Conceptualising Electoral Obligation

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Conceptualising Electoral Obligation

Electoral obligation and compulsory voting

The aim of this paper is to trace and conceptualise the relationship between the norm of electoral obligation and the institutions – primarily compulsory voting - that embody that norm. In this sense the paper represents ‘deep background’ to the topic of compulsory voting that is the focus of this workshop. But first a word on terminology is in order.

What Is in a Term?

Compulsory voting can be defined very simply as the legal obligation to attend the polls at election time\(^1\) and perform whatever duties are required there of electors. As is often recognised, the inherent constraints of the secret ballot mean that in modern democracies (and even in many less-than-democratic settings) compulsory voting is impossible; the state cannot monitor the behaviour of the elector in the privacy of the polling booth and can therefore do nothing to prevent him or her from casting an invalid or blank ballot, and in very few states is any legal effort made to do so.\(^2\) The Dutch language recognises this distinction by employing a term – opkomstplicht – which can be translated as compulsory (or obligatory) attendance at the polls,\(^3\) as does a recent research report from the UK-based Institute for Public Policy, which refers to ‘Compulsory Turnout’ (Keaney and Rogers, 2006). Most European languages fail to make this distinction, however, and use terms that translate roughly as ‘obligatory voting’. The French speak of le vote obligatoire, the Italians of il voto obbligatorio, the Spanish of el voto obligatorio and the Portuguese of o voto obrigatório. In German the terms employed are (gesetzliche)

\(^{1}\) ‘Attend the polls’ is used as a convenient short-hand to designate participation in person or in absentia, to the extent that the latter practice is allowed. It would therefore also include proxy, postal and other forms of remote voting.

\(^{2}\) Tingsten makes the distinction between the obligation to vote (which involves simply attending the polling station) and the obligation to elect (which requires a positive choice to be made) (Tingsten, 1963 [1937]: 182).

\(^{3}\) I am grateful to Joop van Holsteijn for providing this translation.
Wahlpflicht and Stimmpflicht, while most Slavic languages use variations on the Polish term glosowanie obowiązkowe.\footnote{The website of the Latvian parliament provides a useful list of translations of this term into the languages of all European Union member states at http://www.saeima.lv/pet/pls/DD?p_LN=mt&p_INTERFACE_LN=en&p_DESCRIPTOR_URI_ID=4758.}

The terms ‘obligatory voting’ and ‘mandatory voting’ do make their appearances in the English-language literature, yet the most commonly used term to designate this practice is ‘compulsory voting’. This is somewhat unfortunate, given the negative connotations of the term ‘compulsion’ in English; certainly ‘obligation’ has a rather different sound. Use of the term ‘compulsion’ thus casts the institution in a somewhat negative light in many English-languages debates on the subject (despite the fact that the Australians have been happily using this term to describe their electoral system for over 80 years). This usage has the further consequence of preventing the link from automatically being made between the institution and the broader notion of political obligation, which is clearly not the case in those European languages that embed the notion of obligation in their terminology. This somewhat unfortunate state of affairs is difficult to avoid when writing in English. A more appropriate term might be ‘the legal obligation of participate in elections’, but this being somewhat cumbersome, I will mainly employ the terms ‘compulsory voting’ and ‘mandatory electoral participation’, which will be used interchangeably.

The Origin of an Idea and a Practice

The idea of obliging electors to attend the polls can be traced back to Switzerland, in the medieval Landsgemeide, or citizen assemblies, to make collective decisions. Robson claims that ‘The idea appears first in the eighteenth century and seems to have evolved out of the remembrance of the ancient custom by which members of the Landesgemeinde of Schwyz were required to wear their swords at the Assembly Meetings; for apparently if a member did not put in an appearance, or turned up without his sword, he was subsequently refused admittance to the free dinner given on these occasions to the citizens of the canton’ (Robson, 1923: 570; cf Caramani, 2000: 63).
This practice was first applied to modern elections in the 17th century American colonies. In Plymouth Colony a fine for non-voting was introduced in 1636; in 1660 several Massachusetts towns passed legislation compelling attendance at town meetings, and the colony of Virginia made electoral participation mandatory throughout its history, the fine for non-participation introduced in 1649 was 100lb of tobacco (increased to 200lb in 1662). The colonies of Maryland and Delaware followed suit in 1715 and 1734 respectively, as did Georgia in its constitution of 1777 (Abraham, 1952: 107-18). Following the American War of Independence electoral compulsion fell from favour in the US, and discussion of this measure was not revived until the early twentieth century. At this point there were several efforts to introduce it at the local and state levels. Sanctions against non-voters were applied (in the form of taxes) in Kansas City in 1889, before being ruled unconstitutional by the Missouri State Supreme Court in 1895 (Abraham, 1952: 113). This did not deter the states of North Dakota (1898) and Massachusetts (1918) which amended their constitutions in 1898 and 1918 respectively so as to allow for electoral participation to be made compulsory, though this never in fact took place (Jackman, 2001).  

At the same time as compulsory voting was being put to work on a small scale in what were then obscure and distant British colonies, it was also being discussed in the context of revolutionary France. The radical changes contemplated and realised during the Revolution sparked a debate about the suffrage as a right or a function that lasted until well into the 20th century. Those who viewed voting as a right favoured making the franchise voluntary, whereas for those who saw it as a state function, it made sense for participations in elections to be obligatory. Moreau reports that compulsory voting was demanded in 1789 at the time of the French Revolution in the Cahiers of the commune of Aurons (Moreau, 1896: p. 3, n. 1), but the innovation does not appear to have been widely debated at the time, and when in 1789 France became the first country in the world to hold elections under universal (male) suffrage, it did so under a voluntary franchise. Voting in the indirect election for

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5 A similar attempt at constitutional amendment was made in Oregon in 1919, but the proposal was rejected by referendum. Abraham reports that between 1888 and 1951 there were attempts to introduce compulsory voting in 48 US states (Abraham, 1952: 139-55).
the French Senate (elected by local and regional deputies) has, however, been compulsory since 1875 (in some places since 1789) and has not been frequently challenged.

The French example of compulsory voting for the Senate but voluntary electoral participation provides an interest case for comparison in conceptual terms. The mandatory nature of voting in Senatorial elections is justified on the grounds that Senators are elected by public servants (mostly elected legislators), rather than by individuals. Electing Senators is therefore for these officials a public duty which cannot be shirked. This contrasts with the situation of ordinary citizens, who have not chosen to take on the duty of electing but have had it offered to them. A parallel point is made by Caramani, who points out that in early modern times, the representation of boroughs, counties and estates was generally compulsory in Europe, and that it was perceived as a burden. Only gradually when representation yielded greater advantages did it come to be perceived as a right worth struggling for (Caramani, 2000: 63). Following its pre-history in Europe and North America, compulsory voting was introduced in the 19th and 20th centuries in two main regional ‘waves’ in Europe and Latin America. The institution has also been employed more sporadically in Australasia, as well as in the Middle East and Africa see Table 1).

-- Table 1 about here --

**Conceptualising Compulsory Voting**

As has long been recognised by electoral behaviouralists, there are a wide variety of factors that bring people to the polls. We can conceptualise the incentive to vote as falling into two broad categories; pull and push and factors. ‘Pull’ factors include the standard range of motivations for voting, including the desire to influence electoral outcomes, expressive aims, identification with political contestants, and perceptions of civic duty (e.g. Campbell *et al.*, 1960; Riker and Ordeshook, 1968; Verba *et al.*, 1978; Powell, 1980; 1982; 1986; Crewe, 1981; Rosenstone and Hansen, 1993; Dalton, 1996; Franklin, 1982; 1986; Crewe, 1981; Rosenstone and Hansen, 1993; Dalton, 1996; Franklin,

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6 Caramani views the French Revolution as the key turning point in this process.
7 The history of compulsory voting will be treated in detail by Maria Gratschew, in her contribution to this workshop. See also chap. 2 of Sarah Birch, Full Participation: A Comparative Study of Compulsory Voting, Manchester University Press, forthcoming.
1996; 2002; 2004; Gray and Caul, 2000; Blais, 2000; Norris 2002; 2004). The legal obligation to vote is a principal ‘push’ factor; voters are urged to the polls by the law, with varying levels of sanctions being imposed on them if they do not comply. Yet there are also other types of pressure that can be exerted to encourage people to vote, including social and political influence that, operating outside the ambit of formal political institutions, can nevertheless be remarkably effective. Indeed it is through this type of pressure, rather than legal compulsion, that the highest known turnout rates have been achieved in the world – the USSR’s regular 99.99% levels of electoral participation (Bruner, 1990).\(^8\) Coercive mobilisation may also take the form of undue influence by political parties (see Cox and Kousser, 1981; Hansen, 2000; Lehoucq 2003). Finally, ‘ordinary’ social pressure can prove a powerful force in encouraging people to attend the polls (Campbell et al., 1960; Rosenstone and Hansen, 1993; Blais, 2000; Franklin, 2004).

In considering compulsory voting, we are mainly interested in cases where electors have a legal obligation to attend the polls, but legal and informal socio-political forces interact in complex ways. The legal obligation to participate in elections can be congruent with social and political norms, or it can be at odds with one or both of these. There may also be considerable variations within a state – along geographical, sub-cultural, or other lines – in patterns of congruence. In schematic terms, we can understand there to be two types of obligation to vote: informal (social, political) and formal (legal). It should be noted that the enforcement of formal compulsory electoral participation requirements is often linked to a political and/or cultural environment that helps to reinforce voting (i.e. congruence between legal and socio-political forces).

\(^8\) Official Soviet turnout figures are slightly misleading, in that voters could apply to have themselves removed from the register in their constituency on the grounds that they would be away on election day. Estimates of the number of people who avoided their electoral obligations in this way range from 2.5 to 10 per cent (Friedgut, 1979; Karklins, 1986; Roeder, 1989).
obligation to vote combined with effective sanctions. The archetypical case of this is Australia where voting is compulsory, sanctions – though small – are effectively imposed, and there is considerable popular support for the institution. The upper right-hand quadrant represents a situation found in many Latin American countries, where compulsory electoral participation is a legal norm, but sanctions are either non-existent or are not applied. In the lower left-hand quadrant, we find cases where the formal obligation to vote is absent, but informal social and/or political pressures are so strong that a large proportion of the citizenry nevertheless exercises their franchise. The USSR is a good example of this type of system, where Communist Party activists would repeatedly knock on the doors of non-voters on election day and urge them to the polls. Though there is little evidence that non-voting had actual nefarious consequences for Soviet citizens, there was a widespread perception that it might be harmful to one’s career or one’s chances of obtaining scarce goods (Mote, 1965:76-83). There is a similar situation in contemporary North Korea; Mark Suh reports that ‘although voting is not compulsory by law, the political prescriptions laid down in the party catechism prescribe it as the correct behaviour of every citizen. A simple negligence, let alone denial [sic] to take part in the polls, would be followed by harsh discrimination in the living and working sphere of the person concerned’ (Suh, 2001: 399-400).

Finally, in the lower right-hand quadrant, we find the situation in the vast majority of established democracies, but perhaps best represented by the United States, where voting is voluntary and there is little social pressure to vote.

Legal obligation and sanction may therefore be viewed as two overlapping but not coextensive spheres. One the one hand, there may be a legal obligation to vote in the absence of any formal sanction for non-voting. Such an obligation does potentially have importance, as it often represents a touchstone in political debates, and it reflects an act of collective self-binding – it can therefore be seen as an indication of, and mechanism for perpetuating, a certain cultural attitude toward voting.

One the other hand, a state can impose sanctions for non-participation in the absence of any formal requirement to vote. This is the case, for example, in Iran where ‘though voting is not compulsory, citizens may have to show the stamp impressed on voters’ identity cards in polling stations when applying for passports’ (Kauz et al., 2001:
Until recently, Italy provided a democratic example of this practice. Electoral participation is not obligatory, yet voting is described as a duty in the Italian constitution (Art. 48). This prescription was reflected in Italian electoral law between 1946 and 1992 (Caramani, 2000:64, n. 7), when light sanctions were applied to non-voters (lists of non-voters were posted at polling stations). Finally, the state of Illinois for a time put non-voters at the top of those chosen for jury service, though voting was not technically compulsory (Abraham, 1955 15-16).

Alternatively, the state can provide positive incentives to participation, either in the form of ‘vote facilitation’ mechanisms such as automatic registration, the availability of proxy voting, holding voting on a rest day, holding elections over more than one day, allowing absent and/or early voting, covering the travel expenses of voters who are temporarily away from their places of residence (see Franklin, 1996; 2002; Norris, 2004: 171-74), or by offering selective incentives to voters (see below).

Where voting is legally mandatory, a distinction is sometimes made between states that enforce the legal obligation to participate in elections strictly or weakly (e.g. Gratschew, 2004). The problem with this approach is that there are virtually no instances in the contemporary world of truly ‘strict’ enforcement. Common examples of ‘strictly’ enforced compulsory electoral participation are Belgium and Australia, but closer examination of these two cases reveals that in fact enforcement mechanisms take a light touch.

Stengers (1990: 105) writes that once compulsory electoral participation was introduced in Belgium it became a way of life, and compliance was due more to social norms than to actual sanctions, which were in any case only sparingly applied; he notes that ‘on peut parler d’automatisme pus que d’obligation’ (1990: 105). Belgians simply got used to voting and took it for granted that if an election were held, they would be expected to turn up at the polls. This view is confirmed by Pilet, who reports that in Belgium in 1985, only 62 of 450,000 non-voters were punished (Pilet, 2005: 20). Similarly, Lieven de Winter and colleagues point out that in 1999 the chances of being subject to a fine were only 1 in 10,000, and they note that ‘Eu égard à son comportement

The law governing the 2006 elections re-introduced voting as a civic duty, but did not prescribe sanctions for non-voting.
peu civique dans nombreux domaines, et compte tenu de cette tradition de grande impunité du délit, la participation massive des Belges aux elections reste pour le moins surprenante’, (de Winter et al., 2003: 58). The fact that turnout in Belgian elections remains well over 90 per cent must therefore be accounted for other forces and should not be taken as an indication that the law is strictly enforced.

Likewise, in Australia those who study the supposedly efficient mechanisms for enforcement of ‘compulsory voting’ often point out that relatively few people are penalised for non-participation, because a wide variety of potential excuses for non-participation are admitted, and no documentary evidence is required to support a justification. In the 2004 elections 685,937 citizens were recorded as not having voted; of these, 458,952 were issued with notices preliminary to penalties. A total of 234,552 of those issued with notices sought to avoid paying the $20 (£8) fine by supplying ‘valid and sufficient’ reasons for not voting, and only 52,796 paid the fine when it was first imposed; a further 847 paid the fine plus a penalty for late payment. Seven citizens appeared in court to contest their fine (Bennett, 2006: Appendix). Thus while enforcement would appear to be very ‘strict’ in Australia, the penalty for non-participation is extremely modest, and the vast majority of non-voters avoid paying even this small amount by offering excuses for their behaviour.10

Descriptions of enforcement as ‘strict’ or ‘weak’ risk conflating administrative effort with success (compliance rates). In states with weak state capacity and low levels of rule of law (as is the case in many Latin American countries), efforts at enforcement are likely to yield a lower payoff than is the case in established democracies such as Australia and Belgium. The key factor is whether a state has any functioning administrative apparatus in place to enforce the legal requirement to vote. If it does have such a mechanism, we can speak of compulsory voting with sanctions, whereas if it does not, we can speak of non-sanctioned compulsory voting. Such an approach to categorisation makes it possible to measure the impact of various other institutions and

10 Another case of the supposed ‘strict’ enforcement of mandatory electoral participation is the Netherlands, where there was a legal obligation to vote between 1917 and 1970. Yet Irwin reports that in 1966 only 577 of 400,000 non-voters were brought to court, and he comments that ‘obedience was simply recognition that that was the law and that the law should be obeyed’ (Irwin, 1974: 294).
social factors on the effectiveness of enforcement (i.e. turnout), which is not possible if rates of turnout are themselves taken as an indicator of how much effort the state puts into enforcing the legal obligation to vote.

**Modes of Enforcement and Sanctions for Non-Participation**

Compulsory electoral participation is necessarily embedded in a complex set of regulations governing the conduct of elections, and it is not surprising that these regulations shape each other. States where there is a legal obligation to attend the polls have reason to make voting as easy as possible for the citizenry, as this will lessen the costs of enforcement, and it will enhance the popular acceptability and legitimacy of the institution. It is therefore not surprising that compulsory electoral participation is typically linked to an array of institutional mechanisms that facilitate electoral participation (though, as noted above, such mechanisms are not exclusive to states where electoral participation is mandatory).

But even when voting is made as easy as possible, there will still be those who will refuse to comply with the legal obligation to participate, whether out of objection to the institution itself or for some other reason. In somewhat more than half the states where voting is compulsory, sanctions are imposed (the exceptions include Greece (since 2001), Argentina, Brazil, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras (since 2004), Mexico, Panama, Paraguay, and Venezuela). For the purposes of this analysis it is useful to group sanctions into broad categories, in order of increasing severity, bearing in mind that many states impose combinations of sanctions or different types of sanction in different circumstances.

**Demand for an explanation:**

In practice, the demand for an explanation forms part of contemporary enforcement procedures in virtually all systems, in as much as this is a necessary adjunct to the imposition of a penalty. How this is handled varies from state to state; in Australia, non-voters are first asked to justify their non-participation before a decision is made whether or not to impose a fine, whereas in other cases (Belgium, Luxembourg, and most Latin
American states), it is up to electors to take the initiative to explain their absence from the polls to the relevant authorities in order to avoid measures been taken to penalise them.

**Reprimand**

Slightly more severe than a simple demand for justification is the issuance of a formal reprimand to non-participants. When electoral participation was first made mandatory in Belgium, a formal reprimand was a widely-used alternative to a fine for first-time non-voters.\(^{11}\)

**Name-and-shame systems:**

One step up from a formal reprimand issued personally to the voter is a public notification that an individual has failed to carry out his or her civic duty. Such ‘name-and-shame’ systems are commonly referred to by the French term *affichage*, and they typically involve the posting of a list of non-voters in a public place such as the polling station or a municipal building.\(^{12}\) *Affichage* was common in the 19\(^{th}\) century, and it survived in Italy until 1993.\(^{13}\)

**Fines:**

Fines are the most common form of sanction for non-participation in elections; these range from three Swiss francs (£1.30) in the canton of Schaffhausen to €100 or more in Luxembourg. Some polities have blanket fines for all instances of violation; in other cases fines are graduated, increasing from the first to the second violation, and so on. In Belgium, for example, a fine of €25 to €50 is imposed for the first instance of non-voting, and €50-€125 for the second instance; in Luxembourg the fine for repeated violations can rise to as much as €1,000. Until relatively recently, some Swiss cantons went to the extreme of sending district officers (*Waechter*) house to house to collect fines from

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\(^{11}\) See Robson, 1923: 574 for relevant data.

\(^{12}\) *Affichage* was proposed in France in 1889 and 1893, though it was never passed (Quiri, 1908: 78).

\(^{13}\) Law Art 3, D.Lgs. 20 December 1993, n. 534 removed the requirement that names of not-voters should be posted at local municipal office.
dilatory electors (Funk, 2004: 24), while in inter-war Hungary the fine took the form of an additional tax (Abraham, 1952: 89).

**Use-it-or-lose it systems: removal of rights of civic participation**

If voting is considered to be a civic duty, it would seem logical that non-voters should have their civic rights restricted. The most obvious right to restrict is the right to vote itself. In Belgium, if a voter has not voted in four elections over the course of 15 years, he or she is removed from the electoral rolls for ten years.\textsuperscript{14}

Singapore operates an unusual system that combines removal of voting rights with a fine. Non-voters have their names automatically removed from the electoral register and must pay a fee to have them reinstated unless they can produce a ‘valid and sufficient’ reason for not having participated. Not long after the 2006 elections, the Elections Department of Singapore posted the following a message on their website: ‘Names of persons who failed to vote in the General Election held on 6 May 2006 have been expunged from the registers of electors. The lists of these persons are now available for inspection. Persons whose names are expunged from the registers may apply for their names to be restored using Elections Department's E-services. Click for more information.’\textsuperscript{15}

The other relevant civic right is of course participation in elections as a candidate, and prohibition on this activity is a form of sanction in some states with mandatory electoral participation, including Argentina, Bolivia, Brazil, Singapore and Thailand.

**Prohibition of public employment for non-voters:**

Another civic right that is sometimes removed for failure to attend the polls is the right to hold a post in the state administration. This is practiced in Belgium (those who have been removed from the electoral roll for failure to participate in successive elections cannot be

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\textsuperscript{14} The mandatory participation law employed in Hungary during the interwar period stipulated that a citizen should be removed from the electoral register after the first instance of non-voting (Abraham, 1952: 89; 1955: 19). In Cuba, non-voters were removed from the register under the 1919 electoral law, though electoral participation was not made formally compulsory until 1940 (Suter and Nohlen, 2005:200).

\textsuperscript{15} This message was posted on the website of the Singapore Elections Department at http://www.elections.gov.sg/; accessed on 23 November 2006.
hired to or promoted in public office, nor can they be awarded state honours). In Argentina, non-voters are in theory ineligible for public office for three years following the election. In Bolivia, citizens who have not either participated in the election or paid a fine for non-voting cannot obtain a ‘suffrage certificate’ and without such a certificate they are not able to be employed in the public sector, to be paid in public sector jobs, to carry out banking transactions, or to obtain a passport for 90 days following the election. Similar regulations are stipulated in Brazil, with the additional provision that non-voters can receive neither state education nor exemptions from military service or the payment of income tax.

**Loss of services:**

As noted above, Bolivians without a ‘suffrage certificate’ are forbidden from carrying out banking transactions or obtaining passports for 90 days following the election, and in Brazil such electors are in addition deprived by law of the right to state education. Until recently, non-voters in Greece were not able to obtain driver’s licenses or passports (Gratschew, 2002: 108).

**Imprisonment:**

Imprisonment for non-voting is rare in practice, though it has been formally incorporated into the sanctions regimes of a number of polities that have made voting compulsory. In Australia, for example, non-voters who refuse to pay the fine face prison sentences; following the 1993 election, 43 non-voters received prison sentences of one to two days (Bennett, 2005).

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16 When compulsory electoral participation was initially introduced in Belgium, the restrictions on public service were more extensive, including a ban on bearing witness in court, serving on a jury, serving as legal counsel, serving on public commissions or being a teacher (Moreau, 1896: 28).

17 Though not considered here under the rubric of mandatory electoral participation, Italy had until recently a similar system; before the removal of sanctions for non-voting in the mid 1990s, the fact of not having voted was noted on official documents, and there are reports that this may have made it difficult to obtain services such as childcare (Jackman, 2001: 16315; Gratschew, 2002; 108).

18 When electoral participation was made compulsory in the Philippines in 1973, the penalty for non-voting included a prison sentence of up to six-months; Hartmann *et al.*
Exemptions
No polity has full compulsory electoral participation, strictly speaking, because all make exceptions for people in certain circumstances. Exemptions fall into two categories: exclusions from the right to participate and exclusions from the legal obligation to participate.

Exclusions from the right to participate in elections:
All states puts limits on members of the population to whom the franchise is given as a right. In older times, such limitations commonly included property ownership, male gender, and literacy. Though such exclusions have largely fallen into disuse, there is nevertheless variation in the extent to which the suffrage is in practice ‘universal’ in the modern world; exclusions are generally based on two principles: political community membership and political competence. The concept of ‘universal suffrage’ implies that the franchise is granted to all members of the political community, with the proviso that the practice must be based on some notion of minimum competence, given that ‘the set of the ethically desirable is bounded by the set of the feasible’ (Weale, 1999: 9). But while Goodwin-Gill notes that franchise requirements have become increasingly relaxed among democracies (1994: 43), different polities still define political community membership and political competence variously, resulting in differing franchise qualifications. These relate to age, mental incompetence, citizenship, imprisonment, military service, and residence (see Goodwin-Gill, 1994; Katz, 1997; Massicotte et al., 2004).

We must also consider what is sometimes referred to as ‘administrative disenfranchisement’. Compulsory electoral participation in theory requires compulsory registration (though since 1988 Chile has operated an unusual system whereby electoral registration is voluntary but once registered, electors are legally required to vote; Lapp, 2006). In all other cases, the two go hand-in-hand. Of the three main types of registration report that had this penalty been rigorously applied, over seven million citizens would have gone to jail following the 1981 elections. The measure was not systematically enforced, however, and electoral participation was made voluntary again in 1987 (Hartmann et al., 2001:189).
– periodic list, continuous list, and civil registry systems – entailing automatic registration by the state on the basis of the records it holds on the population - is the most effective means of maximising inclusion. It is therefore not surprising that this method is the most common among democracies (Massicotte et al., 2004: 67; Powell, 1986). By contrast, registration procedures that make demands on voters’ time tend to reduce the effectiveness of those procedures (Katz, 1997: 239; Wolfinger and Rosenstone, 1980). But whatever method is employed, there will always be some eligible voters who are left off the register and are therefore unable to vote.

**Exemptions from the obligation to participate in elections:**

Clearly the obligation to vote can only be applied to those who have a right to vote, but in states where electoral participation is in theory mandatory, there are a number of categories of persons who commonly have the right but not an obligation to take part in the electoral process. In some cases people in these categories are formally exempted from the duty of electoral participation, while in other cases sanctions are not applied for failure to participate.

**Gender:**

When compulsory electoral participation was first introduced in many states, women had not yet been given the right to vote. But the subsequent enfranchisement of women did not in all cases entail obligatory participation, especially in the Latin American context. In Ecuador electoral participation was made mandatory for registered men in 1929 but only in 1967 for women (Nohlen and Pachano, 2005: 374). Similarly, in Guatemala, electoral participation has been compulsory for men since the universal franchise was introduced in 1894, but women have only been obliged to attend the polls since 1981 (though they had gained the right to vote in 1954) (Somoza, 2005: 402). In Peru, electoral participation became compulsory in 1931 for all literate men over the age of 21, but only in 1955 for women (Tuesta Soldevilla, 2005: 450). However, the gender differences in

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19 On varieties of registration procedures, see Massicotte et al., 2004: 66-76; ACE Project at [http://www.aceproject.org/main/english/vr/vr.htm](http://www.aceproject.org/main/english/vr/vr.htm).
Latin America have all been removed, and Egypt is the only state in the modern world where electoral participation remains mandatory for men only.\(^\text{20}\)

**Age:**
Several Latin American countries, including Argentina, Bolivia, Brazil, Cyprus, Peru make electoral participation voluntary for those over 70 years of age; in Ecuador, and Schaffhausen (Switzerland) the relevant cut-off is 65, and in Luxembourg 75. In addition, sanctions in Brazil are not applied to non-voters aged 16 and 17.

**Infirmity:**
Virtually all states with mandatory electoral participation exempt the ill or infirm from participating in elections or exempt them from sanctions for non-participation.

**Citizenship:**
In Belgium, non-citizens have a choice as to whether they register, but once registered they are obliged to vote in those elections for which they are eligible (European parliamentary elections for EU member state citizens, or local elections for all foreign nationals). Luxembourg operates a similar system for citizens of other EU member states.

**Residence or location on election day:**
Many states exempt from electoral participation those travelling out of the country (or away from their place of registration) on polling day (Australia, Bolivia, Brazil, Chile, Ecuador, Luxembourg, Singapore). In Argentina people who find themselves more than 500 kilometres from their place of registration on election day with a reasonable justification are exempt from voting. In Chile the same applies to those more than 200 kilometres from their place of registration, and in Cyprus to those residing 50 miles or more from their polling station. In Australia, those stationed in the Antarctic benefit from a similar exemption, as do itinerants. In Peru, only those out of the country for medical treatment or study are exempt from sanctions.

\(^\text{20}\) Lebanon’s brief experiment with compulsory voting between 1952 and 1957 was likewise applied to men only (Scheffler, 2001:174).
Varying regulations apply to citizens living abroad. States that make provisions for foreign residents to vote do not always make it compulsory. In Belgium, citizens residing abroad have, since 1999, had the right to vote, but they are not obliged to do so. If they choose to register, they are then subject to the same requirements as other Belgians (i.e. they are obliged to vote), but they have a choice as to whether they register.

**Literacy:**
Brazil and Ecuador make voting voluntary for illiterates.

**Public duty:**
In Argentina election staff as well as judges and their deputies are exempt from participating in elections if they are carrying out official duties on election day. Similarly, Austro-Hungarian provinces that made electoral participation mandatory exempted those carrying out imperial professional duties (Jenks, 1950: 139). In Peru and Schaffhausen military conscripts are also exempt.

**Inability to reach the polls due to unforeseen circumstances:**
Retroactive exemptions are commonly granted to those who were unable to reach the polling station on election day due to unforeseen circumstances such as lack of means of transport (Austro-Hungarian provinces), bereavement and ‘domestic calamities’ (Ecuador, Schaffhausen), or ‘fortuitous causes or circumstances beyond their control’ (Bolivia).

**Discretion of judge or court**
A number of states, including Australia, Belgium, Chile and Luxembourg grant exemption from sanctions retroactively if grounds are provided to the satisfaction of a judge or court. In such cases the relevant authority can exercise some discretion in determining cases, especially when they involve exceptional circumstances.

**Religious belief or practice**
Eligible Australian citizens who object to electoral participation on the grounds of religious belief may apply to be ‘conscientious objectors’ and be exempted from voting on those grounds (Hughes, 2001, 579). Likewise, under the Spanish electoral law of 1907 clergymen were exempt from participation (Abraham, 1952:86).

**Alternatives to Compulsory Voting**

There are three principal alternatives to making electoral participation mandatory: constitutionalisation, collective sanctions, and the provision of positive incentives to voters. These three alternatives have distinctly different patterns of historical usage. Designation of voting as a duty in a country’s constitution has been employed both alongside compulsory electoral participation and as an alternative throughout the institution’s history. Collective sanctions constitute a historical device that has gradually been phased out in all but a handful of cases. The provision of positive incentives to participate in elections is, by contrast, a mechanism that is increasingly gaining in popularity. Each of these institutional mechanisms will be discussed in turn.

**Constitutionalisation:**

The first alternative to formally requiring citizens to participate in elections is to embed in the constitution a provision that voting is a legal duty. This may seem like a small measure, but by formally recognising the obligation to participate, a state binds itself to a certain normative attitude toward elections. This formal binding can then provide a basis for civic education curricula in schools and voter education programmes by electoral management bodies. It is perhaps for this reason that the constitutions of a number of states describe voting as a civic duty without making it compulsory in law. These include the Central African Republic, Colombia, Cuba, East Timor, Haiti, Italy, Mozambique, and Paraguay, and Portugal. In Colombia, Article 258 of the constitution states that ‘Voting is a right and a civic duty’. Article 118 of the Paraguayan constitution describes voting as a ‘right and a public function of the elector’. Article 49 of the Portuguese constitution states that ‘The right to vote shall be exercised personally and shall constitute a civic duty’. Former Portuguese colonies Mozambique and East Timor have very
similarly worded provisions.\textsuperscript{21} Article 48 of the Italian constitution describes voting as a civic duty, as does the law governing the conduct of the 2006 elections, while Liechtenstein defines electoral participation as a civic duty in the electoral law (Article 3) but not in the constitution.

**Collective sanctions:**

Another institutional device with conceptual affinities to mandatory participation in elections is that of the turnout requirement. The requirement that electoral participation should reach a certain level for the election to be valid was not uncommon in the nineteenth century.\textsuperscript{22} At that time Bavaria and the Grand Duchy of Baden operated an unusual combination of collective and individual sanctions: if an election did not meet the turnout requirement, the costs of the re-held election would have to be borne directly by non-voters as a form of a special tax (Moreau, 1896: 27; cf Caramani, 2000:64).\textsuperscript{23} More commonly, elections are simply declared invalid if they fail to meet the threshold set in law, and they are re-held at the expense of all.

Though turnout requirements are not uncommon in contemporary referendums, they are now rare in elections outside Eastern Europe and the Soviet Union. The modern practice of turnout requirements in this region is a hang-over from the Soviet stipulation that at least 50 per cent of eligible citizens were obliged to vote for the election to be valid (and, in addition, at least 50 per cent of the eligible electorate was required to vote for a candidate for that person to be declared elected (Carson, 1955:76)). This practice was adopted also in Central Europe when most of the countries in the region introduced communist systems. Interestingly, this provision has been retained in some form in the electoral legislation of a number of states in the region, despite the fact that most other

\textsuperscript{21} In East Timor, section 47 of the constitution reads ‘The exercise of the right to vote is personal and constitutes a civic duty’, while Article 73(3) of the Mozambiquan constitution states that ‘The Right to vote shall be personal and shall constitute a civic duty’.

\textsuperscript{22} Crampton (1983:43) claimed that such a rule was applied in Bulgaria following 1879, and Moreau (1896:22) cites turnout requirements in nineteenth century Russian local elections.

\textsuperscript{23} Quiri (1908: 82) reports that bills to introduce turnout requirements were proposed (all unsuccessfully) in the French National Assembly in 1872, 1889, 1893, 1894, and 1900.
aspects of Soviet-era electoral law have been abandoned. Russia imposes a turnout requirement of 50 per cent in presidential elections and 25 per cent for parliamentary polls. In Serbia and Montenegro, similar 50 per cent turnout requirements led some elections to be re-held in their entirety, while the 25 per cent requirement in Hungary has resulted in elections being re-held in individual constituencies. Elsewhere in the region, a 25 per cent turnout requirement applies in Lithuania, the threshold is 33 per cent for parliamentary elections in Uzbekistan, and the Soviet-era 50 per cent requirement has been retailed in Moldova, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan. Given this ‘collectivist’ approach to electoral participation in the former communist region, it should come as no surprise that this is the only part of the world where compulsory voting is not practiced at all.

_Incentives for voting_

The third main alternative to making electoral participation a legal requirement is instead to provide incentives that encourage citizens to go to the polls. Such incentives may take the form of sanctions or selective benefits (in as much as these can be distinguished). The application of sanctions without compulsion may seem odd, yet as noted above, both Iran and North Korea have such a system, and sanctions for non-voting were in place in Italy until the 1990s.

The provision of selective benefits to voters is a rather newer idea that has recently begun to take hold in a variety of settings where increasing rates of electoral participation is deemed desirable but there is general reluctance to make voting a legal obligation. This has often taken the form of the entry of voters into a lottery, as was done at the local level in the Norwegian municipality of Evenes in 1995 (Gratschew, 2006), in some US states (Hansen, 1996; 2000), and at the national level in Bulgaria in 2005

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24 In November 2006 a bill was put before the Russian Duma (parliament) to remove these requirements.

25 For details of the regulations in the individual states discussed in this paragraph, see the Inter-Parliamentary Union Parline database at www.ipu.org.

26 Indeed, the constitutions of some of the post-communist states actually emphasise the voluntary nature of voting. For example, article 65 of the Belarusian constitution states that ‘A voter shall decide personally whether to take part in elections and for whom to vote’.
In Colombia - one of the only states in Latin America where voting is voluntary - voters have since 1997 been given preferential access to some educational and state employment opportunities, reduced military service, and reductions in fees for some state services (Lapp, 2004; Jaramillo and Franco-Cuervo, 2005: 302; www.votebien.com). Finally, in the UK the idea of exploring so-called ‘incentive voting’ has won support from a number of quarters, including Ken Ritchie of the Electoral Reform Society (Baston and Ritchie, 2004).

**Compulsory Voting in the World Today**

With the exception of Eastern Europe and the former Soviet Union, all regions of the contemporary world contain states where participation in elections is compulsory (though the current use of this institution in Africa is confined to Egypt). The Eastern European exception is undoubtedly due to the fact that informally enforced mobilisation under communism made the citizens of these states averse to any kind of formal requirement to participate (Birch, 2003: chap. 3).

Table 1 lists the 29 states that currently employ compulsory voting, together with the date of its adoption, whether there is a regime of sanctions for non-voting, and whether the institution is prescribed in the constitution. As can be seen in this table, just over half of all states that make electoral participation mandatory are located in Latin America. It is also noteworthy that about half the states that currently employ the institution have adopted it since the Second World War. Half impose sanctions for non-participation, and in about two-thirds of all cases, the legal obligation to vote is entrenched in the constitution. These figures re-emphasise the considerable variety in the geographic and temporal contexts in which compulsory voting has been adopted. This variety makes it somewhat difficult to make general statements about the ‘types’ of states where this institution is used, but it is nevertheless worthwhile considering the factors they have in common.

The ’diffusion effect’ undoubtedly goes a long way toward explaining regional patterns, but the patchiness of the institution in most parts of the world suggests that there

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27 Incentive voting will be considered in greater detail by Henry Milner, in his contribution to this workshop.
are other factors at play as well. Massicotte and colleagues claim that a disproportionate number of the states with mandatory electoral participation have Catholic majorities, and they speculate that ‘Perhaps it is natural for Catholics to believe that citizens have moral obligations not only towards God and the church, but also towards the state’ (Massicotte et al., 2004: 37). Yet closer consideration reveals that the majority of Catholic states among our sample of 29 is almost entirely due to the ‘Latin American effect’. Outside Latin America, the only compulsory voting states that have Catholic majorities are Belgium and Luxembourg.

Massicotte et al. also cite colonial heritage as a facto in the distribution of compulsory voting in the contemporary world. They note that this institution tends not to be found in former British colonies, whereas former Spanish colonies are far more likely to have it (2004: 38). In fact, nearly half the non-Latin American states to make electoral participation mandatory are former British colonies: Cyprus, Australia, Fiji, Nauru, Singapore and Egypt, while the institution was introduced in Latin America prior to its adoption in Spain in 1907. Colonial heritage thus provides no better cue than religion as to the distribution of the institution.

Perhaps a more promising explanatory factor is the size of a state’s population. It may be the case that smaller states find it easier to implement and enforce a legal obligation to vote, whereas for more populous states the logistic challenge is seen as being too great (Giraud, 1931). This would explain why small states such as Cyprus, Luxembourg, Costa Rica, Panama, Uruguay, Laos, Fiji, Nauru and Singapore have adopted the institution, but it does not shed light on its maintenance in rather large states such as Brazil, Mexico, Argentina, Thailand, Egypt and Turkey. Median state population size in the world was 5.6 million in 2005, so ‘small’ must be understood in this context. Of our sample of 29 states, 19 have populations larger than this, which suggests that in fact larger states are more likely than smaller ones to oblige their citizens to participate in elections.

We are perhaps forced to conclude that, aside from the predominance of European and Latin American states among the 29 countries where electoral participation is

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28 This figure is taken from examination of World Bank population data, found at www.worldbank.org.
mandatory, they have little in common. Genetic factors thus appear to be most important in determining use of this institution in the world today. It was adopted indifferent places at different times usually in association with other democratic reforms. Frequently this involved a change to the constitution that was then difficult to alter (either because the constitution itself was difficult to alter or because it was difficult to justify removal of a civic obligation from the state’s founding law). The adoption of the institution took place mainly in the context of established rather than new states, which perhaps goes some way toward explaining why we find it in most widespread use on two of the continents with the longest traditions of statehood. These genetic stories, more than anything else, appear to account for why some states in today’s world make attendance at the polls a legal obligation and others do not.
## Table 1: Compulsory Voting in the World Today (2007)

<table>
<thead>
<tr>
<th>Country</th>
<th>Date adopted</th>
<th>Sanction applied?</th>
<th>Constitutionalised?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Europe:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>1893</td>
<td>Yes</td>
<td>Yes (Art 62)</td>
</tr>
<tr>
<td>Cyprus</td>
<td>1960</td>
<td>Yes</td>
<td>?</td>
</tr>
<tr>
<td>Greece</td>
<td>1929</td>
<td>No</td>
<td>Yes (Art. 51)</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1919</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1903</td>
<td>Yes</td>
<td>Yes (Art 23(2) )</td>
</tr>
<tr>
<td>Turkey</td>
<td>1982</td>
<td>Yes</td>
<td>Yes (Art. 175)</td>
</tr>
<tr>
<td><strong>Americas</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Argentina</td>
<td>1912</td>
<td>No</td>
<td>Yes (Art. 37).</td>
</tr>
<tr>
<td>Bolivia</td>
<td>1924</td>
<td>Yes</td>
<td>Yes (Art. 219)</td>
</tr>
<tr>
<td>Brazil</td>
<td>1932</td>
<td>No</td>
<td>Yes (Art. 14)</td>
</tr>
<tr>
<td>Chile</td>
<td>1925</td>
<td>Yes</td>
<td>Yes (Art. 15)</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>1936</td>
<td>No</td>
<td>Yes (Art. 93)</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>1966</td>
<td>No</td>
<td>Yes (Art. 88)</td>
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<tr>
<td>Ecuador</td>
<td>1929</td>
<td>Yes</td>
<td>Yes (Art 27)</td>
</tr>
<tr>
<td>El Salvador</td>
<td>1950</td>
<td>No</td>
<td>Yes (Art. 73)</td>
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<tr>
<td>Guatemala</td>
<td>1965</td>
<td>No</td>
<td>Yes (Art. 136)</td>
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<tr>
<td>Honduras</td>
<td>1894</td>
<td>No</td>
<td>Yes (Art. 5)</td>
</tr>
<tr>
<td>Mexico</td>
<td>1917</td>
<td>No</td>
<td>Yes (Art 36)</td>
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<td>Panama</td>
<td>1928</td>
<td>No</td>
<td>Yes (Art. 129)</td>
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<td>Paraguay</td>
<td>1967</td>
<td>No</td>
<td>Yes (Art. 118)</td>
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<td>Peru</td>
<td>1931</td>
<td>Yes</td>
<td>Yes (Art. 31)</td>
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<td>Uruguay</td>
<td>1924</td>
<td>Yes</td>
<td>Yes (Art. 77)</td>
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<tr>
<td>Venezuela</td>
<td>1958</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td><strong>Asia and the Pacific</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Australia</td>
<td>1924</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Fiji</td>
<td>1990</td>
<td>Yes</td>
<td>Yes (Art. 56)</td>
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<tr>
<td>Laos</td>
<td>1989</td>
<td>N/A</td>
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<tr>
<td>Nauru</td>
<td>1965</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Singapore</td>
<td>1958</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Thailand</td>
<td>1997</td>
<td>Yes</td>
<td>Yes (Section 68)</td>
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<tr>
<td><strong>Middle East and Africa</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>1956 (men only)</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
Table 2: A Typology of Compulsory Voting

<table>
<thead>
<tr>
<th>Form of obligation</th>
<th>Sanctioned</th>
<th>Unsanctioned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal</td>
<td>Sanctioned electoral compulsion (e.g. Australia)</td>
<td>Unsanctioned electoral compulsion (e.g. Venezuela)</td>
</tr>
<tr>
<td>Informal</td>
<td>Sanctions, benefits in the absence of formal compulsion (USSR)</td>
<td>No compulsion, little pressure to vote (USA)</td>
</tr>
</tbody>
</table>
References


Kauz, Ralph, Hamid Khosravi Sharoudi and Andreas Rieck, ‘Iran’, in Dieter Nohlen, Florian Grotz and Christof Hartmann (eds.), *Elections in Asia and the Pacific: A


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