

## **Ticket for Univ. Md. Constitutional Schmooze – Feb. 2014**

### **“Compulsory Voting”**

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Although it is practised fairly widely, the concept of compulsory voting strikes Americans as strange—on an occasion not long ago I mentioned the practice at a meeting of political scientists and was laughed at quite vocally by a senior colleague who insisted there was no such thing. In fact, however, compulsory voting is not only a well-known practice, it is a longstanding part of the Anglo-American discussion about modes of political activity.

The arguments in favour of compulsory voting fall into three categories: improved representation of public opinion; benefits of increased levels of participation; and positive effects on the practice of electoral politics. (This last, I should mention, is my own: I have not seen this particular argument mentioned anywhere in the literature). The arguments against compulsory voting fall into two broad categories: that it will result in the wrong people casting votes, or that it infringes on the liberty of free persons to choose not to participate in political decision-making. These are essentially normative arguments—there are also instrumental arguments, such as the concern that compulsory voting will aid one party or one ideological position at the expense of another.

It is important at the outset to recognize that compulsory voting and universal participation are overlapping but not necessarily coextensional concepts. Compulsory voting combined with effective enforcement mechanisms may, indeed, yield very high or even near-universal levels of turnout, but high turnout may occur without compulsion or efforts to compel voting may be ineffective. It is important not to conflate a policy of compulsory voting with a utopian assumption about the effects of such a policy in practice.

This ticket is divided into three parts. The first part very briefly reviews something of the background of the debate. The second part looks at research on the likely effects of introducing compulsory voting in the United States. And the third part contains some rather unfocused musings about the normative implications of

the first two discussions. In the long run, this discussion is part of a larger project of thinking about the ways in which different systems of voting assert claims to achieve “representation”; I am hopeful and confident that the comments of the participants of this Schmooze will push my thinking in new and fruitful directions.

## **I. Background**

The idea of compulsory voting is at least as old as Solon’s Code of the 6<sup>th</sup> century b.c.e., which required that in times of “civil strife” all citizens were required to declare support for one side or the other and imposed fines on members of council or the popular Assembly who failed to attend meetings. In American history, compulsory voting was mandated in both the laws of Plymouth Plantation and the Virginia.<sup>1</sup> Moving into more modern times, the idea of compulsory voting was widely discussed in the late 19<sup>th</sup> century.<sup>2</sup> In 1893 Belgium became the first country to introduce a national system of compulsory voting; at that time, however, restrictive franchise requirements meant that only 135,000 people out of a population of more than 6 million could vote. The same year a proposal for universal manhood suffrage was defeated, leading to violent protests. In response, Parliament adopted a law that both made voting compulsory and extended the franchise to every male citizen over the age of 25. In addition, fathers who paid sufficient rent, small proprietors, landowners, university graduates, and holders of professional credentials received up to two supplementary votes, a model proposed by John Stuart Mill among others.<sup>3</sup> Australia adopted its own compulsory voting law for Commonwealth elections in 1918, providing a penalty of up to \$50 AUS for nonvoting without a “valid and sufficient reason.” In 1924 Australia adopted a

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<sup>1</sup> Philips, Harry C.J., *Compulsory Voting: The Australian Experiment* (Western Australia Electoral Commission, 2001, 2-33).

<sup>2</sup> Frederick Holls, “Compulsory Voting,” *Annals of the American Academy of the Political and Social Sciences* 1 (1891): 591.

<sup>3</sup> Frank E. Huggett, *Modern Belgium* (New York: Frederick A. Praeger, 1969): 34

similar law covering all national elections, which was upheld by the High Court in 1925.<sup>4</sup>

Between 1890 and World War II compulsory voting laws were adopted in Belgium, Australia, the Netherlands, Costa Rica, Brazil, Austria, Czechoslovakia, while measures were proposed in the U.S. (for public employees), Canada, and France. (Phillips, 17-22). Additional laws were introduced but not always enforced in Bavaria, Spain, Italy, and a number of Latin American countries.<sup>5</sup>

Interestingly, in this period the assumption was that compulsory voting would favour conservative parties and candidates and thus help act as a bulwark against the threat of socialism. The argument was that the eligible voters who failed to show up at the polls were those too busy with private affairs, precisely the population of bourgeois voters whose participation could provide “conservative insurance” against the threat of leftist takeover. Fredrick Holls proposed that the measure was needed to secure the participation of “the industrious mechanic, the labourious farmer, the man of study, the merchant and professional man, in short, all those who form the substance of the State” while noting “the ignorant and vicious as a class are rarely remiss in exercising their privilege.”<sup>6</sup> John Broomnall, writing in 1893, proposed that “the wealthy ... habitually neglected their political duties, some from dislike to mingle with their humbler fellow citizens.”<sup>7</sup> Commentators in Canada, Belgium, and the UK similarly appealed to the idea of “conservative insurance” as a basis for compelled voting. As a result, the ideological division

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<sup>4</sup> Practices in local elections vary: Highest level of compulsion in Queensland, NSW and Victoria voting is compulsory for residents of the municipality but voluntary for rate-payers or property owners outside local government areas, and local voting is voluntary in South Australia, Tasmania, and Western Australia.

<sup>5</sup> William Robson, “Compulsory Voting,” *Political Science Quarterly* 38 (1923) no. 4: 577; Alfred Nerincz, “Compulsory Voting in Belgium,” *Annals of Amer. Acad. of Pol. and Soc. Sci* 18, no. 2 (1902): Phillips, 87-88

<sup>6</sup> Holls, 1891, at 589.

<sup>7</sup> Broomhall, “Compulsory Voting,” *Annals of the Amer. Acad. Of Political and Social Sciences* 3, no. 5 (1893): 623 (11).

tended to fall between parties on the Left who sought universal but non-compulsory voting, and parties on the Right who sought compulsory voting combined with a narrow franchise. Indeed, as late as 1963 a commentator used the term “conservative insurance” to suggest that compulsory voting would be a safeguard against the looming danger of women’s suffrage.<sup>8</sup>

Interestingly, in more modern periods the opposite argument has been widely accepted.<sup>9</sup> Both proponents and opponents of compulsory voting have assumed that the effect of introducing such a practice would be to benefit Left-leaning parties and policy positions. That assumption plays a key role in the discussion, and therefore warrants more careful attention.

## **II. The Left or Right Advantage Effect of CV**

Repeated efforts to test the claim of a Left or Right advantage from CV have yielded inconclusive results. James DiNardo concluded that the introduction of CV in the United States would significantly increase turnout, and that the result would be participation by a significantly greater number of low SES voters. But he also concluded that such voters would be likely to have higher partisan defection rates than current voters, such that their addition to the ranks of voters would benefit whichever party was in the minority. In particular, he found an historical effect that in congressional elections in Democratic-dominated districts there was a negative correlation between turnout and Democratic vote. But Di Nardo also found that this effect weakened through the 1960s.<sup>10</sup> DiNardo’s hypothesis was that this pattern

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<sup>8</sup> Tingsten, Herbert, *Political Behavior: Studies in Election Statistics* (New Jersey: Totowa Press, 1963, 188)

<sup>9</sup> Lijphart, Arend. 1997. “Unequal Participation: Democracy’s Unresolved Dilemma.” *American Political Science Review* 91(1):1-14.

<sup>10</sup> DeNardo, James. 1980. “Turnout and the Vote: The Joke’s on the

might reflect a general weakening of partisan identification, but it is worth considering the possibility that the effect was a result of the disintegration of the “solid South” and its realignment toward ultimate Republican domination, an argument supported by the findings of Robert Erikson, who found that after 1965 increased turnout in Southern races benefitted Democrats.<sup>11</sup>

In a 2003 study, Citrin et. al. tested the hypothesis that such advantages would have any electoral significance. Citrin and his colleagues extrapolated preferences of non-voters using “determinants of electoral choice” of known voters used to estimate preferences of nonvoters to determine whether there are differences in partisan preferences, then extrapolate to determine the effects of including more voters in an election, relying on exit polls, using Senate elections from 1994, 1996, 1998. Finds significant differences in preferences among voters and nonvoters, but also that, “Taken as a whole the research using aggregate data suggests a complex relationship between turnout and outcomes” that “varies over time and across electoral contexts.” Most importantly for their purposes, Citrin et. al. Finds no likely significant effect on Senate elections in the 1990s despite measurable left movement in composition of electorate, due to absence of close races at the statewide level.<sup>12</sup>

These findings are plausible, but non-conclusive. For one thing, Citrin did not study the plausible effects of CV on non-statewide races—local or national--nor the possibility of effects in hypothetical closer races. A more sophisticated approach, focusing on interaction effects, was undertaken in a large-N comparative study conducted by Christian Jensen and Jae-Jae Spoon.<sup>13</sup> Jensen and Spoon studies 9

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Democrats.” *American Political Science Review* 74(2):406–20

<sup>11</sup> Erikson, Robert. 1995. “State Turnout and Presidential Voting: A Closer Look.” *American Politics Quarterly* 23(4):387–96.

<sup>12</sup> Citrin, Jack, Eric Schickler, John Sides, “What If Everyone Voted? Simulating the Impact of Increased Turnout in Senate Elections” *AJPS* 47 (2003): 75-90.

<sup>13</sup> Christian B. Jensen and Jae-Jae Spoon, “Compelled without direction: Compulsory Voting and Party System Spreading” *Electoral Studies* 30 (2011): 700-11.

countries with CV systems in comparison with 34 countries lacking such systems. One of the questions in which Jensen and Spoon were interested was the extent to which increased participation by voters of a given ideology would result in an increased likelihood in the adoption of policies favored by that group. That is, the question of the effects of CV have to be considered at three distinct stages: participation, election of representatives, and adoption of policies. As M. Franklin observes, “[Candidates] may have different policies, but neither can be sure of being able to put their policies into practice even should they win. Making voting compulsory would not change this.”<sup>14</sup>

Following up on this suggestion, Jenner and Spoon hypothesize that a system of CV increased veto points in the policymaking process by producing a greater range of parties and party ideology. Jensen and Spoon suggested the possibility that the implementation of CV might result in the mobilization of voters whose patterns of preference expression would be inconsistent with the previous voting population. “If the least informed voters are both the last ones to vote and vote differently than better informed, more likely voters, then requiring people to vote could have very different consequences for elections than simply increasing the level of turnout by some amount.”<sup>15</sup> This is not only a riff on the idea that less informed voters are more prone to party defection, it is a broader claim that mobilizing ill-informed and unmotivated voters will essentially yield a random result of added votes, thus relatively benefitting smaller parties and creating a “spread effect” in the election of candidates (in parliamentary systems). This hypothesis challenges earlier findings

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<sup>14</sup> Franklin, M., 1999. Electoral engineering and cross-national turnout

differences: what role for compulsory voting? *British Journal of Political Science* 29, 205–224.

<sup>15</sup> Jensen and Spoon, *supra*. At 702 (citing literature on “wrong” or poorly motivated voting by uninformed voters and a Belgian study finding correlation between parties and policy preference least defined by voters who vote because of CV and not otherwise, plus literature showing CV mobilizes less informed, less interested voters.

of a negative relationship between CV and small party success,<sup>16</sup> but is consistent with findings that plurality systems (which are characterized by low turnout) discourage less informed voters from participating.<sup>17</sup>

To gain better purchase on the effects of CV, Jensen and Spoon test for interaction effects and isolated the separating influences of CV and high turnout. Their findings were that holding turnout constant CV harms the Left and small parties, but when CV is accompanied by significant increases in turnout—and when high turnout exists in the absence of CV—Left parties and small parties benefit. The implications for Left-Right politics are that the introduction of CV will benefit Left in situation of prior low turnout and a responsive increase in voting (e.g. by sanctions or social norms).

The researchers further hypothesized that the benefits to Left parties would likely be undercut by the spread effects of mobilizing ill-informed voters, on the theory that a greater number of small parties in a coalition represents increased ideological range within governments and at the same time leads to an increase in the number of veto players, resulting in “increased policy stability, decreased government duration, and increased judicial and bureaucratic autonomy.”<sup>18</sup>

With respect to small parties, the researchers again found that interaction effects complicate the picture. A significant “spread” effect was found only in cases where CV was accompanied by the highest levels of turnout; CV by itself, holding turnout constant, produced no significant effect. Interestingly, high turnout in the absence of CV was associated with a reduced ideological range in governing (708). As the authors note, “CV affects these variables at both the low and high ranges of turnout.

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<sup>16</sup> Birch, Susan. *Full Participation: A Comparative Study of Compulsory Voting* (Univ. Press, NY)

<sup>17</sup> Fisher, Stephen D., Laurence Lessard-Phillips, Sara B. Hobolt, John Curtice, “Disengaging Voters: Do Plurality Systems Discourage the Less Knowledgeable from Voting?,” *Electoral Studies* 27 (2008): 89-104.

<sup>18</sup> *Ibid.*, On veto points as an operating concept in the analysis of governmental systems, see Tsebelis, George “Veto Players and Institutional Analysis” *Governance* 13 (2000): 441-74.

Importantly, the effect of high voter turnout in the absence of CV has the opposite effect on both dependent variables. Thus, these findings show that CV conditions the effect of turnout and turnout conditions the effect of CV. This demonstrates that there is something qualitatively different about compulsory voting rules as compared to only increasing turnout.”<sup>19</sup>

In some ways, Jensen and Spoon’s findings do not easily translate to the U.S. For one thing, we do not employ proportional election of parliamentary representatives from multi-member districts. Equally important, the assumption that non-voters are to the Left of voters may not hold true.

On the question of the effects of plurality rather than proportional systems, Fisher et. al. find a robust correlation between plurality systems and low turnout. This correlation holds even testing for a variety of possible interacting variables including the proportion of safe seats, levels of satisfaction with the existing government, number or range of parties, and recruitment efforts. Additional control variables that were tested included lack of political knowledge, institutional form, and multiple social and economic characteristics. The authors’ explanatory hypothesis is that voters with low levels of knowledge are more sensitive to electoral system effects than voters with higher knowledge levels.” Those with high levels of knowledge in contrast are little affected by the character of the electoral system. Moreover we have demonstrated that this finding is not simply a consequence of the fact that differences in turnout are likely to be lower when overall turnout is higher. Rather, turnout is lower under plurality rule because those who in any election are less motivated to vote are particularly discouraged from doing so with the consequence that not only is the level of turnout lower under plurality rule, but that inequalities in turnout are greater too.”<sup>20</sup>

On the question of whether American non-votes display the same differences with voters as are found in the large N comparative studies, Leighley and Nagler’s

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<sup>19</sup> *Ibid.* 705-07, 708.

<sup>20</sup> Fisher et. al. *supra.* n. 17.

study *Who Votes Now?*, a follow-up to Wolfinger and Rosenstone's 1972 classic, produces important results. Leighley and Nagler finds that with two notable exceptions the hypothesis that American non-voters are consistently to the Left of voters is incorrect. For example, differences on the question of "women's role in society" that were sharp in 1972 have nearly entirely disappeared by 2004, while on the question of "government aid to blacks" there is a significant difference between voters and non-voters in 200 and an even more significant difference in the opposite direction in 2004. On party identification, Independents are overrepresented among non-voters by 14.5% in 2004, novoters are less likely than liberals to self-describe as "liberal" or "very liberal" by a combined 5.1% total and on a range of other issues non-voters appear as conservative as or more conservative than voters.

The major exceptions have to do with class-based or economic issues, and abortion. The researchers find substantial over-representation of conservative views and an increase in that imbalance from 1972-2004. On abortion, there is a shift from underrepresenting to overrepresenting opposition to abortion rights; on government-provided employment, government services, and government-provided health insurance there is a substantial increase in the overrepresentation of conservative views.<sup>21</sup> On these issues non-voters always more liberal than voters, with widely varying degrees of different on government health insurance (spikes in 1988 and 1996) and much more consistency in the level of different on the other two after 1988, at right around the time the Democratic Party's leadership tacked to the Right. This pattern is consistent with the authors' suggestion that the increase in the difference between voters and non-votes on economic issues may reflect a narrowing of available policy choices, and more particularly in light of the general shift of both parties to the Right the increasing unavailability of any party proposing Left-oriented alternatives.

Finally, it is worth noting that despite the dramatic increase since 1972 in

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<sup>21</sup> In 2004, non-voter support for government-guaranteed jobs at 42.9% while voters support level is 31.0%; on government-provided health insurance non-voter support is 51.5% while voter support is 44.3%. Data taken from tables in appendices.

racial and ethnic plurality and economic inequality, the authors find little evidence of persistent differences in voting by race, and the difference in turnout between wealthy and non-wealthy voters has remained stable. That is, the voting population skews wealthier and older than the non-voting population, but not to a greater degree than was true in earlier decades.<sup>22</sup>

As was noted earlier, the translation of policy preferences to policy outcomes is not direct, particularly in the statewide elections studied by Citrin et. al. It is plausible that the Leighley and Nagler's findings have policy implications for local, district-wide, or national elections as well as for closely contested Senate elections. In this regard, it is noteworthy that separate research has pointed to a correlation between district turnout and levels of federal spending.<sup>23</sup>

### **III. Comments on Findings**

Franklin, M.N., 2004. *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies since 1945*. Cambridge University Press, Cambridge – voting is determined by patterns of socialization, themselves influenced by levels of education, etc.

The discussion thus far has focused on the political significance and potential consequences of CV. There is also the question of whether such a system might be desirable or undesirable for other reasons. There is not a substantial and obvious constitutional problem. As one group of authorities puts it, "If the state can force you to serve on a jury, enlist in the army, and separate your trash for recycling purposes,

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<sup>22</sup> Leighley, Jan E. and Johnathan Nagler, *Who Votes Now? Demographics, Issues, Inequality, and Turnout in the United States* (Princeton 2014), 35-45, 139-46.

<sup>23</sup> Hill, Kim Quaile & Jan E. Leighley, "The Policy Consequences of Class Bias in American State Electorates," *American Journal of Political Science* 36 (1992): 351-365; Martin, Paul S., "Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money." *American Journal of Political Science* 47 (2003):110-127.

the state can presumably make you show up and vote.”<sup>24</sup> Similar analogies are relied upon by writers considering existing systems of compulsory voting to conclude that there is no rights-based objection to the practice.<sup>25</sup> On the other hand, there is a frequently expressed belief that CV is politically unpalatable to Americans for reasons of a loosely defined “political culture.” As one commentator put it in 1954, “many of the ideas connected with the general theme of a duty to vote belong properly to the totalitarian camp and are out of place in the vocabulary of liberal democracy.”<sup>26</sup> Richard Hasen observes, “Although the government tells people what to do all the time—file an income tax return, serve on a jury, register in the Selective Service Program, separate trash—hackles rise when compulsory voting is mentioned. I have no good explanation for this phenomenon...” (Hasen, 2135) There is one notable judicial opinion suggesting that CV might be constitutionally suspect. In *Kansas City v. Whipple* (1896) (Mo. Sup. Ct., never appealed) Chief Justice Brace rejected the idea stating, “Voting is not such a duty as may be enforced by compulsory legislation” but must be “free, according to the dictates of his own untrammelled will.” And as we have seen, there are a variety of arguments to the effect that limiting participation is a positive good in that it excludes ill-informed voters from participating.

On the other hand, there are a series of potential benefits to CV that should be considered entirely aside from any predictions of the effects on policy outcomes. One Australian writer listed the following arguments in favor of compulsory voting as it is practiced in his country:

- the benefits of participation

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<sup>24</sup> Lowenstein, Daniel Hayes, Richard L. Hasen, Daniel P. Tokaji, *Election Law Cases and Materials* (Carolina Academic Press Durham NC 2008). For a discussion of potential First Amendment objections concluding that these would be without merit, see Hasen, Richard L., “Voting Without Law?” 144 Univ. Penn. L. Rev. 2135 (1996) at 2175 n.163.

<sup>25</sup> See, e.g., Hill, Lisa, “On the Reasonableness of Compelling Citizens to ‘Vote’: the Australian Case” *Political Studies* 50 (2002): 80-\_\_\_.

<sup>26</sup> Morris-Jones, W.H., “In Defense of Apathy-Some doubts on the Duty to Vote” *Political Studies* 2 (1954): 25-37, 25.

- genuine expression of the national will
- conservative insurance
- political education of citizens
- preserve principle of representation
- performance of civic duty
- counter to corruption of vote-buying.<sup>27</sup>

And one might add another, unmentioned advantage: the introduction of CV would presumably do away with electoral strategies of discouraging and/or suppressing the participation of voters assumed to be likely supporters of one's opponent. Going even further, the existence of CV would make it much more difficult to justify the impositions of onerous barriers to participation.

Aside from "conservative insurance," none of these necessarily presume a particular effect on policy. One particularly interesting emphasis is on the principle of representation. Numerous commentators have observed that the American system of elections is far from democratic; the usual Madisonian response is that we are a representative republic rather than a democracy. But if that is the justification for the system, then a particular description of what is "represented" and an assessment of the degree to which the existing system achieves that "representation" would seem to be in order. The Madisonian model of Federalist 10 famously speaks of representation as a "filter" to allow elite opinion to rise to the top; that is an argument that favors restricting the franchise, and perhaps—along the 19<sup>th</sup> century models discussed at the outset—making voting mandatory for certain classes of persons or as a condition of receipt of a benefit (e.g., those holding public positions, publicly granted licenses). The argument that CV is valuable precisely because it effectively expands the franchise, a very anti-Madisonian position, speaks to a different conception of "representative" government. That theoretical and normative problem has to be addressed and a position staked out before one can make a plausible argument for or against CV.

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<sup>27</sup> Phillips, 106.

The larger question is whether CV would enhance or degrade voters' sense of attachment to the political system and the consequent legitimacy of government in general. This is arguably a pressing question in the United States, where the decline in trust in government institutions and the lack of satisfaction with the democratic process may be said to be approaching the level of an existential crisis. Hill, in her 2006 study, argued that CV increased "representation, legitimacy, and political equality". It is possible, of course, that there is a reversal of cause and effect such that nations likely to adopt CV systems are already informed by political cultures that favor participation and legitimacy, cultures that are reinforced by the effects of CV laws. But it is also possible that the causal arrow sometimes points in the opposite, more Rousseauian direction: that compelling political participation can affect civic culture over time and produce positive effects. The loss of government efficiency by the proliferation of veto points might be more than overcome by the benefits of increased legitimacy.

This discussion of the normative implications of CV are encouraged by the finding that even in the absence of enforcement CV increases turnout. This observation leads Hasen to conclude that CV laws function as articulations of social norms rather than as coercive measures.<sup>28</sup> A nice gloss on this point is provided by Jensen and Spoon's finding that CV has stronger effects where it is an element of a constitutional mandate rather than an ordinary statute.<sup>29</sup> Thus the debate over CV ends where debates about the American system so often do: in a consideration of the relationship between the norms of our constitutional order and the norms of our political culture, and the question of how the two can best be made mutually supportive—or at least mutually intelligible.

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<sup>28</sup> Hasen, 2170-71.

<sup>29</sup> Jensen and Spoon, 709.