The Case for Compulsory Voting:
A Critical Perspective

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This is very much a first draft. All help with remedying its deficiencies would be appreciated but, please, don’t cite or use without permission.
Should voting be compulsory? A surprising number of people seem to believe that it should, and that countries like England, which have never had compulsion, ought to adopt it. As is common with such things, the arguments are a mixture of principle and political calculation, reflecting the idea that compulsory voting is morally right and that it is likely to prove politically beneficial. This article casts a sceptical eye on both types of argument. It seeks to show that the idea of a moral duty to vote is far less clear than proponents of compulsion believe, as is the case for turning a moral obligation into a legal one. It also suggests that the evidence of beneficial consequences from compulsion are not conclusive. Hence, I show, while there are good reasons to worry about declining voter turnout in established democracies, and to worry about inequalities of turnout as well, the case for compulsory voting is not proven.

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 tend to turn on the claim that compulsion is justified as a way of combating the free-riding of non-voters on voters. Such free-riding, it is claimed, is an unjustified exploitation of the provision of a collective good – a competitive party system – and, unless curbed, is likely to undermine it. The pragmatic arguments are that compulsion is necessary to combat inequality in voting, which disadvantages the political

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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, before concluding with some thoughts about the role of
legislative elections in participatory, as opposed to representative, conceptions of
democracy.

Terminology

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. 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, even if there is no means to ensure that people
vote. Indeed, even in the absence of a secret ballot it would be hard to ensure that people
cast legally valid ballots without violating democratic canons of freedom and equality.
So, while it is common to say that respect for the secret ballot explains why compulsory
voting is consistent with not marking a ballot, or doing so in a manner that fails to count
as a legal vote, in fact it looks as though anti-paternalist, anti-authoritarian and anti-

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3 I am assuming that voters might have to walk into booths that identified their party allegiance – rather as in the Houses of Parliament MPs walk into the aye or no lobbies. However, as long as it is necessary to fill a ballot, rather than merely to register one’s presence, it would still be possible to “spoil” one’s ballot deliberately or by mistake.
coercion norms, implicit in democrat government, would preclude compulsion whether or not one considers the secret ballot to be justified.

A. 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, none is as immediate and as successful at 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, 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.\(^4\) 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’”.\(^5\)

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, in Britain, it seems that elderly people are almost twice as likely to vote as younger people, and in the last two General Elections the participation gap between manual and non-manual

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\(^4\) Lijphart, 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.

\(^5\) Ferdinand Mount, “The Power inquiry: making politics breathe”, on the OpenDemocracy website, 28 Feb. 2006. See http://www.opendemocracy.net/globaliation-institutions_government/power_inquiry_331... The Power Inquiry itself was chaired by Dame Helena Kennedy. Its report, ‘Power to the People: An Independent Inquiry into Britain’s Democracy” was published in March 2006, and painted a damming picture of people’s distrust and alienation from established political institutions and parties. The Report can be found online, by going to www.powerinquiry.org.
more than doubled: from around 5% in 1997 to around 11% in 2005. Likewise, between the 1960s and 2005 the difference in turnout between the top and bottom quartile of earners grew from 7% to around 13%. These results are not dissimilar in other countries.

Moreover, because each generation seems to be participating at a decreased rate, it is possible that expectations and social norms that, in the past, created high turnouts, have now been significantly and, 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”. 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, and fallen faster than turnout among older generations. Thus, 70% of those who were in their 20s in 1992 voted, whereas less than 40% of them, now in their late 30s, voted in 2001.

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

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6 These figures can be found on the IPPR’s “Press Release” of May 1, 2006, for its report on compulsory voting. See http://www.ippr.org.uk/pressreleases/?id=2083.
8 IPPR press release, May 1, 2006.
in determining whether a person will vote or not, it has nevertheless become an increasingly significant factor – at least in the UK. 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. Also, unlike the top three quartiles, turnout among this group did not begin to rise again in 2005”. Thus, 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 reelected. So inequalities in turnout are troubling, because they suggest a vicious circle in which the most marginal members of society are further marginalized.

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 reelected. 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.

9Kearney and Rogers, p.12.
10Lijphart 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”. P.6
11Lijphart, 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 footnote 8, p.5, he refers to a study of the UK, 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.
Now, as it happens, in countries like England, it is age, rather than wealth or income, which is the best predictor of who votes. Interestingly, in England, 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. Indeed, Keaney and Rogers say of age that “it is the single most significant of socio-demographic factors – more significant even than socioeconomic status”. (11)

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 - 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, however, 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.

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12 Keaney and Rogers, p.11. Apparently MORI estimates from 2001 suggest that only 39% of 18 – 25 year olds voted, compared to 70% of the over 65s. and Andre Blais, “To Vote or Not to Vote: The Merits and Limits of Rational Choice Theory,” (U of Pittsburgh Press, 2000), pp.49-54.

13 Blais, p.51, reports that Franklin’s 1996 of 22 countries shows that age comes out as the most important socio-economic variable. Blais’ own analysis of the Comparative Study of Electoral Systems (CSES) survey of 9 countries confirmed that age and education are the two critical variables (pp. 51-2).
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 in 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, 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. 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. For example, in the 24 elections since 1946, Australia has average turnout of 94.5%; and in the 19 elections since 1947, Belgium averaged 92.7% 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. (figures)

Fourth Step: Possible Additional Benefits to Compulsion

14 Lijphart, p.7, quotes 15% as the maximum benefit that registration reform would have in the US, and notes that it is irrelevant to most Western democracies, who have fairly high rates of registration to begin with. Proportional Representation may stimulate turnout by 9-12%, but, as footnote 14, p. 7 makes plain, “multipartism, which is strongly associated with PR, depresses turnout – thus undoing some of PRs 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.
15 Lijphart, p.8. Apparently compulsion can raise turnout from 7 - -16 percent, even when the penalties for voting are low.
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.\(^{16}\) 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. The idea behind these potentially attractive features of compulsion is that 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. In short, 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)\(^{17}\) but to ensure that as many of those who turn out 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.\(^{18}\)

**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 down-sides 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 turnout.\(^{19}\) 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

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\(^{16}\) Lijphart, pp. 10 - 11


\(^{18}\) Kearney and Rogers, p. 7

\(^{19}\) Lijphart, p.11. Lijphart is interesting in that he seems to believe that there is a right not to vote, by contrast with Wertheimer, and claims that there is a good case to have the option of voting for “none of the above”, that 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”. Footnote 23, p. 11
have the largest share of the vote in an election, or sufficient to turn it into the major “opposition” party. The IPPR, indeed, notes in a footnote that it would forbid people from campaigning for a “none of the above” option, although explicitly supporting the provision of such an option on the ballot. So, while it is clear that considerably more thought has to go into the 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 every argument for compulsory voting, although it is rarely spelled out in any detail.

The key idea, however, 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.

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21 Alan Wertheimer is a notable exception. See pp. 280-282, and the summary of his argument at p. 290
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”.\(^{22}\)

**Summary of the Case for Compulsory Voting**

The case for compulsory voting, then, essentially 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. Compulsion has no significant costs, because the compulsion is to turnout, 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 nonvoters 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

\(^{22}\) Lijphart, p. 11.
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.\textsuperscript{23} “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.\textsuperscript{24} However, Lijphart complains, most democracies do not place a floor under electoral participation, and 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. 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 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, and has extraordinary and enduring levels of support in Australia – a country with a reputation for individualism, rather than the reverse.\textsuperscript{25} In fact, the democratic case

\textsuperscript{23} Lijphart, p.2
\textsuperscript{24} Mill, \textit{Rep Gov}…. and critiques….
\textsuperscript{25} Other democratic societies that have, or had, compulsory voting include Belgium, the Netherlands (from …), Italy (…), and some Swiss cantons, as well as the following countries in Latin America…. 
for compulsion can be seen as an effort to make explicit and to systematize the experiences of several democracies.

Nonetheless, I will argue, the democratic case for compulsion has not been made, and is far harder to make than its proponents believe. In what follows, I will lay out my concerns in six steps, through which I hope to show that the supposed benefits of compulsion are more speculative and uncertain than proponents believe and that, importantly, compulsion threatens people’s freedom and equality in ways they have overlooked.

B. THE CASE AGAINST COMPULSION

Step One: The Evidence

The connection between compulsory voting and social democracy is more speculative and uncertain than the literature suggests. Those paradigmatic instances of social democracy – Sweden,26 Norway and Finland – do not have compulsory voting and, indeed, appear to suffer from the same worries about declining voter turnout and indifference to the major political parties which trouble countries with more free-market economies, such as the United States and Britain. Indeed, in Norway, they even appointed a special commission to investigate these problems further. 27 Moreover, while the Netherlands used to have compulsory voting, one of the reasons given for rejecting it

26 According to Maria Gratschew, the mere mention of compulsory voting in Sweden, in 1999, by the Minister for Democracy, occasioned heated rejections of it by the media, political scientists and politicians. “Compulsory Voting in W. Europe”, p.30...
was, precisely, the belief that the practice is undemocratic.\textsuperscript{28} So, it certainly does not look as though compulsory voting is necessary for social democratic politics.

Not only do the leading social democratic countries lack compulsory voting, but even the democratic countries with compulsory voting are not notable for their social democratic policies. This suggests that compulsory voting is not sufficient for social democracy, either. Australia, most obviously, cannot be described as a social democratic state and, in the typical typology of economies and welfare states, would almost certainly be counted as liberal, along with the United States and Britain. Nor, indeed, is Belgium obviously social democratic in ethos, although it seems to be corporatist in political outlook. But, be that as it may, it is clear that both Australia and Belgium have problems with racial and ethnic equality that are comparable to those of countries, like the Netherlands or Britain, which lack compulsory voting, and it also appears that both countries struggle with serious problems of economic inequality and, even, of poverty. So, while these inequalities might all have been worse in the absence of compulsion,\textsuperscript{29} the evidence for a link between compulsory voting and social democracy is poor.

\textsuperscript{28}The Netherlands adopted compulsory voting in 1917, along with universal suffrage and PR. Apparently the PR system required 100\% turnout for the results to be truly proportional. See Maria Gratschew, “Compulsory Voting”, p.29. I am curious 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. Apparently compulsory enrollment predated compulsory voting in Australia, and was seen primarily as a bureaucratic response to the difficulty of keeping the electoral rolls up to date. It was introduced in 1911 for Commonwealth elections. Mackerras and McAllister, p.219. \textit{Young people enroll far less often than older people:} for 18 – 24 year olds the estimate is 78\% to 93\% for the eligible population as a whole. If voting is then estimated based on this figure, turnout is in 1990s would prove to be around 83.7\% rather than 96.2\% that follows from taking enrollment as the baseline. Needless to say, this is a very significant difference, and suggests a fairly high degree of noncompliance, as well as of inequalities in voting. See footnote 6, p.219.

\textsuperscript{29}In “Compulsory voting, party stability and electoral advantage in Australia” M. Mackerras and I. McAllister claim that “the system disadvantages rightwing parties and advantages leftwing and minor parties". How far that translates into different policy outcomes is hard to say. See \textit{Electoral Studies}, 18,, (1999), pp.217-233. The quotation comes from their abstract.
Nor, indeed, is there any convincing theoretical reason why the link should be tight. Voters do not always vote on their self-interest- for good and ill- so from the fact that social democrats assume that it would be in the interest of the socially disadvantaged to vote ‘left’ it does not follow that that is how the socially disadvantaged will vote, when they vote. Given the option to vote for “none of the above”, it is possible that many disgruntled and marginalized citizens will vote for that option. In its absence, as we know, many of them vote for parties of the extreme right and left in order to manifest their anger and despair at a political system that seems to have repeatedly failed them. So, with due deference to Lijphart’s expertise, I do not share his optimism about the likely voting patterns of current nonvoters. Instead I fear that if voters cannot spontaneously see the case for voting for a social democratic party or its nearest equivalent, the compulsion to turnout is unlikely to make it plainer.

Step Two: the Normative Aspects of Low and Unequal Turnout

My second concern with the case for compulsion is that it seems to imply that all forms of low and unequal turnout are ethically troubling, though this is not obviously so. Some forms of low and unequal turnout are, genuinely, troubling. But in these case, I suspect, what should be of most concern to democrats is not political abstention, so much as the multiple forms of deprivation that characterize this section of the non-voting population and that, arguably, help to explain their failure to vote. From this perspective, compulsory voting is, at best, a distraction from the serious moral and political problems
that mar so many democracies, and at worst, is likely to persuade governments, and the voters who support them, that “something is being done”, although the most serious forms of inequality will have been left unchanged.

Not all forms of low and unequal turnout are ethically troubling, because there is no reason to suppose that people should be equally interested in politics at all times, or that all people should find voting equally satisfactory. Above all, it is morally and politically important to distinguish amongst different types of non-voters. There may be reasons to be troubled by those who do not vote because they are not particularly excited by any candidates, or because they are disenchanted by their favoured political party – as the failure to vote may point to deep-seated weaknesses in the competitive party system, and in the organization and ideology of the main political parties. But these problems, real as they are, seem far less urgent than those of the people who do not vote because voting and political participation of any form seem as alien and remote as university

30 Mackerras and McAllister estimate that voters sometimes have to cast a ballot once every 18 months (226), but this might prove significantly more, given how many elections are, apparently, invalidated and have to be rerun. Thus, they claim (p.223) that “a re-election for a constituency occurs about once every second year”. To an outsider this seems extraordinary. But the authors simply say that “If Australians felt more strongly about election results than they do, there probably would be more abuse of the system. Allegations of such abuse are frequent, but factual evidence is rare”. (223) It is hardly surprising, therefore, that voting is expected to drop considerably once compulsion is removed.

31 Kearney and Rogers say, “while there is no agreed account as to why voting has fallen in recent years, there seems little doubt that pride of place should be given to changes in the nature of party politics”. (p.16) But I wonder whether they do not exaggerate the situation in the UK by taking a temporary, though very dramatic blip, as evidence of a secular trend. In 1992 voting was 77% in the General Election; in 1997 it was 71%. It then fell to 59% in 2001 and was only at 61% in 2005. However, these last two elections occurred during a very unpopular war and with no credible opposition to the Labour government. Perhaps this is sufficient to show that Britain has finally fallen off a fairly well-established pattern of voting in the 70th percentile at General Elections, but if so, it would be good to have an argument for that conclusion. By contrast, we have notably low rates at local elections, by compared with countries like France and Sweden and this, arguably, is linked to structural features of British politics, such as our centralism, and very large local electoral districts married to very scant political powers.
education, stable, well-paid work, decent housing, safe streets, and respect from other members of society.

Perhaps we should be worried about the electoral inequality that follows from the fact that people who are absolutely, as well as relatively, deprived, marginalized and poor do not vote at the same rate as more favoured social groups. However, it strikes me that this is unlikely to be the most prominent form of inequality troubling the members of those groups themselves or, indeed, those who work with and for them. It is likely to be less significant, for example, than inequalities in the likelihood of violent death, of chronic illness and of premature death from disease; it is also likely to be less significant than pervasive inequalities in access to good quality primary and secondary education, and in educational attainments themselves. It seems less significant than inequalities amongst groups in such matters as pervasive unemployment, low wages, drug abuse and imprisonment. Indeed, as many countries disenfranchise those with criminal records – both temporarily and permanently – concerns about the links between age, race, class and voting ought to be at least as concerned about disparities in criminalization as with disparities in electoral turnout. In short, while compulsory voting can certainly raise and equalize electoral turnout, it is unclear that these are

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32 Figures on violent death rates of young black men in USA and Britain; (what’s available in EU??); ditto illness and morbidity – see recent refs on difficult problem of Aborigine death rate in Australia
33 What figures available? Key point is that if you can keep people alive long enough, and educate them enough so that they can go to University, you’ll have solved several critical social problems and thereby, so studies suggest, have resolved problems of low and unequal electoral turnout. However, it seems likely that inequalities of education, as well as absolute levels of education, are relevant to turnout within and between countries. See Lijphart, p.6 comparing declining rates of voting to increasing rates of education and material wellbeing in Western Europe. For the significance of absolute levels see Blais, ..
34 Figures on employment; pay etc. and, of course, imprisonment.
35 Antoine….and estimates of disenfranchisement black men in the US. Anything comparable for Britain and EU generally? Or Australia??
especially desirable objectives, when the life chances of people in our societies are so unequal, and often so poor, and when compulsory voting, itself, probably has little or no bearing on these.

*The Third Step: Penalties for Nonvoting and their Enforcement*

Proponents of compulsory voting tend to say that the penalties for non-voting are, typically, no higher than a relatively low fine. But even where that is true, it is important to realise that people can, and do, go to prison for failing to pay fines, and that this is the case, as well, for those who fail to pay fines for non-voting. So, it is a predictable consequence of compulsory voting that some people will go to prison, and end up with a criminal record, either because they cannot or will not pay the fine for not-voting. Before holding that compulsory voting is justified, therefore, we need to be prepared to make criminals of people who do not pay their fines for not voting – and need to be confident that doing so is consistent with the social-democratic values and objectives that animate this case for compulsory voting.

The penalties for not voting in many democracies are fairly slight and the striking thing about countries like Belgium and Australia is, precisely, that people still vote although in Belgium fines are rarely enforced, and in Australia, excuses for not voting

36 In a recent case Melissa Manson was sentenced to a prison term for refusing to pay fines for her failure to vote in 1999. See Birch… And Hill, pp. 6 – 7, and p.17. Apparently Manson said that “there were no candidates worth voting for” and that she was unwilling to “pay the fines on principle”.

37 Perhaps concerns of this sort explain the recommendation of the 1997 Joint Standing Committee on Electoral Matters, in Australia, that compulsory voting be repealed for federal elections and referenda. It claimed that “if Australia is to consider itself a mature democracy, compulsory voting should now be abolished”. Quoted in Hill, pp. 4-5
seem to be readily accepted.\textsuperscript{38} But that does not mean that all penalties are low. In Italy, non-voters originally had their cards of good conduct marked – and although the carrying of such cards may not have been common, even in the 1970s, 80s and 90s people feared that they would lose their chances of civil employment if they did not vote at the many different elections and referenda that were required.\textsuperscript{39} Likewise, in Belgium, the penalties on paper are quite severe, although rarely enforced. In principle, failure to vote four or more times within a 15 year period will lead to exclusion from the electoral register for 10 years and, if one is a civil servant, it will also mean disqualification from the chance of promotion.\textsuperscript{40} Even now, apparently, people in Italy can be denied places at state childcare facilities, under what is misleadingly called “the innocuous sanction”. For those whose employment depends on state-funded childcare of various sorts, the mere threat of losing a place would be far more alarming than the prospect of even a hefty fine. What seems like a trivial penalty to some people, then, is a very grave threat to others; and there is nothing about compulsory voting that means the penalties for non-voting must be trivial.

\textsuperscript{38} Although, empirically, there actually is a question about how far, in Belgium, people know that they’re rarely enforced!!! Also problem in Australia, about knowing the precise grounds held to justify exemptions from voting. In fact, the Australian Electoral Commission successfully fought a freedom of information case to prevent the disclosure of the full list of exemptions that it allows! This also means, of course, that not only do citizens not know whether or not they are entitled to an exemption, but they have no way of knowing that the law is being enforced fairly or that the list is, itself, fair. See Hill p.3 However, as Hill shows, most excuses for not voting seem to be readily accepted, and no documentation is required. Hill, p.12

\textsuperscript{39} After a prior presentation of this paper, an Italian of roughly my own age told me a story from her days working in the Italian Foreign Office. My talk had reminded her of the time when she received an official notification that she had failed to vote in a several recent elections. The letter in and of itself was enough to make her catch a train to Italy and then return to Vienna later in the day, although she had not knowingly missed any elections before. By contrast, she said, her brother refused to vote on principle – to the despair of her Father, who thought voting was a duty. Failure to vote could have cost her her job, just as it could have preempted a career in education, or in the University system.

\textsuperscript{40} Maria Graschew, “compulsory voting in Western Europe”, ch. 3 \textit{Voter Turnout in Western Europe},...
The difficulty with the penalties attached to non-voting, however, is not simply their severity, but the manner in which they are enforced. Laws that are rarely enforced raise the spectre of arbitrary enforcement, or the arbitrary threat of enforcement against annoying, unpopular, or combative individuals or groups. A prime example of this was the American case of *Bowers v. Hardwick*, where Hardwick sued the State of Georgia for arresting him on charges of homosexual sodomy, even though it had not intention of prosecuting him, and indeed, released him without any effort to do so. The case is famous – or infamous – in other ways, which are irrelevant to our purposes here. But the key point is that a law can seriously constrain someone’s liberty and privacy even when it never results in legal punishment; and can intimidate the groups to which that person belongs, whether these are based on choice, or on ascription.

*Step 4: The Right Not to Vote is Not a Trivial One*

Despite the claims of proponents of compulsory voting, I am not persuaded that the right not to vote is a trivial one, whether we consider “voting” to mean “turnout” or something more demanding. The right to abstain, or to refrain from political self-

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41 As the abortion case suggests, they also place enormous power in the hands of young lawyers – white men for the most part - who are keen to make their mark by zealously prosecuting laws that have tacitly been ignored, or used only in a particularly heinous example of an incompetent backstreet abortion. For a remarkable picture of such tacit regulations, and their effects, see…..

42 *Bowers v. Hardwick*…..

43 Lisa Hill simply says “The claim that compulsion violates the liberal-democratic principles of choice and freedom is without doubt a valid one. But there are other important liberal-democratic principles at stake here, among them: legitimacy, representativeness, political equality, inclusiveness and minimization of elite power, all of which are served by compulsory voting”. (p.5) Lisa Hill, “Compulsory Voting in Australia: History, Public Acceptance and Justifiability”, prepared for the ECPR workshop in Helsinki. But it remains to be seen how these democratic values are served by forcing people to queue to tick their names off an electoral register or, indeed, to pick up a ballot.

In a 1971 decision the ECHR seemed to agree, arguing that compulsory voting does not violate freedom of conscience or the right against forced labour, as long as there is no compulsion to mark the ballot formally. Hill mentions this case, *X v. Austria*, Appn. No. 4982/71 at p. 7, and
identification and participation is an important one, symbolically and practically. It captures two ideas that are central to democracy. The first is that government is there for the benefit of the governed, not the other way round. The second is that the duties and rights of citizens are importantly different from those of their representatives, because the latter have powers and responsibilities that the former do not.

Citizens do not owe their government electoral support or legitimacy, and this is one reason to doubt that citizens have a duty to turn out or to vote. As Rawls suggests, people have a natural duty to support just, or nearly just, institutions. But it will not be easy to ground a general duty to vote on this duty. The natural duty to support just institutions applies to non-citizens as well as citizens, and it is plausible that the differences between the two mean that their shared duty can take appropriately different forms. Still, it is quite a step from a general duty to support just institutions to the claim that citizens are morally obliged to vote in every election and that that moral obligation may be legally enforced. Such a claim requires us to suppose that “support” must take the form of “electoral participation”, rather than anything else. It also implies that failure to vote in and of itself will count as failure to support just institutions – even if failure will be deemed excusable in certain circumstances. Neither assumption looks plausible, or easy to square with familiar ideas about democratic rights and duties. So while it is reasonable to suppose that people do, sometimes, have a duty to stand up and be counted,

cites [www.hmso.gov.uk/acts/acts1998/80042--d.htm ch 42](http://www.hmso.gov.uk/acts/acts1998/80042--d.htm ch 42), schedule 1 (4) as the place to look for further details. However, it looks as though the Court is trying to accommodate different European views of the matter, as it claims that “any work or service which forms part of normal civic obligations” is excluded from the prohibition against forced labour - and, perhaps, rights of freedom of conscience. It can’t be said that this is analytically very compelling, whatever its merits politically and in deference to national sensibilities. Hill, p.7

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and that this may require them to vote on occasion, the idea that citizens have a general duty to legitimate their governments, and so to vote, is hard to sustain.

The second reason to believe that the right not to vote is significant is the importance to democratic conceptions of freedom and equality of the difference between citizens and legislators, or those who hold special power and responsibilities for the well-being of others. Party discipline may justly require legislators to vote, and to vote one way rather than another. Democratic conceptions of responsibility, accountability and equality may also require legislators to vote openly, rather than secretly, even though legislators, like citizens, can suffer from bribery and intimidation. By contrast, it is hard to justify a general duty to vote, or a duty to vote publicly, simply because one is a citizen and has a right to vote. No such duty is implied by the case for universal suffrage, which simply supposes that legal rights to vote should reflect the equal interest of individuals in voting, and in standing as candidates for legislative office. Nor is it clear that citizens have some general duty to vote on the public good, rather than personal conceptions of duty, or even out of self-interest. So the idea that the right not to vote –

45 For a legal case that has influenced my thinking on the importance of distinguishing the rights and duties of leaders and ordinary members, see NAACP v. Alabama. ... The crux of the Supreme Court decision in this case, is that ordinary members of the NAACP, and other organizations, do have duties of accountability that require them to sacrifice their anonymity. By contrast, leaders of organizations do. The implication is that organizations with no formal leadership will either have to appoint some members who can be held accountable for the behaviour of members, or that all members will have to share in accountability and any loss of privacy that this involves.

46 I discuss the difficulty with Mill’s arguments again the secret ballot, and their contemporary counterparts, in “Mill and the Secret Ballot: Beyond Coercion and Corruption”, forthcoming in Utilitas, (Vol. 20, No. 2, June 2007)


48 There are at least two problems here. The first is that even if people have a duty to vote, at least in some cases, it is unclear that that duty is a duty to vote for the public good, rather than out of concern for non-citizens, distant others, or out of concern for the worst-off in their own country. Secondly, it is not clear that people have a general duty to vote to begin with – although many people, myself included, apparently
and not to participate in other respects – is a trivial right or liberty seems to trivialize the
differences in power and responsibility of democratic citizens and legislators.

These problems are apparent when we consider how the line between a duty to
turn out and the duty to vote is to be set, and how to decide what is to count as legitimate
grounds for failing to fulfill the legal duty to vote. Arend Lijphart is very clear that
citizens should not be required to accept a ballot, or to do anything beyond turning up and
ticking their names off a register of voters – and this seems to have been the practice in
the Netherlands. While he believes that citizens should have the option to vote for
“none of the above” he clearly thinks that being required to accept a ballot or, indeed, to
register a legally valid vote, would be inconsistent with the freedom of citizens. Quite
which freedoms would be violated, and why these are not violated by the duty to turn out,
Lijphart never says. Still, we can suppose that he thinks a requirement to cast a legally
valid vote would violate people’s freedom of conscience and, quite possibly, their privacy
too. He clearly assumes that such liberties are fundamental, rather than trivial, and so
such violations cannot be justified by the benefits associated with compulsory voting,
however real and desirable.

It is plausible, as Lijphart seems to assume, that freedom of conscience would be
threatened by compulsory voting, because some people hold religious views that deem

feel some sort of duty to vote. For a more detailed discussion of these points see “Mill and the Secret
Ballot”, pp… It should be noted, though, that people may have quite different conceptions of their duty, so
from the fact that, empirically, people vote out of a sense of duty, we are still a long way from knowing
whether or not their individual senses of duty are mutually compatible or, indeed, can in any way be
characterized as voting on “the public good”. This is a point that political scientists appear too readily to
overlook.

49 Lijphart, p. 2
anything more than the most minimal contact with the modern state unjustified. The Amish are a quintessential example; but some orthodox Jewish groups would likely qualify, as would some cloistered Catholics monks and nuns and as might the Quakers and various other forms of Protestant “nonconformism”.

But it is a mistake to suppose that the only people with conscientious objections to voting are religious. In *Judd v. McKeon* an Australian socialist argued that he should be exempted from the duty to vote, as on his view all capitalist political parties are immoral. He lost the case. It is difficult to see the moral case for compulsory voting in such circumstances, nor is it clear that the possibility of voting for “none of the above” would meet such moral objections. These are, presumably, moral objections to any political party that is not committed to socialism. But as the option of “none of the above” leaves open the possibility that one would vote for a capitalist party other than “the above”, someone who felt unable to vote on socialist grounds is unlikely to feel able to vote for “none of the above”. Such an option is simply too vague and all inclusive to meet the moral objections of many people who do not vote on conscientious grounds.

Consequently, as Lijphart seems to have realized, whatever the case for adding a “none of the above” option to the ballot, it cannot justify forcing people to vote who have conscientious objections to voting. By contrast, Kearney and Rogers of the IPPR give

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50 Hill mentions this case in footnote 5, p. 3. *Judd v. McKeon* 91926 38 CLR 380). Judd was fined 10 shillings for not voting, and lost his appeal against the fine. (AEC 2004) Hill seems to doubt the justification for prosecution in such cases. See Hill, p.18

51 Hill, too, makes it plain that she can see no case for prosecuting people like Manson and Mansell. “it is probably best to allow dissenters like these to abstain without penalty, not only because their claims are morally compelling in terms of the types of democratic values compulsory voting is supposed to serve… but
the impression that they would require people to pick up ballots and, perhaps, even to mark them, so long as it were legally permissible to vote for “none of the above”.\textsuperscript{52} And in Australia, it seems, it is legally required not only to pick up a ballot, but to make a legally valid vote, unless one falls into the category meriting an exemption.\textsuperscript{53} This interpretation of the law seems never to have been tested in court.\textsuperscript{54} So it is important to realise that Lijphart’s own conception of justified compulsion is at odds with other conceptions of compulsory voting.

The main difficulty for Lijphart’s view, however, is that the case for forcing turnout, but not voting, is obscure. After all, it is low and unequal voting, not turnout, that is the cause of moral and political concern. While it is likely that many people who have been forced to turn out will then go on to cast legally valid votes, we are here talking psychological probabilities, rather than any conceptual or normative connection between

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\textsuperscript{52} P.26, they seem quite happy to describe as compulsory turnout something that looks far more like compulsory voting- although not the compulsion to cast a legally valid ballot. See p. 26, where they apply compulsory turnout to being forced to pick up a ballot and mark it in some way, even if this includes “spoiling”, ticking the “none of the above” option where available. The latter, of course, would count as casting a legally valid vote. At p. 30 they say, “‘compulsory voting’ does not…impinge on the right not to vote. However, it does impinge on the right not to take part in the political process at all. While this does represent some curtailment of personal freedom, it should be seen in context…”p.30. So it looks as though their understanding of compulsory turnout is a lot more demanding than Lijphart’s or Hill’s.

\textsuperscript{53} According to Hill, legal commentators in Australia disagree about whether compulsory voting means more than just compulsory registration and attendance. The results in a test case suggested that “marking a ballot informally does not meet the requirements in the Act on how to vote, and is therefore an offence”. As Hill suspects, this suggests Australian law would fall foul of the ECHR, as it seems to require actual and formal voting, rather than mere attendance. Hill, p.9, discussing \textit{O’Brien v. Warden}, cited in A. Twoomey, “Free to Choose or Compelled to Lie? The Rights of Voters After \textit{Langer v. the Commonwealth}” Federal Law Review, vol. 24, No. 1, (1996), pp. 201-20.

\textsuperscript{54} Nor would it be easy to do so, given how many ballots count as “informal” or “spoiled” in Australian elections. The reason, apparently, is that the electoral system is so complicated that unless voters essentially leave the most of the available choices up to their party, they are quite likely to make errors that invalidate their vote altogether. Indeed, the more one learns about the Australian electoral system the more problematic it can seem from a normative perspective, particularly if one values transparency, simplicity and publicity in voting systems.
enforced turnout and democratic voting. That is, the reason why people are likely to vote, if they are forced to turn out, is that most people do not like to waste their time. So, if they are forced to queue at polling stations, in order to tick their name off a list, they may well go on to vote, although otherwise they would not have bothered. But from the fact that people do not like to waste their time, and therefore tend to vote, it does not follow that we are justified in forcing them to queue in order to tick their names off an electoral register.

Queuing simply to tick your name off an electoral register seems pretty pointless and annoying. Nor are its pointless and annoying features in any way alleviated because they have been turned into a legal duty. Such a duty, indeed, seems pretty insulting and demeaning, and ill suited to promoting the idea that voting is an important civic duty. So, while Lijphart’s conception of the duty to vote avoids the difficulties of alternatives- by sharply distinguishing the duty to turnout from the duty to vote- it suffers from the problem that the duty to vote, so understood, can scarcely be considered a moral duty and seems inappropriate as a legal duty in a democratic political system.  

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55 Actually, there is an empirical question about how far the stated “gains” produced by compulsion refer to turnout rather than voting, and how far they depend on legal requirements to vote rather than to turnout. Ambiguity here makes it important to sort out what, exactly, different figures refer to and what legal background they presuppose.

56 Compulsory turnout is likely to give observers the impression that other people are overwhelmingly willing to vote – though, in fact, they may not be willing to vote at all. It thus puts considerable social pressure on people to vote, who might otherwise have abstained, or who might have spoiled their ballots. While surveys in Australia show that three quarters of the country consistently support compulsory voting, a quarter of the population, no less consistently, claim to oppose it, although 95% of registered voters comply with the law. This rather suggests that the pressure to conform is very significant, as only South Australia enables people to avoid compulsory voting by allowing non-registration, and then limiting compulsion to registered voters only. Likewise, almost 90% of Belgian voters cast a vote, although that figure is expected to fall dramatically were compulsion removed. This has led opponents of compulsion to assert that “[compulsory voting] gives the impression to traditional parties that they can rely upon the solid support of their supporters and that they do not need to put much effort to be active”. The quotation is from Ecolo’s 1981 manifesto, “Une autre maniere de faire de la politique…” quoted in Jean-Benoit Pilet, p.9
Things are not notably easier when we consider who should be exempt from the duty to vote, and why. So far, we have been assuming that people with conscientious objections to voting should be exempt. But it is a striking feature of the Australian case that those who object to enforced voting, but not to voting itself, are not exempt from the requirement to vote. Nor, presumably, are those who have no general conscientious objection to voting but who would object to voting in a particular case or set of cases. Again, it is also worth noting that the Australian electoral board have successfully fought to avoid publishing the full list of legal exemptions with which they work.57

Such a position seems remarkably arbitrary, morally and politically. A conscientious objection to being compelled to vote can be fully as conscientious as an objection to voting itself.58 Likewise, an objection to voting in a particular case can be just as conscientious as a general objection to voting. The parallel with conscientious objection in war seems appropriate. Whatever the legal case, it is hard to see why people who are not pacifist should not be entitled to assert an overriding moral objection to fighting in a particular war or, indeed, to fighting in most wars. After all, one might suppose that fighting in defence of a just state, or of a nearly-just state is legitimate, even

57 Hill….
58 By comparison, conscientious objections to compulsion in the case of income tax only raise moral worries if we have some prior reason to suppose the tax is illegitimate or immoral in some way. So, too, for military service. But that is because the right to vote seems a fundamental democratic right; whereas what rights we have to pay taxes, serve on juries and defend our country probably follow from worries about second-class citizenship, unjustified paternalism and outright sexual, racial or class discrimination.
required, without in any way supposing that most of the wars democracies fight actually fall into that category. 59

So while Australia is willing to imprison people who do not pay fines because they object to being forced to vote, such a practice is hard to justify as long as people are able to avoid voting on the grounds of a conscientious objection to voting itself. To suppose that all conscientious objections to voting – however misplaced, misguided or, indeed, undemocratic in ethos and content – justify a legal exemption from voting, while no other conscientious objection does is difficult to square with the freedom and equality of citizens. It is clearly inconsistent with the idea that people can legitimately differ about what is valuable and worthwhile in life, and so can have mutually incompatible conceptions of personal duty.

“Reasonable Pluralism” is the term Joshua Cohen coined for the many ways in which informed, well-meaning and conscientious people might think about matters of ultimate moral and political importance. 60 As he argued, we cannot protect the freedom and equality of individuals if we are indifferent to the reasonable differences amongst them or, indeed, if we are indifferent to the difference between reasonable and unreasonable conceptions of the good. It may be that a commitment to democracy requires us to tolerate views that are unreasonable in various ways, as Erin Kelley and …

59 Rawls…
have argued. Nonetheless, it is doubtful that democracies can be indifferent to the
cohesion, consistency and evidence that people can adduce for their beliefs, particularly
when they use these to justify exemptions from general duties, or as grounds for special
rights. Consequently, it is hard to see how exemptions from the legal duty to vote – or
even to turnout – can be defined as narrowly as in Australia and, indeed, how far, if
adequately defined, they are consistent with a general duty to vote at all.

**Step 5: Non-voters are not Free Riders**

The case for compulsory voting turns, importantly, on the thought that non-voters
are free-riders, selfishly exploiting the public-spirited efforts of voters. There are two
problems with this picture. The first is an internal one, of consistency with other aspects
of the case for compulsion; the second is the difficulty of reconciling this picture of non-
voters with democratic ideas of legitimacy.

The idea that non-voters are selfish exploiters of voters is hard to square with the
picture of political inequality that underpins other aspects of the case for compulsory
voting. At the start of the case, as we have seen, non-voters are conceptualized as
socially deprived in various ways, and as appropriate objects of social democratic
concern. Nonvoters, on this picture, find it difficult to protect their own interests- they
are, after all, less educated, less experienced and less well-organised than other people -
and so are liable to exploitation by the more powerful, knowledgeable and politically
astute. The case for compulsion, indeed, verges on the paternalist, at least as regards this
social group, because non-voting is here presented as a threat to their interests, albeit a

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61 Erin Kelley and ....”Tolerating the Unreasonable” ....
partially self-induced threat.\textsuperscript{62} By contrast, the free-riding justification of compulsion assumes that non-voters are behaving in a self-interested fashion, and seeking to enjoy the benefits of a democratic electoral system without doing their fair share to maintain it. They seem, therefore, to be exploiting the good will, public spirit and sense of duty of voters, and to be behaving in ways that are selfish and immoral.

There is a clear inconsistency between these two pictures of non-voters, and their relevance to the case for compulsory voting. Perhaps there is some way to reconcile the two pictures, without undermining the social democratic features of the case for compulsion, though this strikes me as improbable. However, it is striking that proponents of compulsion seem not to have noticed the difficulty of reconciling the free-riding argument for compulsion with the initial concern for unequal turnout, and this rather suggests that such plausibility as these arguments have turns on a failure adequately to identify the interests of nonvoters, or to enquire too closely, into who, exactly, we are talking about.\textsuperscript{63}

\textsuperscript{62} Something similar may underpin arguments for the closed shop – or the requirement to join a labour union as a condition of work. However, the case for the closed shop, though controversial, seems stronger. The idea that unions are really in the interests of workers who do not support them is of less importance than the claim that unions typically fight to negotiate better pay and conditions for their members than would otherwise be possible. To be a non-union member in a union shop, therefore, enables one to enjoy the benefits of others’ struggles, risks and union dues, without sharing in any of the costs. (The case, in other words, is fundamentally egalitarian, rather than paternalist.) This seems especially unfair when employers, on their side, generally have an interest in undermining the union by pitting one worker against the other, and thereby limiting the freedom to associate, as well as to negotiate over the conditions of work. So, whether or not it is individually rational to participate, enforced solidarity insures some rough correlation between benefits received, and burdens sustained. For a liberal egalitarian defence of the closed shop, see Stuart White….. It is, of course, wrong to suppose that employers always want to undermine a union, or indeed, that unions always see themselves as locked in a life-and-death struggle with employers.\textsuperscript{63} It also suggests a failure to engage with the behaviour of voters. After all, people are known to vote on all sorts of considerations, some of which are decidedly unsavoury. We might want to describe supporters of Le Pen as selfless contributors to a democratic public good. But this will require some argument, and cannot be treated as an \textit{apriori} truth. So, the picture of voters assumed by the free-riding justification of compulsion has considerable difficulties, too.
But there is a difficulty with the free-rider argument for compulsion, other than internal consistency. Democratic theory suggests that non-voters are not necessarily free-riding on the efforts of voters to maintain a democratic system, because the legitimacy of an election, in a democracy, depends on the behaviour of non-voters, as well as voters. What makes for a legitimate election, after all, is not that some party got a majority of the vote – we know that many legitimate governments in fact got a minority of the vote. What makes for a legitimate government is that those who did not vote for the winning party or candidate, including those who did not vote at all, are willing to accept the victory of the victor.

Non-voters, therefore, have a critical role to play in conferring legitimacy on the outcome of elections, and this role is no less crucial for being largely passive.\textsuperscript{64} If nonvoters fail to deem the winner legitimate, this is likely to influence the attitude of those who voted for the losing party, and therefore to threaten the ability of the winner to form a legitimate government in the eyes of the domestic population and internationally. That is why calls to boycott an election can seem so threatening to dictators, even if they hold their elections and plebiscites, and win with flying colours. And this is why, even in England, where calls to boycott an election are rare, the evident mismatch between the percentage of people who voted for Thatcher and Blair, compared to the political power

\textsuperscript{64} By contrast, in the closed shop case, concerns about legitimacy have nothing to do with the case for enforced union membership. Indeed, it is arguable that closed shops threaten the legitimacy of unions, rather than sustaining them, as they make it apparent that some workers deny that joining a union is, indeed, in their interests. Presumably, the reasons to go for a closed shop, nonetheless, depend on the idea that equality of sacrifice is itself a fundamental good; and that the risks of “divide and rule” tactics are so great that the risks of enforced membership are the lesser of two evils.
within Parliament which they wielded, threw an unfavourable light on the British “constitution” and fostered internal dissent within the last administration of these two powerful and charismatic Prime Ministers.

In short, the idea that compulsory voting violates no significant liberties is hard to defend. It is hard to defend because the right to abstain, in a whole range of cases, seems to be critical to a democratic conception of politics, and the proper distribution of rights and duties within it. Nor is the case for compulsion helped by the idea that non-voters are free-riders. On the contrary, such a picture seems to indicate confusion about how non-voters should be identified and characterized for moral and political analysis. Likewise, the free-rider justification of compulsion misrepresents the way that elections confer legitimacy, and thus underestimates the ways in which nonvoters, like those who voted for the losing side, can uphold or undermine the claims to legitimate authority of governments.

Step 6: The Danger of False Analogies

The case for compulsory voting is frequently characterized by analogies between compulsion in the case of voting and compulsion in the case of military service, the education of children, or in the cases of taxation and jury duty. The idea is that democratic societies frequently require people to contribute to some public good and, in the case of compulsory voting, the level of compulsion is remarkably small, compared to other forms of compulsion that are generally considered justified.

My impression is that most people are just copying Lijphart here. See Lijphart, p.11, Hill, p. 5 and Kearney and Rogers, p. 30. However, unlike Hill, Kearney and Rogers do not cite Lijphart as their inspiration.
This argument turns on the assumption that compulsory voting is necessary to protect a public good – although how that good should be characterized is uncertain. To call it high and equal turnout or voting obviously begs the question whether high turnout – or, even, equal turnout - are themselves public goods. There are some reasons to doubt this, not least because what is to count as “low” or “unequal” turnout is obscure. It might be said that the public good in question is “legitimacy” or a “democratic electoral system” or, even “representation” or “a representative political system”. But to make such claims looks like over-kill, and is clearly inconsistent with the idea that there are democratic and legitimate political systems which lack compulsory voting. As these, indeed, seem to be the majority of “actually existing” democracies, there is clearly something wrong with the idea that democratic legitimacy or representation turns on achieving turnouts in the 90th percentile, or even in the 80s. The first difficulty with these analogies, therefore, is the idea that compulsory voting is necessary or justified in order to protect a public good.66

But the difficulty with these analogies is more fundamental. Perhaps we can look at legal requirements to serve on juries, to serve in the army, to pay taxes and to educate our children as laws that seek to protect a public good from the temptations posed by free-riding. But it is doubtful that such ideas play any significant role in explaining why such legal duties are justified when they are, as they seem to obscure the very

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66 In a personal email Franklin suggested that compulsion might be justified in newly formed democracies, in order to protect people from the sense of “let down” that often accompanied the “teething” period, and to set voting habits off on the right foot….I would not want to rule out a case for compulsion in those circumstances.
considerable differences in the content, weight and justification of these different duties, as well as to obscure the differences between justified and unjustified forms of each.

For example, the duty to pay taxes applies whether or not one is a citizen, and seems to be characterized by ideas of “ability to pay”, proportionality and even redistributive duties, that are absent from the case for compulsory voting. Again, it is worth noting that compulsory voting implies that everyone has a legal duty to vote, but some people will be excused their failure to fulfill that duty. By contrast, the duty to pay income tax below a specified threshold is no legal duty at all – although the poor, notoriously, have to pay consumption taxes, and this means that the case for raising money from income rather than consumption taxes is, in part, based on notions of distributive justice.

Likewise, the duty to serve on a jury, in systems with jury trials, appeals to moral and political notions of equality, fairness and justice that go well beyond the idea that the state can solve collective action problems via coercion. The duty to serve on a jury importantly reflects, I would have thought, the duty to provide defendants with a jury of their peers – that is, a jury that is made up of people like them, suitably defined. Compulsion is necessary because voluntary participation is likely to lead to juries skewed in all sorts of undesirable ways, which make it likely that some particular defendants will be vulnerable to wrongful conviction or that, indeed, almost all of them are. So, the main reason why compulsion is justified in the case of jury duty is because we have duties of justice to defendants which constrain what will count as a free and fair trial.
Without belabouring the point, therefore, it looks as though the case for compulsory voting cannot be made to seem innocuous or democratic by comparing it to other duties which we generally accept. The difficulty is that these latter duties have an evident and agreed point to them, whereas whether or not it is desirable to raise and equalize voting, or to use legal compulsion to do so, has still to be established.

Moreover, duties to pay taxes, to educate one’s children, to serve in the defence of one’s country or to serve on juries, are all very different duties, with significantly different justifications. What makes them morally and politically significant and distinct is, inevitably, lost in any attempt to treat them as examples of justified coercion in response to collective action problems. Perhaps we can illuminate these duties by treating them as solutions to the problem of providing and maintaining public goods, given rational self-interest. But my hunch is that such a perspective is likely to obscure, rather to illuminate, the morally significant features of these different duties and may, indeed, lead to radically undemocratic versions of them. 67

C. CONCLUSION

In this paper I have argued that the social democratic case for compulsory voting is unproven. It is unproven because the claim that compulsion will have beneficial results rests on speculation about the way that nonvoters will vote if they are forced to vote, and

67 The theory of rational choice and the theory of moral choice are not the same, just because the requirement of reasoned justification generally attaches to the latter. Depending on background circumstances, it can be rational to exploit or to be exploited; it can be rational to deceive, coerce and blackmail, or to put up with being deceived, coerced and blackmailed. So unless one is careful to build in suitably moral assumptions, there is nothing about an individually or collectively rational decision that requires it to be consistent with democratic norms. For an illustration of this point in the case of social contract theory, see Joshua Cohen…Locke…. And Rousseau….Or, indeed, see David Gauthier’s….
there is considerable, and justified, controversy on this matter. Nor is it clear that compulsory voting is well-suited to combating those forms of low and unequal turnout that are, genuinely, troubling. On the contrary, it may make them worse by distracting politicians and voters from the task of combating persistent, damaging, and pervasive forms of unfreedom and inequality in our societies.

Moreover, I have argued, the idea that compulsory voting violates no significant rights or liberties is mistaken and is at odds not only with democratic ideas about the proper distribution of power and responsibility, but also with the social democratic concerns that animate the case for compulsion in the first place. Rights to abstain, to withhold assent, to refrain from making a statement, or from participating, may not be very glamorous, but can be nonetheless important for that. They are necessary to protect people from paternalist and authoritarian government, and from efforts to enlist them in the service of ideals that they do not share. Rights of non-participation, no less than rights of anonymous participation, enable the weak, timid and unpopular to protest in ways that feel safe and that are consistent with their sense of duty, as well as self-interest.\footnote{I have some concerns that enforced turnout will, actually, lead to undue social pressure to vote. Certainly, there are real concerns about how people’s privacy is to be protected if, as on Lijphart’s scheme, they are forced to tick their names off a register, but not forced to pick up a ballot or vote. Moreover, in Australia the gap between the 25-30% of the population who repeatedly reject compulsory voting, and the very high rates of voting itself, suggest that there is a great deal of pressure on people to vote, whether or not they wish to do so. Something similar seems likely in Belgium, too, where opposition to compulsion is fairly common and sustained, but finds no significant expression in voting figures. The discrepancy does not seem to be an artifact of the wording of polls, in these case, as the results - especially in Australia – seem to be remarkably consistent over time. See Hill, p. 4: the voting rate is 95%, whereas support for compulsion is normally about 70%.}
True, such forms of protest are 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. 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 at all. 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.

As we have seen, the case for compulsory voting seems to depend on two mutually inconsistent pictures of nonvoters. On the first picture they are objects of legitimate concern, being young, and less well placed to defend their interests than the older, better educated, and more socially advantaged groups from which voters typically come. The case for voting, here, is that this is necessary to ensure fair representation, equality of political participation, legitimacy and more social democratic policies. On the

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69 Kearney and Roger 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”. Obviously, this requires people to vote, rather than just to turn up. Apart from that, of course, it is easy to imagine the obvious rejoinder to this, which is that people are being lazy when they voted 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.
second picture, nonvoters are selfish, immoral exploiters of fine, upstanding citizens, and so may justifiably be compelled to vote, whether they want to or not. In neither case, it must be said, is there any straightforward reason why everyone should be under a legal duty to vote, but the idea, presumably, is that legal coercion in this case must apply to all citizens, rather than to a particular subset of these.

The internal inconsistencies in the case for compulsion, however, go beyond the picture of nonvoters, to the conception of democracy itself. Animating the case for compulsion, so it seems, is a concern for participatory democracy that goes beyond the “elite” conception of democracy that Schumpeter espoused, or even the more usual conception of representative democracy typical of pluralism. On the former view, democracy does not require equality in participation, and there is no need for concern that most people have no hope of becoming a political candidate, let alone of actually being elected as the representative of others. On this view, democracy is simply the ability of citizens to “chuck the bastards out” every so often, and freedom and equality are identified with the ideal of “one person one vote” and with transparent and fair elections. On the latter view, democracy requires rather more than Schumpeter allowed, because representation is thought, importantly, to require relatively equal abilities to form groups to advance one’s political interests, and roughly equal chances of being able to stand as a credible candidate for political office. On neither view, however, does it matter whether or not people actually want to use their vote, and the idea of compulsory participation in

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70 Earlier Dahl, pluralists, Lani Guinier, Melissa Williams,. Key point here, that latter three argue for descriptive, or mirror, representation on the grounds that people need an equal chance to elect a candidate from their social group – and, conversely, that representatives should not face special barriers to election based on their race, gender or class. Importantly, Williams also appeal to ideals of deliberation, not just representation, in her arguments.
any form would seriously undermine the legitimacy of electoral outcomes, by making it difficult to determine the *intensity*, and not just the *direction*, of individuals’ preferences.

Participatory views of democracy, whatever the differences amongst them, share the view that elections, though important, are only one of the many ways in which people can, and ought, to be able to govern themselves.\(^71\) Electing legislatures on this view – or, even, standing as a candidate in such elections – are not the defining element of a democratic government, or at least, are nowhere near as determinative as representative conceptions of democracy imply. Framing laws, and being governed by laws that our representatives have framed, are important forms of political equality and freedom and, on this view of democracy, are certainly one of the reasons to prefer democratic governments to alternatives. But they are far from the only ones or, in some views, far from being the most important. After all, how power is distributed, used and justified in families, in workplaces, amongst consumers are all important to how well our lives go, and to our ability to see and treat each other as equal, and as capable of self-government. So, on participatory views of democracy, inequalities, coercion and powerlessness in these areas, as in cultural and social realms more generally, can prove as threatening to democracy as unrepresentative voting rights, or the failure of individuals to exercise their rights to vote or to protest.

The social democratic case for compulsory voting seems to appeal to the ideals of freedom, equality and self-government that are associated with participatory conceptions of democracy. But, if I am right, the emphasis placed on equalizing and raising electoral

\(^{71}\) Pateman, Walzer, Joshua Cohen, later Dahl, Iris Marion Young, Sabel and Fung…
turnout, which is essential to the case for compulsion, sits uneasily with the differences between representative and Schumpeterian ideals of democracy and, above all, with participatory democracy itself.

Of course, Lijphart, Kearney and Rogers, Wertheimer, Hill and the rest are concerned about forms of inequality beyond inequalities in turnout. And there is nothing about concern with the latter that means one’s conception of equality has to be exclusively electoral in focus. Nonetheless, it is a striking feature of this literature that the far greater and more consequential inequalities of political power – within parties, legislatures, local government, unions and employers’ organizations – are scarcely mentioned and seem to be taken largely for granted; and that this is the one form of equality of outcome in politics that they espouse. Yet there are reasons to think that these other inequalities, and their extent, negatively affect electoral turnout, because people do not want to vote for the people and parties on offer, and cannot themselves alter the choices they face. Voting for none of the above is no substitute for the ability to form a new political party, or to reshape the political party with which you are most sympathetic. It is no substitute for the education, knowledge, self-confidence and social standing – not to mention the money and connections – that affect one’s chances of political influence and success in a competitive electoral system. So I suspect that the social democratic

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72 Lijphart refers several times to compulsory voting as “an attractive partial solution to the conflict between the democratic ideals of participation and equality”, p.11

73 In fact, it is because other forms of political participation are unequal and, he assumes, must be unequal, that Lijphart places so much importance on equalizing electoral turnout. But if the latter are so unequal, it is uncertain how far equalizing turnout will make a difference to political and other forms of inequality. Nor is it clear that we are powerless to alter the role of money in politics – at least in terms of campaigns – and that more couldn’t be done to encourage and to equalize the more time consuming forms of politics, via public subsidies, advice and help on organizing and so on, and laws that facilitated political activity in workplaces, super markets and so on.
case for compulsory voting is unstable. The concerns for participation and for social equality that give it its appeal, make the compulsory exercise of rights unappealing, and point away from the identification of democracy with legislative elections.

That is not to say that compulsory voting can never be democratic, merely that these are likely to be exceptions, rather than 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 social 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.