

Week 12. Restricting Voting

1 Exclusion and Inclusion in Voting Systems

Special groups in democratic theory worth thinking about:

- children
- foreign residents
- criminals / ex-felons
- the mentally impaired
- the incompetent

2 Cholbi, “A Felon’s Right to Vote”

Can we justify felon disenfranchisement (FD)? Disenfranchisement is clearly a type of punishment (544), so it stands in need of justification.

Desert and Justice (545)

Strict Retributivism (545)

Theory: Strict retributivism claims that we should punish people in a way that “fits” the crime. (Naive version: *lex talionis*, ‘an eye for an eye’.) If the punishment is revoking a political right, the crime thus has to be political in some sense.

Objection: Most crime is not relevantly political: “the mere fact that an act breaks legitimately established laws does not make it a political act” (547). So FD cannot be justified on the basis of this theory.

Questions for Discussion. (1) Why is the fact that crime is mostly “not political” relevant? (2) What distinguishes “strict” from “proportional” retributivism?

Proportional Retributivism/Fairness (548)

Theory: Proportional retributivism claims that we should punish people in a way that is *proportional to* the crime. The theory does not claim that felons lose *all* rights. Do felons deserve to lose the right to vote, in particular?

Objection: We should observe first that felons contain many rights (549). In particular, they retain pre-political, moral rights. The right to vote derives from such a pre-political right, the right to self-determination. This right is fundamental: “Without [it], we are not members of a community of political equals but subjects of that community” (550).

Questions for Discussion. (1) How would the argument change if we do not believe in a fundamental right to have a say? (2) Does the argument imply that prisons should be run democratically?

Forfeiture (550)

Theory: If you violate the law, then you forfeit certain rights. E.g., if you attack someone, you forfeit your right to not be attacked yourself. This is why felons lose the right to vote.

Objection I: Proportionality is still relevant in this context—criminals do not forfeit all rights. It is not clear why they should forfeit political rights in particular (552).

Objection II: Even if forfeiture arguments work, they at best show that it *wouldn’t be wrong* to bar criminals from the vote. The argument does not yet show that we a good reason to bar them. So this argument, by itself, does not achieve its aims.

Social Benefits (555)

Electoral Integrity and Self-defence (555)

Claim: Allowing felons to vote undermines democracy by weakening criminal laws, and violates the “purity of the ballot box”.

Objection: This claim rests on dubious empirical assumptions. Also, note that we allow non-virtuous people to vote; in general, we intentionally impose very few restrictions on the franchise (556).

Deterrence (557)

Claim: FD helps deterring future crime.

Objection: There is little evidence for this claim. Also, it’s unclear how FD can be a deterrent if most Americans don’t even know about it.

Rehabilitation (558)

Claim: FD helps rehabilitating felons.

Objection: Some of the causes of crime are “alienation, social isolation, a sense of powerlessness, and disrespect for authority” (558). FD is likely to make these feelings *worse*, rather than better. So FD is unlikely to help with rehabilitation.

Questions for Discussion. (1) What other (if any) benefits might FD have? (2) Does FD have any *symbolic* value that might justify it?

Rights and Responsibilities (559)

Claim (Deigh): Rights are linked to responsibilities. If you fail to fulfil the relevant responsibilities, you lose the right. Example: a Hobbesian sovereign’s right to rule (560).

Objection I: If the right to vote is a fundamental moral right, then it will come with “few responsibilities” (561). Basic rights do not need to be earned.

Objection II: If we commit a crime, we might show that we are incompetent as a citizen. But that does not show that we are incompetent in fulfilling other responsibilities, like voting (562).

Conclusion (565)

On the basis of the theories considered, we cannot justify FD—at least not how it’s currently practiced. FD likely goes back to a desire to express our outrage at crime. But FD is not the best way to express this outrage. The right to vote is a fundamental moral right which, even if felons would be unlikely to exercise it, it would be wrong to take from them.

3 Brennan, “The Right to a Competent Electorate”

I. Introduction

When decision with high stakes are made, which are forced upon us and which we cannot avoid, we have a right that these decisions are made by competent persons. Allowing incompetent people to vote violates this right.

Instead, we should aim for an “elite electoral system” (2)—though this paper will not show that this is the ideal form of government.

II. The Basic Argument for Restricted Suffrage (3)

In a democracy, *de iure* power is equally distributed—that is, we all get a tiny share of political power to exercise. This power is held over others, which raises the question “why should that person hold power over me?” (4).

The Jury Analogy

Brennan compares democracy to different juries—the irrational, ignorant, and morally incompetent jury. None of these juries has authority or legitimacy, Brennan claims.

Questions for Discussion. Are there relevant differences between democracy and the jury case?

The Competence Principle

This leads Brennan to formulate

The Competence Principle. It is unjust to deprive citizens of life, liberty or property, or to alter their life prospects significantly, by force and threats of force as a result of decisions made by an incompetent or morally unreasonable deliberative body, or as a result of decisions made in an incompetent and morally unreasonable way. (5)

Even if an incompetent body does not lead to actually incompetent results, the mere exposure to the relevant risk is wrong.

Questions for Discussion. (1) How might we argue for the competence principle? (2) In which other cases might the principle apply?

In government decision, as much is at stake as in jury decisions. So the decisions of the government fall under the competence requirement (7).

The ultimate holders of power in democracies are voters (8). So the principle also applies to electorates. Imagine an ignorant, irrational, and unreasonable electorate (9). The majorities in these electorates act unjustly.

III. Objections to Restricted Suffrage (11)

The competence principle is not the only principle that governs the allocation of political power. So the argument does not yet show that restricted suffrage is superior to all alternatives.

Estlund's First Argument (12)

Brennan considers an argument from Estlund against epistocracy (who shares many of Brennan's premises). Estlund claims that defenses of epistocracy rest on three premises,

Truth Tenet: there are correct answers in politics.

Knowledge Tenet: some citizens know more of these truths than others.

Authority Tenet: having more knowledge justifies having more authority.

Estlund rejects the authority tenet, as he believes it makes the expert/boss fallacy. Being an expert does not generally make you boss! (14)

Questions for Discussion. (1) Illustrate the expert/boss fallacy with an example. (2) Is this fallacy really a fallacy?

Brennan: the current argument does not rely on this principle, however. It only needs a weaker principle,

Anti-Authority Tenet. If you are unreasonable or incompetent, then you should have no authority.

This principle does not say when you have authority; but when you fail to have it. Thus, this argument does not commit the boss/expert fallacy.

Estlund's Second Argument (14)

Estlund has another argument, based on the

Qualified Acceptability Requirement (QAR). Any basis for distributing power has to be acceptable to all qualified points of view (15).

Restricting the suffrage in epistocratic ways—e.g., through a voter competence “exam”—violates QAR. We cannot all agree on where to draw the line between competence and incompetence (15).

Questions for Discussion. (1) What are the “qualified” points of view? (2) What does QAR entail for policy-making? What would a government look like that acted on QAR? (3) Are there any policies that are acceptable from all qualified points of view?

IV. Choosing the Lesser Injustice (18)

Democracy violates the Competence Principle; epistocracy violates QAR. So we need to choose between them. Brennan argues that the former injustice is greater than the latter.

How unjust would it be to fail QAR? Brennan argues that some existing policies already violate QAR—e.g., voting-age restrictions (19). But these violations of QAR are not “horrible” (20). Voting-age laws, while imperfect, fulfil an important function.

A voter examination system would be similarly unjust—which is to say, not very unjust: “Restricted suffrage is about as unjust as voting age laws” (21). By contrast, universal suffrage is as unjust as enforcing incompetent jury decisions. This injustice is much stronger.

V. The Consequence of Restricted and Universal Suffrage (22)

The previous section compared the two systems in terms of justice. What about the expected consequences of these systems?

Instituting voter exams invites corruption (22). At the same time, given how common political ignorance is (23), restricting the suffrage will also have positive effects.

Given that epistocracy is less unjust than democracy, and might have positive effects, we should experiment with it (24).

Questions for Discussion. (1) What other disadvantages might restricted suffrage have? (2) What other injustices (beyond QAR) might restricted suffrage involve?