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**Should the obligation to vote be abolished?**

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***Is Compulsory Voting Justified in a Liberal Democracy ?***

The normative debate on compulsory voting has recently known a revival in political theory<sup>1</sup>. One of the main issues at stake is whether compulsory voting should be considered as a liberal or as an illiberal practice. In this presentation, I will first consider the arguments put forward by the authors who consider that compulsory voting has no place in a liberal democracy. Against this conception, I will argue that compulsory voting is not only permissible by liberal standards, but actively required by them.

**I.** To be sure, all authors recognize that most liberals regard political participation as both intrinsically and instrumentally desirable. But the fact that liberals have historically championed the right to vote in no way commits them to an endorsement of compulsory voting. 'For clearly it is one thing to fight for the right of all to be allowed to vote, and quite another to uphold a principle whereby all are made to do so' (Austin, 2008). More precisely, the opponents to compulsory voting consider it to be a violation of political liberalism for at least two reasons.

**Compulsory voting violates individual liberty**

The first argument against compulsory voting hinges on the principle that individual liberty should prevail over other democratic ideals such as equality and participation. The refusal of compulsory voting is thus buttressed on the postulate that citizens must be free to decide if they choose to vote or not. All citizens should have the right to be apolitical and the act of voting must remain a personal choice, not an obligation.

More precisely, compulsory voting would conflict with a number of liberal commitments, such as free thought, free speech and privacy. In a liberal society, the right to remain silent is a crucial one, not only when one is being interrogated by the police but also when one's political views are asked. At democratic elections, this right boils down to the right not to vote, which is violated if voting is made compulsory. Rights to abstain, to refrain from making a statement or from participating « may not be very glamorous, but can nonetheless be important... »(Lever 2010, p. 911).

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<sup>1</sup> See for instance : Austin 2008 ; Engelen 2009 ; Fischer 2011 ; Lacroix 2007 ; Lever 2008, 2009 and 2010 ; Saunders 2009 and 2010.

In particular, liberals should regard with suspicion laws that require performance of a particular acts since they are generally regarded as a greater interference than those merely prohibiting certain acts. This does not mean that such requirements are never justifiable – as shown by the legal requirements to pay taxes or send one’s children to schools – (Saunders 2009) but we need to ask where some can rightly be required to bear the costs for the benefits of others. « It is far from obvious that this is so, since lower levels of voting seem sufficient to sustain the democratic process, as evidenced by the stability of Western democracies despite low turnout » (Saunders 2010).

According to this view, compulsory voting would be as case of strong paternalism. Strong paternalism occurs where there is an intervention to protect or benefit a person, despite that person’s informed and voluntary denial of consent to paternalistic measures proposed (Lindley, 1986, p. 64). Even if people are not always good judges of their own interests, respect for people’s freedom and equality and capacities for reasoned judgment generally tells against forcing them to exercise their rights, or to make the most of their liberties and opportunities (Lever, 2010, p. 906).

### **Compulsory voting violates pluralism**

While ancient republicans valued political participation as an end in itself, the liberal ideal is that of a state that, rather than promoting some comprehensive conception of the good, restricts itself to ensuring the conditions within which individuals can pursue their own conception of the good as they see it.

Liberals cannot support compulsory voting because it promotes a view of what the good life consists of, namely a life of active political engagement. Liberals should design electoral systems in such a way that they respect reasonable disagreement among citizens on the value of political participation. Compulsory voting is likely to fall foul of liberal commitments to respect reasonable disagreement over fundamental values when justifying public policy and state coercion (Lever 2009).

Moreover, even if ones believes in the importance of political participation, if people vote only because they are forced to, then this cannot plausibly be seen as a exercise of civic virtue (Saunders 2009).

**II.** The opponents to compulsory voting are not alone in believing it is a breach of individual rights. Most of the proponents of compulsory voting also consider it as a restriction of individual liberty. However, they insist it should be considered only as a ‘very minor restriction’ (Lijphart, 1997, p. 11) on individual freedom, especially if compared with the other constraints imposed by our liberal democracies – taxes, compulsory education etc. – and the expected benefits that it may have in terms of electoral participation and social equality. Being forced to vote is then considered as little sacrifice of individual liberty which is justified by more substantial gains elsewhere.

In contrast, I uphold the idea that the obligation to vote – far from being detrimental to individual liberties – may be envisioned as the necessary condition for the full exercise of equal liberty. Put differently, rather than attempting to illustrate that the benefits of compulsory voting outweigh the costs, I rely on the notions of autonomy and of equal liberty which justify compulsory voting in the name of the very principles of political liberalism<sup>2</sup>.

### **Liberty as autonomy**

As shown below, the main argument against compulsory voting hinges on the principle that individual liberty should prevail over other democratic ideals such as equality and participation. However, compulsory voting does not in the least imply that ‘deliberate’ abstention may not exist – as exemplified by the high proportion of blank or null and void votes in countries where voting is compulsory.

One should not forget either that the expression ‘compulsory voting’ or the ‘duty to vote’ is a misnomer (Lijphart, 1997, p. 2). Strictly speaking, no one is compelled to vote. No one is obliged to fill in a ballot paper or to choose one of the parties or candidate in contention. The only duty that a citizen has to fulfill is to come to the polling station on a precise date. The citizen’s right not to vote is guaranteed by their presence in the polling booth and by the secret voting procedures.

In that respect, it is significant to note that the European Court of Human Rights ruled that the obligation to vote did not go against article 9 of the European Convention for the Protection of Human Rights – relative to freedom of thought, conscience and religion. In its ruling, the European Court declared that the citizen’s freedom of conscience was preserved because they could always cast a blank vote. Besides, the notion of ‘free elections’, as stipulated in the First Protocol of the Convention, does not mean ‘elections in which voting is not compulsory, but elections in which the act of voting is free’ (Ruling on 22nd April 1965).

One sees that the issue at stake is what a liberal state can legitimately enforce upon its citizens (Engelen, 2009). Reasons of time prohibit a detailed discussion on this issue here. However, one might wonder if the opposition between compulsory voting and individual liberty may not be equated to some confused opposition between liberalism and libertarianism. The opposition to compulsory voting in the name of individual liberty is “highly problematic since it entails that no liberal can legitimately compel its citizens to do something that not all of them would choose to do voluntarily” (Engelen, 2009). Liberty, in the liberal view, is rather akin to the concept of autonomy, that is to say that liberty does not mean the absence of obligations but rather the respect of the laws that men have made and accepted for themselves. In that respect, civic obligation may be considered simply as the concrete form of this concept of autonomy.

As compulsory voting does not restrain individual conscience, it cannot be considered as a violation of the liberal distinction between the public sphere and the private sphere which, according to Judith Shklar, is ‘neither permanent nor unalterable as the important point for liberalism is not so much where the line is drawn, as it be

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<sup>2</sup> This part of this presentation draws on Lacroix, 2007.

drawn, and that it must under no circumstances be ignored or forgotten' (Shklar, 1989, p. 24).

### **The principle of equal liberty**

This leads to a second liberal notion which may justify the principle of compulsory voting, namely equal liberty. It is well known that turnover among voter with high levels of education is much higher than for low-educated voters and such inequalities in electoral participation pose serious problems of legitimacy for a liberal well-ordered society.

One might even draw a parallel with the social question as redistributive policies have also been the butt of criticism by libertarians in the name of individual freedom. However, many liberal thinkers have convincingly argued that this an improper conception of the word liberty as this restrictive conception actually concerns the liberty of a few and thus implies constraints for the majority.

That is the reason why the liberal commitment to liberty has been reformulated as a commitment for equal liberty, a principle that justifies solidarity policies which do not infringe on individual rights as they aim at guaranteeing liberty for all and creating the necessary condition for the full exercise of individual liberty.

The same argument can be used to defend compulsory voting. By encouraging all citizens, even the least motivated among them, to be informed and voice their opinions, compulsory voting would partially thwart the strong social determinants and oblige political parties to pay heed to the more marginalised electors. In that sense, the objective of (quasi) universal participation may be considered as the logical continuation of universal suffrage that Benjamin Constant, some two centuries ago, considered a better means of limiting powers than associations bent on particular interests.

They are thus two distinctive ways for liberals to defend the duty to vote, each respectively responding to the two dimensions of political participation as defined by Benjamin Constant and Alexis de Tocqueville: as an end in itself or as a means of protecting private liberties. In the first approach, which might be called 'maximal', the duty to vote is the continuation of a vision according to which political participation is one of the necessary condition for individual and collective autonomy.

However, even the rejection of such a maximal view of democracy does not invalidate an other 'minimal' conception which envisions compulsory voting as the best institutional measure to make voting procedures as equal as possible, notably as a counterweight to other forms of political participation – for instance, associations – bound to remain unequal. Put differently, even according to a purely instrumental conception of democracy, the obligation to vote can be justified as a way to contain the domination of the most powerful.

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