

Research Article

A Liberal Defence of Compulsory Voting

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At first sight, it might seem difficult to defend compulsory voting from a liberal point of view. Indeed, compulsory voting is widely considered as a breach of individual rights – even if such a minor restriction may be justified for the sake of common good. In this article, I challenge such an interpretation and I present a case for a non-utilitarian conception of compulsory voting. I first emphasise the importance of political participation in the liberal paradigm. I then insist on the notions of autonomy and equal liberty which legitimate compulsory voting in the name of the very principles of political liberalism.

Is it possible to defend compulsory voting from a liberal perspective? At first sight, the task seems rather difficult as both advocates and opponents of compulsory voting agree on the fact that it is a breach of individual rights – even if such a ‘minor’ restriction (Lijphart, 1997, p. 11) may be justified for the sake of the common good in a democratic society, especially in terms of social equality. Besides, political liberalism seems particularly ill fitted to tackle such an issue since liberal theories are often considered to be relatively remote from the questions of citizens’ political participation. The first object of this article is to challenge such an interpretation grid, and more particularly the all-too-frequent idea that political liberalism is a mere arrangement of individual liberties. Yet, the question is not only to reflect on whether political liberalism may incorporate collective self-determination *per se*. The issue is also to see if the liberal paradigm can be reconciled with the *obligation* to participate. In that respect this article upholds the idea that the duty to vote – far from being detrimental to individual liberties – may be envisioned as the necessary condition for the full exercise of equal liberty. Consequently, this article presents a case for a non-utilitarian defence of compulsory voting. The argument falls into two parts. The first section emphasises the importance of political participation in the liberal paradigm. The second section insists on the notions of autonomy and equal liberty which legitimate compulsory voting in the name of the very principles of political liberalism.

I. Liberalism and political participation

The first creed of liberalism hinges on the radical affirmation of individual liberty and respect for individual autonomy. For liberals, liberty is ‘the aim of every human association; it is the foundation of public and private ethic; on it rest the enterprises of industry; without it there can be no peace, no dignity, no happiness for man’ (Constant, 1997, p. 481). This declaration of principle needs to be qualified,



especially as the very word 'liberty' has always been an object of controversy. Indeed, after Berlin and Hayek, 'negative' liberty – or rather an individualistic conception of liberty – has come to be associated with the only viable form of modern liberty, while 'positive' liberty refers to pre-modern and anti-liberal views. Hence the frequent assimilation between liberalism and a form of privatism confined to the defence of individual independence and the apology for commerce.

However one might wonder if the distinction made by Berlin some 50 years ago has not contributed to blurring further our understanding of political liberalism. In fact Berlin overlooked the importance of the 'positive' exercise of liberty as defended not only by Alexis de Tocqueville, but also by John Stuart Mill and Benjamin Constant – two authors regarded by Berlin himself as the 'fathers' of liberalism. Those liberal thinkers uphold the idea that sovereign power can only exist in 'a limited and relative way' (Constant, 1997, p. 313). Nevertheless, the stress laid on the necessary limits to the imposition of power does not mean that political liberty was depreciated. In his analysis of the best form of government, Mill clearly opted for a form of participatory democracy: 'it is evident that the only government which can fully satisfy the exigencies of the social state is one in which the whole people participate' (Mill, 1999, p. 234). Such a conviction led him to promote extended suffrage on the basis 'that the rights and interests of every person are only secure from being disregarded when the person interested is himself able, and habitually disposed, to stand up for them' (Mill, 1999, p. 224).

To be sure, Constant introduced the famous distinction between 'the Liberty of the Ancients' – i.e. direct and constant participation in the public assembly – and 'the Liberty of the Moderns' – notably defined as 'the peaceful enjoyment of private independence' (Constant, 1997, p. 602). In his view, modern liberty was more suited to modern times and he invited his readers to be wary of the 'ancient views', which were the cause of so many evils during the French Revolution. However, one should not overlook the fact that Constant also declared that his observations did:

'not in the least tend to diminish the value of political liberty. ... It is not security which we must weaken; it is enjoyment which we must extend. It is not political liberty that I wish to renounce; it is civil liberty which I claim, along with other forms of political liberty' (Constant, 1997, p. 602).

He added that 'political liberty is the most powerful, the most effective means of self-development that heaven has given us' because it 'enlarges [the citizens'] spirit, ennobles their thoughts, and establishes among them a kind of intellectual equality which forms the glory and power of a people' (Constant, 1997, p. 617).

It thus seems difficult to equate 'the Liberty of the Moderns' with 'negative liberty' (Berlin, 1998, p. 210) or to consider that, for liberals, the only true question is not 'to know who exercises power but how much power is vested in their hands' (Berlin, 1998, p. 210). If one considers the opening lines of Constant's famous address, one clearly sees that modern liberty, far from being a mere list of individual rights, implies the right of every man 'to associate with other individuals ... to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which

the authorities are more or less compelled to pay heed' (Constant, 1997, p. 593). In other terms, Constant's conceptions of modern and ancient liberty do not differ much on the question of man's capacity to act positively (Holmes, 1994). The main difference between these two kinds of liberty lies in their very nature and domains. On the one hand, 'political liberty' in antiquity was based on the privileged status of the citizens, while modern liberalism is founded on equal civil rights. On the other hand, ancient liberty rested on a direct, 'active and constant surveillance' (Constant, 1997, p. 602) over the political representatives whereas, in modern nations, the emergence of the private sphere and the development of trade implies that for most citizens political participation can only be conceived as a part-time activity. Although he considered that individual independence was the first modern need and that political virtue – in its ancient sense – would no longer exist, in the light of the failure of Jacobinism, Constant was also conscious of the fact that 'the danger of modern liberty is that, absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily' (Constant, 1997, p. 617).

II. A liberal duty to vote

Defending the concept of compulsory voting from a liberal perspective does not simply mean emphasising the importance of political participation in the liberal paradigm. It is also essential to establish that the duty to vote is *not* a breach of liberal rights. I therefore propose to adopt an alternative approach that somewhat contradicts the more commonly held view according to which compulsory voting would only be 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, military or civil service, etc. – and the expected benefits that it may have in terms of electoral participation¹ and social equity. In opposition to such a 'utilitarian' approach – that justifies some restrictions on the pre-eminence of individual liberty for the greater good of society – I would like to insist on the notions of liberty as *autonomy* and of *equal* liberty, which legitimate compulsory voting in the name of the very principles of political liberalism.

Liberty as autonomy

The main argument against compulsory voting hinges on the principle that individual liberty should prevail over other democratic ideals such as equality or 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, and not an obligation. According to this view, the compulsory vote would be a case of strong paternalism. Strong paternalism occurs when there is intervention to protect or benefit a person, despite that person's informed and voluntary denial of consent to the paternalistic measures proposed (Lindley, 1986, p. 64).² 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. In Belgium (one of the four European countries where the vote is compulsory) the proportion of null and void votes was

7 per cent in the 1990s, against 1 per cent or less in most countries. 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 candidates in contention. The only duty that a citizen has to fulfil is to come to the polling station on a precise date. The citizens' 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 – and to article 3 in the First Additional Protocol that establishes 'the right to free elections'. 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, does not mean 'elections in which voting is not compulsory, but elections in which the act of voting is free' (Ruling on 22 April 1965).

In fact one might wonder if the opposition between compulsory voting and individual liberty may not be equated to some confused opposition between liberalism and libertarianism. 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 law but rather the respect of the laws that men have made and accepted for themselves. In that respect, civic obligations may be considered simply as the concrete form of this concept of autonomy (Dumont and Tulkens, 2005). 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 drawn, and that it must under no circumstance be ignored or forgotten' (Shklar, 1989, p. 24). Compulsory voting might be conceived as one of the political prerequisites so that 'every adult should be able to make as many effective decisions without fear or favor about as many aspects of her or his life as is compatible with the like freedom of every other adult' (Shklar, 1989, p. 21).

The principle of equal liberty

This leads to a second liberal notion which may justify the principle of compulsory voting, i.e. equal liberty. Let us first analyse some figures. In Canada, all things considered, turnover among voters with higher levels of education is on average 17 times higher than for low-educated voters (Blais et al., 2004, p. 229). In France, in 2002, 80 per cent of college graduates took part in the vote, against 62 per cent of the non-qualified population (Delwit, Kulhaci and Pilet, 2004, p. 23). This phenomenon would be even stronger in so far as declining electoral turnout is particularly perceptible in the population with low educational levels. In other words, the lower electoral participation is, the higher inequalities are in terms of educational attainments in the electorate. Such a conclusion is confirmed by the result of an analysis conducted in Belgium on the impact of the potential suppression of compulsory voting. According to this study, if voting was no longer made compul-

sory in this country, almost half of the population with low educational levels would never vote against a proportion of one in ten in the well-educated population (Billiet et al., 2001). In all logic, the socio-professional composition of the electorate would be profoundly altered. According to data collected in Flanders, the proportion of manual workers and unemployed people voting would decrease by 6 per cent while the number of professionals, executives and skilled workers voting would increase by 4.8 per cent which points to the fact that 'unequal electoral participation increases if voting is not compulsory' (Hooghe and Pellerieaux, 1998, quoted in Billiet et al., 2001, p. 79).

One obviously does not need to adhere to neo-republican theories to consider that 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 redistribution mechanisms have also been the butt of criticism by libertarians in the name of free enterprise. Conversely, many other liberal thinkers argue that this is an improper interpretation of the word liberty as this restrictive conception actually concerns the liberty of a few and thus implies constraints for the majority. 'A much more attractive ideal would be liberty for all ... in other words, the liberal commitment for liberty has resources that may be opposed to the "libertarianism" of the economic conservatives' (Waldron, 1987, p. 129). 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 conditions 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. As in John Rawls's model the only acceptable forms of inequalities are those that are beneficial to the least privileged part of the population, it is all the more difficult to contend that the recorded inequalities in electoral participation may serve the interests of this category of individuals. From this approach, the defence of compulsory voting echoes Shklar's observations on democracy. As emphasised by Paul Magnette, 'in Shklar's definition of liberalism ... it is first and foremost the liberty of the weakest that is protected by democracy'. It may not make citizens equal, but 'at least it erodes the submission of the weakest' (Magnette, 2006, p. 93). It is in that sense that the objective of (quasi-)universal participation may be considered as the logical continuation of the extension of the voting franchise that Constant, some two centuries ago, considered a better means of countervailing the powers that be than intermediary bodies or 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 Constant and 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 conditions for individual and collective autonomy and self-fulfilment. However, even the rejection of such a 'perfectionist' liberalism does not invalidate the 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 duty to vote can be justified as ‘it makes it possible to prevent the risks of arbitrariness and contain the domination of the most powerful’ (Magnette, 2006, p. 92).

Notes

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- 1 As emphasised by Arend Lijphart, compulsory voting is ‘the only institutional mechanism ... that can assure high turnout virtually by itself’ (Lijphart, 1997, p. 10) and it is all the more efficient as the penalties imposed are generally very low.
- 2 I owe this argument and this reference to an anonymous referee.

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