 8).

1. Critics of compulsory voting often claim that there are equally effective, voluntary means by which to raise voter turnout. In fact, compulsory voting is the only really reliable and decisive means by which to raise and maintain high turnout (Louth and Hill, 2005). Furthermore, its

² See Graeme Orr, 2004. For example, the penalties in Australia for failure to attend a polling booth are fairly mild, and non-compliance is handled in a reasonable fashion. Initially, the Electoral Commission sends the absentee a "please explain" letter with the option of paying a \$20.00 fine to settle the matter. If a satisfactory reason for abstention is provided the matter is dropped.

³ For example, some degree of proportionality is optimal (as opposed to a simple plurality system) so that voters can achieve at least some degree of meaningful representation.

⁴ See most recently: Brennan and Hill, 2014

effect is immediate. Therefore, if we are serious about getting and keeping turnout high across *all* social groups, compulsory voting is our best bet.

2. Opponents of compulsion sometimes suggest that it doesn't matter if turnout is low: that government is just as legitimate and behaves no differently when only some of the people vote. But high turnout is preferable to low turnout, not only because turnout levels *do* affect government behaviour but because low turnout elections are less legitimate.

Low turnout elections are less legitimate because they are less *procedurally* legitimate: they only give a partial and biased picture of the priorities and preferences of the electorate. This is because, in most voluntary systems, turnout is concentrated among the better-off. This makes the governments of low turnout elections less *substantively* legitimate because a wealth of studies has shown that government attention is directed predominantly to those sections of the population who vote.⁵ Since such people also happen to be better off than non-voters, this exacerbates social and political inequality and results in unrepresentative government. Universal, socially-even voting—such as compulsory voting is able consistently to deliver—confers legitimacy on both the electoral process *and* the government that wins office.

3. Contrary to the claim often made by its opponents, compulsory voting does not violate any assumed 'right not to vote'. This is because, as far as I can tell, there is no such thing as a "right not to vote"; further, no court has recognized its existence. Although voting is a right as well as a duty, this does not mean that the right can be waived or inverted as the possessor pleases. Some rights exist, not just to protect individual freedom, but to serve other ends. If a particular right defines the structure of government or even the structure of a decent society then any individual's desire to waive or invert it is beside the point because the community in general has an interest in preventing that from happening (Kreimer 1984: 1387). A useful example is the right to be free from slavery. Prohibitions on slavery exist, not just to protect individual liberty, but to eradicate a practice that fundamentally challenges and damages the ideals of a free society (see Kreimer 1984: 1387–8). Should any citizen wish to assent to a life of slavery, the state would not—and should not—recognise her attempt to waive her right to equal protection since that state (and all the people it represents) has an over-riding interest in maintaining a society free from slavery. The same is true of many other rights such as the right to an education and the right to vote. The right to vote is not just an individual right; it also exists for the purpose of constituting and perpetuating representative democracy, a collective benefit (HLR 2007). The right not to vote cannot be granted because it cannot be universalized; doing so could potentially destroy the form of government for which the right *to* vote exists, that is, democracy. The right to vote is, in a legal sense, fundamental; partly because it is the sovereign right that protects all other rights and partly because its existence defines the very character and structure of representative democracy.

4. Compulsory voting is justified because voting is not just a right: it is also a duty. Voting is a duty-right. A 'duty-right' exists where one has both a duty to do something and a claim that protects this duty. We rarely hear about duty-rights yet they are quite common and people perform them all the time: judges have duty-rights to impose sentences, teachers have a duty-right to grade the work of their pupils and police officers have both a right and a duty to arrest criminals (Rainbolt 2006: 34–6). Voting is a right but it is also a duty we owe to other voters for two reasons. First, we owe it to all other members of our political community to vote so that together we can constitute and perpetuate representative democracy and enjoy the

⁵ For a survey of these studies see Hill 2013.

benefits of living in a proper democracy rather than, say, an effective oligarchy or gerontocracy. Second, we have a duty to other members of our social group to vote so we can meet other classes of voters on equal terms for the purposes of self-protection and self-government. For example, it would make no sense for me to be the only woman in Australia to bother voting: in order to protect myself from the domination of men, all other women should vote so that together we can meet men on equal terms and thereby collectively protect ourselves and our liberties.

5. Some voting libertarians argue that just because something is a duty does not mean that it should be enforced by the state. This is true. For example, we have a duty not to lie but we would not want the state to go around enforcing this duty, especially given the ubiquity and social necessity of ‘white lies’ (for example ‘yes your [disastrous] haircut looks great’). But voting is not just *any* duty; it is a *special* duty because the existence and proper functioning of representative democracy depends upon its universal performance. So too do our welfare and rights. When democracy functions well, rights (such as the right to be treated equally by governments and before the law) are more secure.

6. Compulsory voting is not just consistent with democracy; it can also be reconciled with liberal values. Although it is certainly illiberal in the sense that it violates one conception of liberty-- negative liberty-- we should also bear in mind that violations of negative liberty are acceptable if there is a good enough reason. For example, even if we are in a hurry, we accept the restriction on our freedom of having to stop at red lights for obvious safety and co-ordination reasons. In the case of compulsory voting I have argued that, because of its demonstrable benefits, and because the burden on personal autonomy is fairly low in well-managed and regulated systems like Australia’s, there are good enough reasons for restricting negative liberty and requiring people to vote. But even if this were not conceded, because compulsory voting ensures that government attention and spending is more evenly distributed across classes of citizens (see Brennan and Hill, 2014: Chapter 6) it serves other conceptions of liberty such as non-domination, autonomy and positive liberty. Therefore, compulsory voting can be reconciled with some liberal values.

7. Compulsory voting seems undemocratic but ultimately it isn’t: sometimes it is necessary to reduce a value (in this case, democratic choice) in order to promote it. For example, in order to promote the value of equality of opportunity we might need to temporarily reduce that value through affirmative action programs. Giving preference to minority groups in recruitment drives will temporarily reduce equality of opportunity for majority groups but in the long term that value is served by the reduction. Similarly, in order to promote, overall, the values of freedom and democratic self-government, sacrificing the freedom to abstain from voting can be justified. By compelling people to vote democracy as a system for self-government, self-protection and representation is strengthened.

8. Critics often suggest that compulsory voting is paternalistic. Even if this were true, the assumption that all instances of paternalism is bad should not be accepted uncritically: the law that requires us to educate our children even if we would prefer not to is paternalistic. Yet, it is still a good idea. In any case, it is not even clear that compulsory voting is an instance of paternalism; rather, I think it is better appreciated as a case of self-paternalism. Self-paternalism is not true paternalism (actually, it’s a form of autonomy). There are certain transactions or decisions that are usually regretted, for example, selling oneself into slavery or failing to wear a seatbelt that leads to an injury. These are decisions that a rational citizen might retrospectively wish she had not been in a position to make therefore people will

generally agree (sometimes retrospectively) to laws that prevent them from yielding to actions that are harmful to themselves (Calabresi and Melamed 1972: 1113).

Compulsory voting makes democracy work better, enabling it to function as a social activity engaged in by all affected interests, not just a privileged elite. When managed properly, it is something we would retrospectively wish for because of its ability to solve the collective action problem that contributes to the mass abstention of the disadvantaged in voluntary systems. We know that in voluntary systems, the more disadvantaged a person is, the less likely she is to vote. And yet failure to vote demonstrably exacerbates the disadvantage of habitual abstainers. At the same time, however, in voluntary systems it often becomes irrational to vote if you are the only member of a disadvantaged group willing to vote. Those locked into this rationality paradox therefore need a co-ordination mechanism to help them out of it and to ensure that voting becomes rational for them. Compelling everyone to vote breaks the cycle of abstention, government neglect and cynicism that leads to (and, in turn, exacerbates) the electoral exclusion of the poor. For this reason compulsory voting is best understood, not as unwelcome interference by an overbearing state but as a form of self-paternalism. At first sight, this interpretation might sound twisted but bear in mind that over 70 per cent of Australians approve of the institution and have done so for decades (Hill 2010).

9. Compulsory voting does not give us a more ignorant electorate (see Hill, 2011) as is often suggested but, even if it did, its capacity to deliver political equality—which is more important than political competence—justifies its use.

10. Compulsory voting does not lead to worse government as is sometimes claimed; in fact, it correlates with better government that is more responsive to the needs and priorities of the entire electorate, with lower levels of corruption and higher levels of citizen satisfaction and trust (see Part II, Brennan and Hill, 2014).

In light of these considerations compulsory voting is justified.

Concluding Remarks. Compulsory voting was introduced in Australia to raise voter turnout levels and it has done that job very effectively. Of course, it would be preferable if we could find a less coercive means by which to raise turnout. But the fact is that compulsory voting is the *only* reliable way to provide high and socially-even voter turnout. In turn, high and socially even turnout gives us government that is procedurally more legitimate and better able to serve the interests of everyone and not just the well off. So, regardless of what survey data might tell us about the political competence of habitual abstainers in voluntary systems, when such citizens do start voting, government starts to work not only by and of them, but *for* them. It converts their formal right to vote into a substantive one. But requiring people to vote is not justified just because it makes things better. It is justified because voting makes things better in a way that is fundamental to preserving a cherished way of life. It serves a vital social function: the maintenance and perpetuation of democracy, a collective benefit.

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