PART I

MEDICINE WORSE THAN THE DISEASE?

Against Compulsory Voting

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1

The Heavy Burden of Proof

1.1 Where Are We the People?

Democracy is rule by the people. But what if the people refuse to rule? Many people worry if we do not have government *by* the people, then we will not have government *for* the people – at least not for all of them.

During presidential elections in the late nineteenth century, 70–80 percent of eligible Americans voted. For whatever reason, in the twentieth century, participation rates seem to have dropped to 50–60 percent.[1] Midterm national, state, and local elections averaged a mere 40 percent.

A U.S. president has never been elected by a majority of eligible voters. In the 1964 election, 61.05 percent of voters cast their ballots for Lyndon Johnson – the largest majority any president has ever enjoyed. Yet, at the same time, because turnout was so low, Johnson was in fact elected by less than 38 percent of all voting-eligible Americans. We call Reagan's 1984 victory a "landslide," but less than a third of voting-age Americans actually voted for him. Less than a quarter of eligible Americans voted to reelect Bill Clinton in 1996. In all elections, a

[1] One classic paper attempting to explain this phenomenon is Richard Boyd, "Decline of U.S. Turnout: Structural Explanations," *American Politics Quarterly* 9 (1981): 133–59. However, note that some prominent political scientists think the official U.S. turnout rates are mistaken. See Michael P. McDonald and Samuel L. Popkin, "The Myth of the Vanishing Voter," *American Political Science Review* 95 (2001): 963–74.

minority of the voting-eligible population imposes a president on the majority.

When most people hear these numbers, they shake their heads and wring their hands. They conclude that Americans fail to take the responsibility of self-government seriously. They worry that Americans – especially young adults, of course – are complacent, apathetic, and self-centered.[2] I have heard conservative Americans complain, "Our brave troops died to protect our democratic freedoms, yet half of us can't be bothered to vote." The thought: democratic apathy means they died in vain.

Low turnout is not a distinctly American condition. Canada's rates are similarly low. Swiss national election rates are significantly lower.

Many pundits, politicians, philosophers, and political theorists believe low turnout is a problem. Democracy is dying. Low turnout shows we have low civic virtue. Low turnout means worse government.

Suppose they are right. If so, there seems to be a simple solution. If the people will not choose to govern themselves, we could just *force* them to do so.

I think that would be a terrible idea.

1.2 Against Compulsory Voting

I argue that we should not endorse compulsory voting. A fortiori, we should oppose it. Those countries that currently practice compulsory voting are obligated to eliminate it.

In this introductory chapter, I establish that there is a moral presumption against compulsory voting. I argue we should presume compulsory voting is unjust until someone adduces a compelling justification for the practice. I also establish that the bar for justifying compulsory voting is high. It is not enough to *speculate* that compulsory voting might produce good consequences. It is not enough to offer evidence that merely suggests it would produce good consequences. Even

[2] They are probably mistaken. Instead, it appears that young people are civically engaged rather than apathetic. However, they engage through volunteering and other means rather than by voting. See Cliff Zukin, Scott Keeter, Molly Adolina, Krista Jenkins, and Michael X. Delli Carpini, *A New Engagement?* (New York: Oxford University Press, 2006).

proving that compulsory voting does produce good consequences is not enough. To successfully defend compulsory voting, one must show that the purported good consequences are significant, that they are the right kind of consequences to produce through government coercion, and also that there are no superior alternative ways to produce those consequences. Justifying compulsory voting is no easy task.

Next, in Chapters 2 and 3, I argue that so far there is no compelling justification for compulsory voting. Some arguments for compulsory voting rely on mistaken or unproven empirical speculation. Others rely on flawed moral premises. In other cases, there are viable non-coercive (or less coercive) alternative means of getting the supposed benefits of compulsory voting.

Because compulsory voting is presumed unjust, to show that there is no good case for compulsory voting is sufficient to show that we must oppose it. Thus, by the end of Chapter 3, I will have done sufficient work to justify opposition to compulsory voting.

However, in my final chapter, I go even further. I argue that there is also a strong independent argument against compulsory voting. Making all citizens vote is like forcing the drunk to drive. It endangers us all.

So, in short, Chapters 1–3 show compulsory voting is a bad idea because it is not a good idea. Chapter 4 argues compulsory voting is a bad idea because it is a bad idea.

1.3 Compulsory Voting "Works," but So What?

We can learn what it takes to make a good argument for compulsory voting by seeing what is wrong with some bad arguments. Here is one simple but flawed argument:

The Turnout Argument

1. Compulsory voting produces high turnout.
2. If compulsory voting produces high turnout, then compulsory voting is justified.
3. Therefore, compulsory voting is justified.

This argument has too many controversial moral assumptions built in.

Premise 1 is relatively uncontroversial, provided we confine our discussion to well-developed Western democracies. In the most straightforward sense, compulsory voting *works*, at least in well-developed Western democracies.[3] For instance, back in the 1920s, when voting was voluntary, only about half of Australians tended to vote. Australia introduced compulsory voting, and as a result, voter turnout rose. If a well-developed Western democracy instantiated compulsory voting, it would probably get high turnout as a result.

However, premise 2 is implausible on its own. Just because compulsory voting makes people vote, it does not thereby follow that compulsory voting is good or just. The mere fact that compelling people to do something produces more of that thing does not show we should compel them to do it. We need a real argument. We need a real explanation of why it is important to get more of that thing. Over the next few chapters, we will see a few such purported explanations. None of them succeed, as far as I can tell.

1.4 Who Holds the Burden of Proof?

In one sense, I am at a disadvantage in this debate. If I want to convince people that they should not support compulsory voting, I must consider and rebut a wide range of possible arguments supporters might adduce.[4] I try to do this in Chapters 2 and 3. However, someone might always produce a new argument I failed to consider.

At the same time, I hold an advantage. The two sides of this debate do not begin on equal footing. Instead, the side that supports

[3] Sarah Birch, *Full Participation: A Comparative Study of Compulsory Voting* (New York: United Nations University Press, 2009): 79–98, shows that compulsory voting has a weaker or insignificant ability to increase participation in many second- or third-world democracies.

[4] A. John Simmons, in his debate with Christopher Wellman over whether there is a duty to obey the law, makes a similar point. On one hand, Wellman has the burden of proof. We get to assume that there is no duty to obey the law until we are shown otherwise. On the other hand, Simmons has to consider and rebut a wide range of possible arguments for a duty to obey the law, whereas Wellman need only produce one decent argument. See Christopher Heath Wellman and A. John Simmons, *Is There a Duty to Obey the Law?* (New York: Cambridge University Press, 2005). See also Michael Huemer, *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey* (New York: Macmillan, 2012), for a similar point.

compulsion bears the *burden of proof*. Those who claim governments should compel citizens to vote bear the burden of proving this claim. Those who wish to compel their fellow citizens to vote must produce a compelling justification for this compulsion. Otherwise, by default, we should not support compulsory voting.

When one side has the burden of proof, it has to win the debate. The other side only needs not to lose. It "wins" by default. Because the pro-compulsion side bears the burden of proof, if, upon reasoned reflection, the balance of the arguments for and against compulsory voting leaves you feeling largely agnostic or undecided, then, for that very reason, you must oppose compulsory voting. If, after careful reflection, you are not sure whether compulsory voting is justified, then you must oppose it.

The pro-compulsion side has the burden of proof for two reasons. First, it asserts the positive. Second, it advocates compulsion. Let us examine each of these in turn.

1.5 The Burden of Proof: The Logic of Argumentation

My college housemate, Linea, claimed to be a witch with magic powers. Now, I never believed Linea was actually a witch. To justify my skepticism, I did not have to prove she was lying or delusional. Rather, my skepticism was justified because she never demonstrated she had any magic powers.

Suppose a researcher claims acupuncture cures cancer. We are justified in being skeptical until we acquire compelling evidence that acupuncture really does cure cancer. Now, suppose the researcher shows me some data that appears to support the claim that acupuncture causes cancer. However, suppose I show that she made some mistakes in her calculations, and thus her results are not statistically significant. This would be enough to invalidate her argument and justify my continuing skepticism. I would not need to prove definitively that acupuncture does not cure cancer.

In general, in any controversial debate, the side that asserts the positive claim bears the burden of proof. No one has a standing intellectual duty to prove a negative. Rather, those who assert that a controversial positive claim is true bear the intellectual obligation to establish its truth.

So it goes with philosophical arguments as well. Sure, in a debate between a Kantian and a utilitarian over the best moral theory, the two begin on equal footing. Each of them defends a controversial moral theory. But our debate in this book is not that kind of debate. Rather, this is more like a debate in which one person defends Kantianism, while the other merely defends skepticism about Kantianism. In that case, the Kantian bears the burden of proof. The skeptic need not prove, definitively, that Kantianism is false. The skeptic need only poke holes in the Kantian's argument.

Lisa Hill, William Galston, Bart Engelen, and other supporters of compulsory voting assert that the state should force citizens to vote. They thus assert a controversial positive claim. They thus bear the burden of proof. To justify my skepticism, I do not thereby have to prove definitively that compulsory voting violates citizens' rights, that the state should not compel citizens to vote, that compulsory voting would be a disaster, that compulsory voting fails to produce good results, or the like. I need only poke holes in their arguments or find fault with their reasons.

Suppose you do a literature search, looking up published empirical research on the consequences of compulsory voting. You find that, say, five papers conclude compulsory voting produces certain good consequences, but five papers (of equal merit, as far as you can tell) claim it does not; this *helps* my argument but hurts the pro-compulsion side.

By default, we are justified in failing to advocate compulsory voting until they give us compelling reasons to advocate it. If we do not have sufficiently good reasons to accept compulsory voting, then we should not endorse it.

1.6 The Burden of Proof: The Morality of Compulsion

There is a second reason why the pro-compulsion side bears the burden of proof. This second reason shows us why, in the absence of a strong argument for compulsory voting, we must not only *fail to advocate* compulsory voting but must actively *oppose* it. This second reason shows us why, in the absence of a compelling justification for compulsory voting, we must presume it to be *unjust*.

Compulsory voting is, after all, compulsory. Advocates of compulsory voting want governments to coerce people into voting. In

commonsense morality, we presume coercion – including government coercion – is wrong, until shown otherwise. We presume it is wrong for a state to intrude into citizens' lives or force them to perform a service. We presume it is unjust for a state to restrict citizens' liberties. In general, compulsion has to be justified; the lack of compulsion does not.

As an analogy, imagine we were debating about whether to go to war. The pro-war side would have the burden of proof. Wars are presumed illegitimate. In any debate about going to war, the antiwar side does not need to prove that the proposed war is bad. Rather, the pro-war side has to prove that the proposed war is just. Otherwise, the antiwar side wins by default. A good way of putting this is that unless there is good reason to go to war, we automatically have good reasons not to go to war. The antiwar side only acquires a burden of showing that the war is bad once the pro-war side starts to make a strong case on behalf of the war. So it goes with compulsory voting as well.

Of course, wars are horrific affairs. Although I think compulsory voting is unjust, it is not nearly as unjust as a typical unjust war. But that does not undermine my point. To see why, consider a silly example. Suppose we are considering whether the government should criminalize booger eating by making booger eaters pay a $20 fine. Now, hardly anyone over age five wants to eat boogers.[5] Forcing booger eaters to pay a small fine would be only a minor injustice. Yet, if this law were really in consideration, the pro-criminalization side would still bear a heavy burden of proof. The anti-criminalization side need not prove that eating boogers is healthy, that criminalization would cause more harm than good, that laws against booger eating are "undemocratic," or that citizens have some sort of natural right to eat boogers. Rather, the anti-criminalization side gets to presume that criminalization is wrong just because it coercively intrudes into people's lives. Government coercion, no matter how petty, is presumed unjust until shown otherwise. So it goes with compulsory voting.

One might object that the presumption against coercion is just a *libertarian* position. That would be a problem, if true. Libertarianism is

[5] Actually, I had a difficult time finding hard numbers for this. But see J. W. Jefferson and T. D. Thompson, "Rhinotillexomania: Psychiatric Disorder or Habit," *Journal of Clinical Psychology* 56 (1995): 56–9.

a controversial political philosophy.[6] It claims citizens have expansive and stringent rights against interference. However, the presumption against coercion is not unique to libertarians. If the presumption against coercion is to be identified with a background ideology, that ideology is liberalism in general. Many of the advocates of compulsory voting claim themselves to be liberals.

All liberals share the view that there is a strong presumption in favor of liberty and a strong presumption against government coercion. Indeed, this may be the defining feature of liberalism. As Gerald Gaus explains,

> The liberal tradition in political philosophy maintains that each person is free to do as he wishes until some justification is offered for limiting his liberty.... As liberals see it, we necessarily claim liberty to act as we see fit unless reason can be provided for interfering.... A person is under no standing obligation to justify his actions.... Interference with another's action requires justification; unjustified interference is unjust.[7]

Liberals – including libertarians Robert Nozick and Eric Mack, classical liberals John Stuart Mill, Gerald Gaus, and David Schmidtz, and left-liberals such as John Rawls and Joel Feinberg – argue there is a strong presumption in favor of liberty.[8] The presumption of liberty holds that, by default, people should be free to live as they see best, without having to ask permission from or justify themselves to other people. By default, *all* restrictions on liberty are presumed wrong and unjust until shown otherwise.

This liberal presumption against coercion is not itself special to liberalism, it comes from, or at least is now part of, commonsense moral thinking. By default, common sense holds that I may not slap you, kick you, take your money, or kill you. Common sense holds that, by

[6] Though approximately one-fifth to one-third of Americans are broadly libertarian. See Jason Brennan, *Libertarianism: What Everyone Needs to Know* (New York: Oxford University Press, 2012): 171–2.

[7] Gerald Gaus, *Contemporary Theories of Liberalism* (Thousand Oaks, CA: Sage, 2004): 207.

[8] For left-liberal articulations and defenses of the presumption of liberty, see Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1979): 18–20; Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1984): 9; John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001): 44, 112; Stanley Benn, *A Theory of Freedom* (New York: Cambridge University Press, 1988): 87.