

A Compulsive Matter: Mandatory Voting in Australia and Its Discontents

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The session is on Radio National, Australia's effort at highbrow airings on the wireless. And, to be fair, it often does not disappoint. But on this occasion, there was a general sense of bonhomie amongst the participants on the Big Ideas segment, a glee about living in a glorious country far in advance of any on this terminally doomed earth. It sounded, in many ways, like the fond, electoral reiterations of the lately victorious prime minister, Scott Morrison: Australians live in a glorious country of few imperfections, so boo to the rest of you, savages of distant lands.

The theme of the jovial self-congratulation of the panellists, featuring historians **Judith Brett** and **Clare Wright**, with jolly ABC moderator Annabel Crabb, was *Suffragettes, referenda and sausages: the history of democracy in Australia*, [recorded](#) at the Sydney Writers Festival on May 2 this year. The smug sense of the topic could be gathered from Radio National's introduction to the program. "Australia was head of the pack with votes for women, an electoral commission and compulsory voting."

The fact that Australia, along with New Zealand, was a pioneer in voting systems is undeniable. The secret ballot was born down under, as it were. But what becomes clear in the themes of such panellists, and their publications, is a self-satisfied sense that compulsory voting is the indispensable tool to keep the enthusiastic nutters out and keep the beige and maliciously dull in. The "minority" are not in charge in Australia, goes this claim. Compulsory voting, as Crabb et al would have us believe, does away with the chance Australia might get a Donald Trump, for instance, victorious on the crest of an indignant white wave that flooded the polling booths when it mattered most.

Section 245 of the Commonwealth Electoral Act 1918 is a delightful bit of drafting that brings the policing power of the state to bear upon an elector's choice. It is condescending, the parent's rebuke, a grand wrap across the knuckles of the disobedient. Not voting without a "valid and sufficient reason" means a sanction. Not voting often means a very stiff fine indeed. Cognates are to be found in countries such as Brazil, [which punishes](#) the non-voter by denying work in the public sector, loans from public banks or obtaining a passport.

Voting is compulsory in 19 of the 166 so-called electoral democracies ([numbers on this vary](#) – one puts it at 30), but Australia is only one of nine that enforce it. Its introduction and swift passage via a private member's bill in 1924 prompted the legal historian **Geoffrey Sawer** to claim that, "No major departure in the federal political system had ever been made in so casual a fashion." The converse is true: that compelling individuals to vote, a

state directive as it were, was perfectly acceptable and hardly worthy of debate. The legacy of obedience in penal societies runs deep.

As Brett [puts it](#),

“People from our sister democracies are often astonished that Australians are compelled to turn up to vote: it seems an affront to freedom. We in reply are appalled at their low turnouts and the election of leaders and governments by a minority of voters.”

What [works](#) such as Brett’s insist upon is a certain misplaced legitimacy. To give electors the choice of turning up to the polls is something of an encouragement of illegitimacy. Noses are turned up at voting outcomes where electors had a choice of turning up to their polling booths, yet decided to stay at home. The results are scorned. “Britain’s disastrous 2016 decision to leave the European Union was carried by a slim majority of the 72.2% of voters who turned out.” Writing in elevated tones of disapproval, Brett also notes that the 2016 US presidential election saw a percentage turnout in the high fifties. “Donald Trump did not have the support of the majority of voters, but neither would Hillary Clinton had she won.”

These observations do little in terms of evaluating the notion of informed choice in compulsory voting systems. Many Australian voters are baffled when they do vote about what a bicameral legislature is, or that they have to vote for an upper chamber (the Senate) and the lower House of Representatives. The idea that voters are also “reading the policies,” the favourite brush-off line of a confused voter seduced by false complexities, is the grand icing on the cake of deception. Does an apathetic vote have real value?

When the Electoral Act’s exemption of a “valid and sufficient reason” has been challenged, the results for the abstainer have been meagre. The Australian High Court gave short shrift to the political opinions of a citizen who refused to vote in the 1926 decision of [Judd v McKeon](#). Judd, a socialist, was keen to argue that the candidates were all representatives of the capitalist order and did not need his preference to perpetuate it. Expressing “an objection to the social order of the community in which he lives,” according to Chief Justice Knox and Justices Duffy and Starke, was “not a valid and sufficient reason for refusing to exercise his franchise.”

The case law is resolutely anti-intellectual on the subject. Thoughts, ideas and philosophies matter less than the practical issues of illness, accident or natural events that prevent a person from casting a ballot. The High Court [acknowledges](#), for instance, that a compulsory vote need not be exercised if the “intending voter on his way to the poll was diverted to safe life, or to prevent crime, or to assist at some great disaster”. This lends itself to a firm conclusion: the fact of voting is more significant than its cerebral or spiritual content. Merely having “a subjective incapacity on the part of the voter to determine that he prefers one candidate in an election to another,” [opined](#) the Supreme Court of Victoria in 1970, does not afford a valid and sufficient ground for failing to vote.

There is also a fundamental philosophical point at work here. A right to vote must, axiomatically, assume a non-vote. Engagement and abstention are choices, and while the latter may seem unwise and take you out of the running as a genuine “voice” – that term itself being less consequential in today’s mass industrialised and estranged societies – the

assumption that you cannot do so by law creates the sense of a false choice.

Anyone, then, with an acquaintance with the taxonomy of rights should realise that the right to vote shades off into an obligation in this instance, transmuting into a matter of duty and obedience to the state. The trumpeted virtues of enfranchisement become a matter of command by the Australian Electoral Commission and the commonwealth. You are forced to vote for the lunatics on offer; but, you are also told that you can just as well do what is termed a "donkey vote". This latter point shows a good deal of disingenuousness on the part of defenders of compulsory voting. You must be compelled to vote, but it does not mean you have to necessarily pick a choice on the ballot. A spoiled vote is still an indication of preference or lack of one. But why vote in the first place then? Because it is the right thing to do. And so the circular reasoning continues.

The inconsistencies here are rarely taken seriously in Australian debates (or non-debates) on the subject of compulsory voting. The duty masquerades ingloriously as a right. And lurking behind the high minded principle is a more grounded political motivation. Historically, the Australian Labor Party encouraged compulsory voting to ensure that their voter base turned out in competitive numbers to those of their conservative opponents. As ever, more a case of survival than principle.

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