

# DEMOCRACY, JUSTICE, AND ELECTIONS

by

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I shall discuss *democracy* and *justice*. Each of these ideas is vast, and there are many ways of making connections between them. I have decided to consider how the ideals of democracy and justice may constrain *elections*. In the talk, I shall draw on various historical examples, from ancient Athens to the French Revolution. I shall also discuss and cite earlier writers on the topic, from Aristotle to Hegel.

I previously gave a talk on this topic in Brazil. The main organizing principle will be three important aspects of the Brazilian electoral system, which nevertheless raise issues of general interest: compulsory voting, the role of illiterate voters, and the low voting age.

Let me begin by making two claims and asking some questions.

First, in modern democracies the battle for universal suffrage has more or less been won. It is generally accepted that except for age limits and perhaps a few other constraints, restrictions on the right to vote are fundamentally unjust. Literacy, property, payment of taxes, gender, birth and similar criteria for restricting the suffrage are now a thing of the past. To put it differently, the era of political oligarchy is finished. The only choice today is between democracy and dictatorship. Needless to say, the political power of economic oligarchies remains enormous in many countries, but it is not, as it was in the past, reinforced by political oligarchy.

Second, the battle for high turnout rates in elections has not been won. In advanced industrial democracies, the rate of voter participation has on averaged suffered a decline of ten percentage points over the last 50 years. Let me note that in almost all these countries, voting is voluntary. Later, I shall discuss compulsory voting at some length. But for the time being, I assume that voting is voluntary.

But what good is electoral justice if democracy is under threat? What good does it do that everybody *can* vote if fewer and fewer actually *do* vote? Could there even be a systematic tendency for the extension of the suffrage and turnout rates to be inversely related? There is a saying from an old song by Gilbert and Sullivan, “When everybody is somebody, nobody is anybody”. Applied to elections: when everybody can vote, the impact of an individual

vote is so small that few may bother to vote. As we shall see shortly, Hegel offered this argument as an objection to unrestricted electoral democracy.

I have suggested that the extent of the suffrage is a question of justice and the rate of turnout a question of democracy. This claim is of course a gross simplification. Many would deny that a society with a severely restricted suffrage counts as a democracy. Conversely, low turnout rates may have unjust consequences. I shall return to these issues.

Elections are a fundamental, almost constitutive component of democracy. The practice in ancient Athens of choosing officials by lot, so that each would *rule and be ruled in turn*, shows that there can be democracy without elections. Yet even the Athenians used elections to choose their most important officials, notably the generals. In modern societies, democracy is unthinkable without elections.

The example of Athens allows me to clarify a possible ambiguity. In this talk, I mostly discuss “elections”, that is, the choice of a *person* to some position. Yet what I say mostly applies to votes more generally, including the choice of a *policy*. When the Athenians met in the assembly, their main task was not to elect officials but to adopt laws and decrees. In modern society, the use of referendum serves the same purpose. I am not going to take a stance on the role of direct democracy in modern societies, except to say that I think there are occasions on which it is perfectly appropriate to ask the voters to decide an issue directly instead of leaving it to the politicians they have elected. Most of the questions concerning justice and democracy that I discuss here, also apply to these votes. As we shall see, however, referendums can pose special problems of their own.

Elections raise issues of justice. At the most basic level, the question of deciding who shall have the right to vote is at least in part a question of justice. The choice of an electoral system also raises questions of justice. Consider for instance the election of deputies by majority voting in single-member districts. In Great Britain, the Liberal Democrats have for the last 25 years obtained around 20% of the popular vote, and between 4% and 10% of the seats in parliament. Intuitively, this seems unfair. Proportional representation would seem better in terms of justice. It would come closer to providing each voter with equal political power.

At the same time, one can argue that the British system is good for democracy, in the sense of promoting stable and efficient government. Conversely, proportional representation has often been criticized as inefficient. Although these links are not uncontroversial, they are supported by a good deal of historical experience. I do not want to go into technical detail. Rather I want to make the simple point that what is good for justice is not necessarily good for democracy. In fact, I already made a remark to that effect, when I suggested that a wide suffrage and high rates of turnout may not go together.

To spell out these normative ideas a bit more fully, let me first consider the idea of a *just electoral system*. I shall define it in terms of two properties.

First, the allocation of voting rights, and the practical realization of those rights, must be consistent with the principle of equal respect for persons. This requirement excludes not only formal discrimination, but also *intentional* and *unintended but avoidable* obstacles to the exercise of the right to vote. Later, I discuss some mechanisms which one group may adopt in order to reduce the factual likelihood that another group will exercise its right to vote, while leaving it formally free to do so. More indirectly, one group may oppose measures that would increase the likelihood that another group would exercise its right to vote. We shall see examples of both strategies.

Second, the outcome of the election should in some rough sense represent the popular will. As is well known from political theory, this idea does not in general have a rigorous meaning. Yet in many cases it is obvious that the outcome does not reflect the wishes of the voters, as when 20% of the votes translate into 4% of the seats. Moreover, even when the outcome does reflect the wishes of the *voters*, it may not reflect the preferences of the *electorate*. If, as is sometimes the case, turnout rates increase with income and with education, the outcome will be skewed in favor of the better off.

Next, let me consider the idea of a “well-functioning democratic system”. I shall define it in terms of three requirements.

First, the electoral system must produce, or tend to produce, stable governance. The Third French Republic is often cited as a negative example, although the culprit may have been lack of party discipline rather than the electoral system by itself.

Second, elections must tend to produce competent officials. If Tocqueville was right in thinking that voters in a democracy tend to prefer incompetent candidates, the system is not functioning well. A more general problem is that in some societies there seems to be little correlation between the qualities needed to win elections and the qualities needed to govern well.

Third, the electoral turnout must be reasonably high. It is widely accepted, for instance, that the low turnout rates in elections to the parliament of the European Union reflect voter alienation, and that it suggests that democracy at the scale of Europe is not working very well. Some scholars used to argue that low participation is a good thing, as it shows that the voters are content with the way they are governed. Surveys show, however, that compared to voters, non-voters are usually *less* satisfied with the way they are governed.

Low turnout rates, while reflecting weak support for democracy, might also weaken it further. If voter participation in national elections declined to, say, less than 15%, the regime would appear to have little legitimacy and perhaps be vulnerable to a non-democratic takeover. By contrast, it has been argued that even if only 15% of the adult population has the right to vote, as was probably the case in Athens, democracy may still be a vibrant force if turnout is high. For the survival of democracy, the ratio of voters to the total

adult population may be less important than the ratio of voters to the total electorate.

I shall now pursue some of these ideas in more detail. As already mentioned, the discussion is organized around three features of the Brazilian constitution: compulsory voting, the clauses referring to illiterate citizens, and the low voting age. I shall offer some comments on how these features might be justified – or criticized – on grounds either of justice or of democracy.

Justice requires, with some exceptions, that *all can vote*, unfettered by formal or informal impediments. A well-functioning democracy requires that *many do vote*. This distinction between the possession of a right and its exercise is well known from other areas. In most cases, the non-exercise of a right, on a large scale, is not seen as problematic, as long as it is the result of free individual choices rather than of the high costs of exercising the right. The freedom of expression is not threatened when most citizens abstain from criticizing the government if the reason simply is that they do not find much to criticize.

This statement is of course in one sense too simplistic, since it ignores the case of adaptive preferences or, as it is also called, “the problem of the happy slave”. I am not claiming that absence of criticism is a sign that everything is fine, but it is not an infallible sign that things are bad either.

The right to vote is different. As I just argued, it would be a danger sign if a large majority of the citizens chose not to exercise their right to vote. And in fact, why should they exercise it? The cost of voting, although small, is not zero. The benefit of voting, if measured by the chance of casting the decisive vote, is essentially zero. One of the first to observe this fact was Hegel:

As for popular suffrage, it may be further remarked that especially in large states it leads inevitably to electoral indifference, since the casting of a single vote is of no significance *where there is a multitude of electors*. Even if a voting qualification is *highly valued and esteemed by those who are entitled to it, they still do not enter the polling booth*. Thus the result of an institution of this kind is more likely to be the opposite of what was intended; election actually falls into the power of a few, of a caucus, and so of the particular and contingent interest which is precisely what was to have been neutralized. (*Philosophy of Right* § 311.)

Hegel’s argument is actually self-contradictory. If people “do not enter the polling booth”, there will not *be* “a multitude of electors”. Yet modern game theory can be used to show that his conclusion is correct. If voters are rational and self-interested, only a small number will vote.

Hegel used this conclusion to buttress his argument for a corporatist mode of representation. He could, however, have used it to justify a different proposal: *to make voting obligatory*. In this way, voting is transformed from a right into a duty. One can in fact argue that voting is a civic duty on par with paying taxes, serving in the military and doing jury service. To make sure that

citizens fulfill these duties, one cannot count on their voluntary compliance induced by moral or social norms. Rather, voting has to be enforced by *legal* norms, with sanctions for non-compliance.

Experience shows that turnout rates are substantially higher in countries that have compulsory voting than in countries where voting is optional. When a country introduces compulsory voting, turnout rises. Australia is a case in point. When compulsory voting is abolished, turnout falls. Venezuela is a case in point. On the basis of opinion polls it has been estimated that turnout in the 1990 elections in Brazil would have dropped from 85% to 55 % had voting not been compulsory.

The question is how to explain this difference. Do people attach an *intrinsic value* to voting when it is compulsory or merely an *instrumental value* due to the sanctions for non-voting?

Let us first note that voting poses a collective action problem. It is better for all if all vote, but better for each, in material terms, to abstain than to vote. To put the question in perspective, consider two other collective action problems: donating blood and abstaining from polluting. It is better for all citizens if some of them donate blood, because then they are assured a transfusion in case they need it, yet in material terms it is better for each not to give blood. Similarly, it is better for all if nobody uses cheap polluting fuels, but better for each to pollute.

Blood donation is always voluntary. In most societies, this is also the case for voting. To prevent pollution, the government can affect behavior by imposing a tax on polluting fuels so that each prefers not to pollute. Electoral systems that impose sanctions on non-voters might be viewed in the same perspective. By imposing costs on non-voting, sanctions turn the socially desirable act of voting into an individually rational and self-interested option. The question is whether this is *all* there is to compulsory voting.

In some cases, legal sanctions are indeed little more than a price mechanism. Most people – whether they are drivers or non-drivers – probably see no difference between paying a fine for illegal parking and putting money into the parking meter. But this case is not the general one. Most people would prefer spending three weeks in hospital to spending three weeks in jail, assuming that the material conditions were the same in both cases and, crucially, that other people knew about their situation. Lawbreaking would not induce stigma and shame if the law were merely a price mechanism.

If there is general respect for the law, individual laws will also tend to be respected. Hence under a system of compulsory voting, the primary impulse to obey the law could induce a secondary impulse to vote that is not induced by the fear of sanctions. This argument does not of course imply that sanctions are superfluous. The claim is more modest, namely that compliance with the law is greater than it would have been if it had been perceived merely as a price mechanism.

Moreover, compulsory voting might trigger *a norm of fairness*, in the following sense. For some people, the civic duty to vote is probably not unconditional. They say to themselves, “If others turn out to vote, it is only fair that I should do my duty as well”, but if turnout rates are low they do not feel they have a duty to act better than others. When voting is made compulsory, their estimate of the likelihood that others will vote goes up, and hence they are more likely to vote as well.

The alternative explanation is that the fear of sanctions provides a full account of the higher turnout under compulsory voting. In general, these sanctions are not severe and enforcement levels are low. Yet from an expected-utility point of view, even a small perceived risk of a small fine for non-voting might exceed the small cost of voting. Also, voters might not know how small the risk is, and they might not be rationally motivated to find out.

To my knowledge, there has been no systematic attempt to find out whether the effects of compulsory voting are due mainly to a stronger feeling of civic duty induced by the law or mainly to the deterrence effect of sanctions. I suspect that cost-benefit analysis fails to capture the psychology of voting, but I have no clear and clean alternative explanation to propose.

I want to pursue some further implications of the fact that voting is a collective action problem. To overcome a free-rider problem, institutional designers may use either the stick or the carrot – punish non-compliers or reward compliers. To increase the size of the population, for example, the government may either reward families with many children, as is done in France, or punish those who seek abortion, as was done in Romania under Communism.

If we accept the instrumentalist account of the effects of compulsory voting, this system relies on the use of the stick. Citizens are penalized if they don’t vote. One might also imagine, however, use of the carrot, by rewarding citizens who turn out to vote. Historically, of course, we have often observed the opposite pattern: voters had to pay in order to be allowed to vote. Usually, this regime was created to dissuade the poor from voting. This was the case, notably, for the poll tax used in many American states until 1964. Yet if the aim is to increase turnout, payment might be an efficient system.

Although, to my knowledge, there are no modern systems in which voters are rewarded for voting, proposals to this effect have been made. In November 2006, a ballot initiative in Arizona to award a million dollars to a randomly selected voter, for the purpose of increasing turnout, was rejected by roughly one million votes against and half a million in favor. The total number of voters was about 60% of the registered voters in the state. One might ask how many would have turned out if the lottery had already been established, and whether there might then have been a majority for the lottery. This idea is of course part speculation and part joke. We shall see later, however, that there are real-life cases that have a similar structure.

Some objections to compulsory voting do not apply to payment to voters. For one thing, the libertarian objection that compulsory voting violates the freedom of the individual has no purchase on this proposal. For another, payment for voting leaves the individual free to express his dissatisfaction with the political system or with the set of candidates on offer, by abstaining from casting a vote.

In theory, compulsory voting might also provide an occasion to express one's dissatisfaction, by providing the option named "None of the above". To my knowledge, however, this opportunity exists only in systems with voluntary voting, in which it is of course less valuable because the voters can also express their alienation by staying home.

Let me turn to some of the devices the Athenians used to make people attend the assembly. A comedy by Aristophanes suggests that in the fifth century BC one tried to shame people into attending, by staining the coats of abstainers or latecomers with red paint. In the fourth century BC, voters were probably paid half a day's income if they showed up for a meeting of the Assembly, which typically lasted half a day. In an interesting and intriguing passage, Aristotle suggests, however, that voters would have to be paid *more* than wages forgone, to make it profitable to attend. I shall cite the passage at some length, since it also illuminates some insidious ways in which the party in power may act to reduce the political participation of its opponents:

The devices adopted in constitutions for fobbing the masses off with sham rights are five in number. [...] *As regard the assembly, all alike are free to attend; but fines for non-attendance are either imposed on the rich alone, or imposed on the rich at a far higher rate.* As regards the magistracies, those who possess a property qualification are not allowed to decline office on oath, but the poor are allowed to do so. As regards the law courts, the rich are fined for non-attendance, but the poor may absent themselves with impunity. [...] In some states a different device is adopted in regard to attendance at the assembly and the law courts. All who have registered themselves may attend; those who fail to attend after registration are heavily fined. Here the intention is to stop men from registering, through fear of the fines they may thus incur, and ultimately to stop them from attending the courts and the assembly as a result of their failure to register. Similar measures are also employed in regard to the possession of arms and the practice of athletics. The poor are allowed not to have any arms, and the rich are fined for not having them. The poor are not fined if they absent themselves from physical training: the rich are.

These are the devices of oligarchical legislators, and in democracies they have counter-devices. *They pay the poor for attending the assemblies and the law-courts, and they inflict no penalty on the rich for non-attendance.* It is obvious that he who would duly mix the two principles should combine the practice of both, *and provide that the poor should be paid to attend, and the rich be fined if they do not*

*attend*; if there is no such combination, power will be in the hands of one party only. (Aristotle, *Politics* 1297 a).

If office brought no profit, then and only then could democracy and aristocracy be combined; for both notables and people might have their wishes gratified. All would be able to hold office, which is the aim of democracy, and the notables would be magistrates, which is the aim of aristocracy. (*Politics* 1308b-1309a).

The first passage seems to rest on the premise that nobody would attend the Assembly for its intrinsic value, but that one would have to use instrumental tools to make them attend – the stick for the rich and the carrot for the poor.

What is especially intriguing about these passages is the idea that oligarchs or democrats might create a system that gives everybody the *right* to participate while at the same time assuring that their own side has a *de facto* monopoly on power. While the first passage is evenhanded in imputing these tactics to both oligarchs and democrats, the second affirms them only with regard to the oligarchs. The latter claim would in fact seem to be the more plausible idea. While history has many examples of elites hiding their elitism behind formal equality, I do not know of any cases in which a majority has offered the minority a poisoned gift of the right to abstention.

Be this as it may, these devices would of course be necessary only in a society where the *appearance* of political equality was important to secure the loyalty of the citizens and to make it harder to complain for those who choose not to participate. In the modern world, the appearance of equality is even more mandatory. At the same time, needless to say, vast inequalities remain. There is, therefore, an immense incentive to create what Aristotle called “sham rights”.

To illustrate this kind of hypocrisy regarding electoral systems, I shall give an example from the French Revolution. Art. 1 of the Declaration of the Rights of Man and the Citizen states: “Men are born and remain equal and free in rights”. In a natural interpretation of that expression, it implies both an equal right to vote and an equal right to be elected. The members of the constituent assembly hesitated, however, to draw that radical conclusion, which might have led to the election of a large number of non-property-owners. In October 1789 they adopted the requirement that deputies had to pay at least one “marc d’argent” in taxes and own some real estate. It has been estimated that at best, no more than one citizen in ten satisfied this criterion. As Robespierre pointed out, it contradicted not only Art 1 of the Declaration, but also Art. 6: “All citizens, being equal in the eyes of the law, are equally admissible to all public dignities, positions, and employments, according to their ability, and on the basis of no other distinction than that of their virtues and talents”.



The popular hostility to this measure induced a largely cosmetic reform in 1791, when the assembly decided on minimal tax-paying requirements for *primary voters* and for *deputies*, while very stringent economic qualifications were required for the intermediate group of *electors* whom the primary voters would choose to choose the deputies. In this way, one could assert with the appearance of truth that all or most taxpayers could vote and be deputies, while at the same time making it very likely that those effectively chosen as deputies would belong to the wealthy group that chose them.

The journalist Loustalot wanted to substitute direct elections without economic restrictions for this three-tier system. He took care, however, to anticipate and reply to an objection that might be raised by the property-owners:

No citizen ought to be deprived of his *right* to vote; & it is important that all proletarians and citizens who might easily be corrupted should *de facto* be deprived of it. [...] This could easily be achieved by an astute choice of the location to which the citizens would have to travel to get to the electoral assemblies. (Loustalot, *Révolutions de Paris* No. XVII, 9 novembre 1789.)

In other words, by making the distance to the voting place sufficiently large, while of course not paying anyone for showing up, one would *de facto* be able to exclude undesirable elements without being in the uncomfortable position of violating the rights of the citizens.

At this stage I want to return to the relation between justice and turnout. The important point is that the requirement of compulsory voting tends to have two distinct effects. On the one hand, it consolidates democracy, by increasing turnout. On the other hand, it promotes justice, by improving the match between the outcome of elections and the popular will. When voting is voluntary, poor citizens are somewhat less likely to vote than the better-off. The tendency varies across countries, and is not always very strong, but it can be substantial. The impact of education on voting is even more substantial. In addition to findings by political scientists, evidence in favor of the correlation is provided by the strong resistance of right-wing parties to compulsory voting, as well as to many measures intended to facilitate voluntary voting.

We may assume, therefore, that compulsory voting promotes justice because it better reflects the popular will. When voting is compulsory, it is in some sense a burden. Making it voluntary for certain disadvantaged groups of the population might, therefore, seem to be a generous gesture. It is, however, a poisoned gift if its effect is to reduce the participation of those groups in the elections and, indirectly, their representation in national politics. Hence it looks very much like the oligarchic practices that Aristotle describes.

The illiterate or other disadvantaged groups can be treated differently from other citizens in another respect as well: they can be made ineligible to public office. There is a long tradition for imposing stronger requirements for office-holding than for voting, be these defined in terms of income, property,

tax payment, age, gender, or length of residence. Montesquieu offered the traditional justification for this distinction: “just as most citizens, who are competent enough to elect, are not competent enough to be elected, so the people, who are sufficiently capable to call others to account for their management, are not suited to manage by themselves” (*Spirit of the Laws* I.2).

In his doctoral dissertation at Columbia University, Claudio López-Guerra showed that this venerable argument is deeply flawed. Let us distinguish between *voting-competence*, which is the competence to judge the competence of candidates for managing public affairs, and *issue-competence*, which is the competence to manage public affairs. Assume, reasonably, that some people have voting competence but not issue-competence. This premise does not warrant a limitation of eligibility to those who possess issue-competence, since voters possessing voting-competence would not elect candidates who lack issue-competence.

This argument might even justify the imposition of *stricter limits on voters* than on representatives. In his *Project for a Constitutional Code for France*, probably written in October 1789, Jeremy Bentham proposed that “The Right of Election shall be in every French citizen, male or female, being of full age, of sound mind, and able to read”. By contrast, he proposed that “From the capacity of being elected no human creature whatsoever shall be excluded”.

There are also historical instances of stricter requirements for voters than for deputies. Thus in the Danish constitution of 1849 the age requirement for electing deputies to the lower house was 30 years and that for eligibility to that house 25 years. In Spain and in the Netherlands, women received the right to be elected before they had the right to vote. In the 1776 constitutions of Delaware and Virginia, voters had to be freeholders with at least 50 acres of land or satisfy other property conditions, whereas representatives only had to be freeholders.

The rationale for this asymmetry is, on the one hand, that *qualified voters could be counted on not to choose unqualified deputies* and, on the other hand, that a group of individuals who are unqualified on the average might contain some qualified individuals. Consider the Danish case just mentioned. The framers may have thought that voters below the age of 30 would in general not have voting competence. At the same time, they would have recognized that some individuals below that age would be sufficiently mature to have not only voting competence but even issue competence. Voters above 30 would because of their greater maturity be able to identify and vote for such individuals. Nothing would be lost by allowing wide eligibility to office, because the narrow electorate would ensure that only competent candidates would be chosen. At the same time something would be gained since there would be a larger pool of competent candidates to choose from. Recall that William Pitt the younger was elected to parliament at the age of 22 and was prime minister at the age of 24.

In a complex society it is unlikely that an illiterate candidate would stand out as a new William Pitt. Nothing would be gained by allowing illiterates to be elected. By the same token, however, nothing would be lost. The other side of the coin is that the explicit ban on illiterate candidates, as well as the exception to compulsory voting for illiterate candidates, is stigmatizing and unjust. They do not pass the test of equal respect for persons.

The same objection applies, in my opinion, to the Brazilian system of making voting optional for voters between 16 and 18. On this point, let me quote from an article by Robert Ludbrook, an Australian specialist on children's law and children's rights. Australia is one of the few advanced industrial countries that have instituted compulsory voting. In arguing for a lowering of the voting age from 18 to 16, Ludbrook addresses the question whether voting should be made optional for voters between 16 and 18.

To give voters under the age of 18 the choice whether to vote or not would be to treat them differently than all other eligible voters. It would be setting a precedent and creating a sub-class. It could generate opposition from constitutionalists and politicians who might see it as the thin end of a wedge. It could also expose young people to the criticism that they want the *right* to vote but do not want the *obligation*. At a time when there is widespread feeling that children want rights, but are unwilling to recognize corresponding responsibilities, their preference for optional voting could be used against them. (Robert Ludbrook, "Children and the Political Process", *Australian Journal of Human Rights* 1996)

Let me now bracket the issue of optional versus compulsory voting, and address the issue of the voting age more directly. I want to discuss the normative grounds on which one might argue for a lowering of the voting age from 18 to 16.

As a matter of justice, the voting age would have to be justified in terms of equal respect for persons. To spell out what this means, we first have to determine what it means to be a person. This is of course a difficult question. For my specific purposes in this talk, I define a person as someone who cannot legitimately be constrained by strong paternalistic measures. On the one hand, paternalism may be justified if an individual lacks the requisite cognitive abilities for decision-making. On the other hand, it may be justified if he or she has great problems of impulse control.

Adults, too, may be lacking in either of these respects, but usually as the result of a transient emotional state. The state does, therefore, impose some *weak* paternalistic measures on adults, notably through mandatory delay procedures that allow emotions to cool down before marrying, divorcing, purchasing a handgun, or demanding voluntary sterilization. The use of minimal age legislation in many domains can also be seen as a delay procedure, but with a different rationale. The state tells adults, "You cannot make this decision until you have *regained* your normal decision-making capacity". By contrast, it tells young people, "You cannot make this decision

until you have *achieved* the normal adult decision-making capacity”. In addition, it may tell them, “If you nevertheless make this decision, you will not be held liable for it since you have *not yet achieved* the normal adult decision-making capacity”.

If we consider different countries, we find minimum age legislation in many arenas: end of compulsory schooling, admission to employment, obtaining a driver’s license, buying cigarettes or alcohol, marrying without parental permission, being subject to criminal prosecution – and of course voting. In a given country, the minimum ages may differ across arenas. In the US, the eighteen-year old can vote but, in many states, not buy liquor. In Brazil, the sixteen-year old can vote, but not be subject to criminal prosecution. In France, you have to be eighteen years old to vote, but the President now wants to make second offenders between 16 and 18 subject to criminal prosecution. This combination also exists in many American states.

The cross-arena differences among these age limits are probably often due to accidents of history and politics, but there may also be some more systematic reasons. It seems reasonable to deny the right to vote to those who do not have the requisite cognitive capacities. By contrast, impulse control seems less important in voting. Strong paternalist measures can be justified by the need to protect impulsive individuals against themselves, but this argument seems to have little relevance for the act of voting. Whatever benefits political candidates or parties promise will not materialize in the immediate future.

One could argue, therefore, that *if* the requisite cognitive capacities develop earlier than impulse control, the voting age could be lower than the minimal age for activities in which impulsiveness could induce self-destructive behavior. And this seems more or less to be the case. We know that intelligence increases with age until 16, but not much beyond that age. According to some scholars, counter-hedonistic qualities such as impulse control and conscientiousness increase between the ages of 20 and 40. If these findings are to be trusted, the choice of voting age 16 may be a wise one.

These remarks are, to be sure, very speculative. To my knowledge, actual processes of lowering the voting age have not relied on these psychological arguments. It may be instructive to look at the ten arguments for reducing the voting age in the United States to sixteen years that are put forward by the National Youth Rights Association:

1. Youth suffer under a double standard of having adult responsibilities but not rights.
2. Youth pay taxes, live under our laws, they should have the vote.
3. Politicians will represent their interests if youth can vote.
4. Youth have a unique perspective, they'll never have those experiences again.

5. 16 is a better age to introduce voting than 18; 16 year olds are stationary.
6. Lowering the Voting Age will increase voter turnout.
7. If we let stupid adults vote, why not let smart youth vote?
8. Youth will vote well.
9. There are no wrong votes.
10. Lowering the voting age will provide an intrinsic benefit to the lives of youth.

These arguments are a mixed bunch. The first two, which are obviously the most important, offer *conditional arguments* for the right to vote. In my opinion, they are not very convincing.

If *some* sixteen-year olds pay taxes, does it follow that *all* sixteen year olds should have a say in how taxes are used? If one believes in the principle “no taxation without representation”, it would seem more logical to grant the right to vote only to those persons who actually pay taxes. But that would be unacceptably unfair to physically disabled sixteen-year olds.

If sixteen-year olds are mature enough to be held responsible for their actions, does it follow that they are also mature enough to vote? This argument presupposes that sixteen-year olds are in fact held responsible for their actions, which, as we have seen, is not always the case.

If sixteen-year olds are subject to the laws, does it follow that they should have the right to influence the lawmaking process? This argument is too strong, as it would also justify lowering of the voting age to 14 or to 12 years or even below.

I shall not pursue these normative matters, not because they are uninteresting, but because I would like to conclude by considering the issue from another perspective. Whatever political philosophers might think about the appropriate voting age, the citizens themselves are likely to have highly varying opinions about the issue. In Australia, it seems, many sixteen-year olds would like to have the right to vote, but as an optional one. Other citizens would presumably like to lower the age on the condition that voting remains mandatory, and still others might be opposed to any lowering. As matter of practical politics, the decision whether to lower the voting age must result from the normal political process that aggregates these preferences, rather than being imposed by the philosopher-king.

But then one question arises acutely: *whose preferences?* I shall assume that a proposed extension of the suffrage is to be decided by referendum. Let us call those who have the right to vote prior to the referendum the “existing electorate”, and those who will have the right to vote if the extension is adopted

the “extended electorate”. Who shall have the right to vote in the referendum? The existing electorate or the extended electorate?

In two cases the competence to judge voting competence was assigned to the extended electorate. The first was the adoption of the 1830 Virginia constitution, which was ratified in an election open to all who were prospectively enfranchised by it. The same procedure with the opposite result was observed in 1953 when revisions in the Danish constitution were submitted to referendum. Each voter cast two votes, one for or against the proposed constitution and one for a change in the voting age. The alternatives for the latter vote were to lower the age from 25 years to either 23 years or to 21 years. In the first vote, only citizens above 25 could cast a vote. In the second, everybody above 21 could vote. The draft constitution was adopted, and the result of the second referendum was that a majority of the voters above 21 decided to lower the voting age from 25 to 23 rather than to 21.

Does justice require that the prospectively enfranchised citizens be given the right to vote in a referendum on lowering the voting age? Consider first the opposite case, a referendum on a proposed raising of the voting age. My intuition tells me that it would be unthinkable to exclude the prospectively disenfranchised from the vote. Suppose the proposal was to raise the minimal voting age to fifty. Although there might well be a majority for this proposal among voters above fifty, they should not be able to write a privileged position for themselves into the constitution.

The same argument does not, however, apply to extensions of the franchise. There is an asymmetry between the two cases, since the old will never get young again whereas the young will get older. Hence when those between 16 and 18 years are asked whether the voting age should be lowered from 18 to 16, they should not focus merely on the short-term increase in their own influence that will accrue to them if the proposal is adopted. They should ask whether as mature or old citizens they want to live in a society in which sixteen-year olds can vote. They might decide that they don't.

Earlier, I distinguished between voting-competence and issue-competence. Although voters cannot be assumed to have issue-competence, they are supposed to be able to decide whether candidates have. The question I am discussing here cannot be stated in quite those terms. In a referendum on the voting age, voters *are* assumed to have issue-competence – the competence, namely, to decide whether members of a certain age group have voting-competence. The question is whether and when disenfranchised voters have the competence to assess their own voting-competence. Surely, we think today, women should be allowed to vote in a referendum on women's right to vote. Surely, ten year olds should not be allowed to vote in a referendum on the right to vote of ten year olds. There is no general answer.