

Aid for Our Purposes: Mandatory Voting as Precommitment and Nudge

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Mandatory voting has received public and scholarly interest as a solution for problems of unequal representation and policies that advantage the wealthy. Yet some oppose mandatory voting because it seems to coerce political expression, in violation of the human right to free expression. This article fundamentally reinterprets the point of mandatory voting as serving the self-identified purposes of citizens and so minimizes concerns about coercion. It uses survey evidence to show that mandatory voting can help the large majority of American citizens who believe they should vote to do so, thereby functioning as a precommitment mechanism. For the minority who do not think they should vote, mandatory voting functions as a nudge to surveillance, which helps citizens protect their interests, whatever they may be, through encouraging surveillance of political actors. The argument concludes that mandatory voting would make all citizens better off by their own lights and without troubling coercion.

Mandatory voting—or as it will be called here for reasons discussed below, *mandatory turnout*—is enjoying a period of increased public and scholarly interest due to its perceived ability to address some of the most pressing contemporary political issues. Following the 2014 midterm elections, which marked the lowest turnout in the United States in more than 70 years, President Obama said that mandatory turnout would be “transformative” of American politics, sparking widespread discussion of the idea in major news outlets (Yan 2015). Even before Obama’s comments, a growing chorus of often prominent voices had been discussing mandatory turnout in prominent media outlets, in a pattern grown routine in recent election years (Dews 2014; Galston et al. 2014; Levine 2012; Liem 2012; Liu 2012; Marcus 2014; Matthews 2012; Ornstein 2012; Orszag 2012; Pildes et al. 2011). During the same period, there has been a spike in scholarly interest in mandatory turnout, much of it precipitated by Arend Lijphart’s 1997 American Political Science Association (APSA) presidential address (Birch 2009; Brennan and Hill 2014; Engelen 2009; *Harvard Law Review* 2007; Helmke and Meguid 2008; Hill 2002, 2006; Jakee and Sun 2006; Lacroix 2007; Lardy 2004; Lijphart 1997; Malkopoulou 2015; Matsler 2003; Panagopoulos 2008; Singh 2015).

Part of the reason for this interest is increased concern about political and economic inequality. Insofar as unequal patterns of political participation contribute to unequal representation and to policy outputs that disproportionately favor the interests of wealthier citizens, mandatory turnout is seen by some as a way to address these sorts of pressing inequalities through promoting electoral participation among economically and politically marginalized groups (Lijphart 1997). In a world of universal turnout, it is surmised that rightist agendas of fiscal retrenchment and upward redistribution will face harsh sanction at the ballot box, and there is evidence that mandatory turnout states do indeed feature greater support for leftist policies and parties (Bechtel, Hangartner, and Schmid 2015; Fowler 2013). Mandatory turnout has therefore attracted a great deal of public and scholarly interest due to its perceived ability to address some of the most pressing issues in contemporary politics, particularly in the United States.

Yet there are concerns that mandatory turnout is coercive in a particularly troubling way. It has been argued that mandatory turnout compels political speech and so violates one’s right to free expression, which must include the freedom not to exercise it (Lever 2009; Saunders 2010; also see Lardy 2004). If mandatory turnout coerces expression, it

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Data and supporting materials necessary to reproduce the numerical results in the paper are available in the *JOP* Dataverse (<https://dataverse.harvard.edu/dataverse/jop>). An online appendix with supplementary material is available at <http://dx.doi.org/10.1086/690711>.

seems to violate one of the most fundamental human liberties and so must be rejected however much it promises to ameliorate unequal representation and economic inequality.

This article presents a fundamental reinterpretation of the purpose of mandatory turnout, one which can all but eliminate its coercive dimension and thereby remove one of the most powerful and frequently invoked objections to it. On the new understanding of mandatory turnout, it is a means to help all individuals further their own self-identified purposes. It does so either as a precommitment mechanism for those who see themselves as having a reason to vote or as a nudge to surveillance of politics for those who do not.

When people believe they should vote, mandatory turnout can be seen as a precommitment device that helps them to do something they believe they should do but have trouble doing on their own. Empirical evidence suggests that most people in the contemporary United States believe they should vote, as would be required to make this view of mandatory turnout plausible. As a precommitment device, mandatory turnout cannot be said to be coercive in the relevant sense because it helps those who believe they should vote to honor their self-affirmed commitments.

For those who do not believe they should vote, the coerciveness of mandatory turnout is muted if it is viewed as a nudge that encourages citizens to surveil democratic politics for threats to their interests. By nudging citizens to surveil politics, mandatory turnout helps them to protect their interests, however those interests are conceived. On this account, mandatory turnout avoids worrisome coercion due to specific design features of the regime that make abstention possible and because it does not aim to induce voting or other forms of political expression, but rather surveillance, and it leaves citizens free to refrain from such surveillance. Both of these arguments are silent on the long-standing issue of whether voting is a right or a duty, but both conclude that mandatory turnout would benefit all citizens in contemporary democracies by standards they themselves would affirm and without troubling coercion.

The argument here focuses on the United States and how mandatory turnout could be justified to Americans. It does so because of the recent American interest in mandatory turnout discussed above, because problems of low turnout and economic inequality are particularly acute by international standards in the United States, and because the United States has relatively rich survey evidence bearing on the question of what its citizens think about voting. The United States is also a good case because, although everyone is concerned about government coercion, Americans as a group are particularly so. Justifications for mandatory turnout palatable to an American audience, with their heightened sensitivity to coercion, are

therefore likely to defuse concerns other audiences may have about mandatory turnout's coerciveness.

This inquiry also illustrates the way that political theory and empirical political science can be used in concert to yield new theoretical insights. The argument made here engages materially with the beliefs of actual citizens as gauged by public opinion research, a task that political theorists seldom undertake. Looking at public opinion data reveals the new idea of seeing mandatory turnout as a precommitment device. The data also reveal the plausibility of thinking about mandatory turnout in this way because it shows overwhelmingly one-sided support. In this case, empirical evidence opens up an unexpected theoretical alternative that can help revitalize a debate often caught in a stale dichotomy of seeing voting as a duty versus a right. This study therefore serves as a model of how political theory can engage productively with empirical political science.

A DEFENSIBLE REGIME OF MANDATORY TURNOUT

Not all regimes of mandatory turnout are equally justified, nor are they all justified by the arguments offered below. At issue here is a particular regime of mandatory turnout that is designed to respond to common objections and that is based on the best empirical evidence currently available about how these institutions operate in the real world. My aim in this section is not to lay out an original regime of mandatory turnout but rather to draw upon previous work—particularly that of Lisa Hill—to clarify what is being argued for by outlining the design of a “best practice” mandatory turnout regime (Hill 2004). The regime as a whole has much in common with that advanced in a comprehensive body of work by Hill, though the purpose of it has been reimagined in the way articulated below (Brennan and Hill 2014, chap. 5; Hill 2010).

First, we must dispense with the terminology of *mandatory voting* in favor of *mandatory turnout*, because the former is not accurate and invites misunderstanding. It is widely recognized that mandatory voting is a misnomer because there is no way to enforce a legal obligation to mark a ballot paper without violating the secrecy of the ballot (Brennan and Hill 2014, 116). The most that any system of mandatory voting can require of citizens is that they attend the polls and accept a ballot paper or accept an absentee ballot through the mail. Mandatory turnout is a more accurate name for this practice.

It is, moreover, impossible to coerce a *meaningful* vote. This point has not been sufficiently understood in the mandatory voting literature, and it serves to render moot disputes about an alleged right not to vote (Hill 2015; Lardy 2004). When we speak of citizens voting, we mean the casting of ballots that meaningfully reflect citizens' political judgment.

Mechanically attending the polls or physically depositing ballot papers does not count as voting in this sense. Any alleged duty to vote is for this reason essentially uncoercible since no one can force individuals to register their judgment in the required way. Because of the secret ballot, and since meaningful voting cannot be coerced, regimes of mandatory voting are more accurately called regimes of *mandatory turnout*, and this terminology is used in what follows.

This terminological change begins to bury a central line of objection to mandatory turnout regimes, which is that they coerce political speech in violation of the freedom of expression as well as of the right not to vote. Because all that is required of citizens is that they attend the polls, and perhaps accept a ballot, they remain free to either refuse to take a ballot or to cast a blank one (Hill 2010, 433). The right to avoid political expression has thereby been protected, as well as the right not to register an electoral preference.

The fact that voting in the relevant sense cannot be coerced also implies that a purported duty to vote cannot be coerced. I will return to this point below because it helps answer an objection to seeing mandatory turnout as a pre-commitment mechanism.

Another measure that can help defuse the worry of coercing speech is to include on the ballot a “none of the above” or “no candidate” option. This option ought to be included at the top of the ballot as well as for each ballot item.¹ In the US context, such a provision would likely be effective prophylaxis against the courts finding that mandatory turnout laws violate individuals’ First Amendment right to freedom of speech (Lund 2013, 110; Matsler 2003).

Annabelle Lever thinks we should persist with the terminology of mandatory *voting* because mandatory voting is intended to get people to vote, not just to turn out (Lever 2009,

58). If Lever is right, mandatory turnout seems to be illegitimate regardless of the features discussed above because it coerces people with the aim of extracting political expression from them. Yet Lever does not consider that there might be reasons other than getting people to vote to endorse mandatory turnout. That is, even if it is illegitimate to enact mandatory turnout with the aim of extracting political expression, we might reimagine the purpose of mandatory turnout in a way that is legitimate. Two such alternative purposes are offered below based on the desirability of helping people do what they think they should but find difficult to do and on the value of protecting one’s interests. This reimagining of the purpose of mandatory turnout marks a key difference with the understanding of Hill and others who see it as a tool for promoting turnout.

A scheme of mandatory turnout should include sanctions beyond fines but allow for generous exceptions, because empirical evidence suggests that such sanctions maximize the scheme’s effectiveness and that exceptions do not harm it. Mandatory turnout regimes seem to work best at promoting turnout when they combine strict enforcement with “severe” penalties (Panagopoulos 2008). In this research, however, “severe” penalties include any penalty in addition to fines. Thus, mandatory turnout will work as well as the evidence suggests it can if it simply includes sanctions beyond fines, such as *inconvenience windows*. Inconvenience windows suspend some public benefits for those who do not turn out for a period of time calibrated to the importance of the benefit and the average frequency of use. Mandatory turnout states have made use of such windows (though not under this name) with respect to several kinds of public goods, including public employment, welfare benefits, public education, bank transactions, and the receiving of state licenses, passports, and other identification (Birch 2009). Not all of these are defensible, however. Depriving poor nonvoters of welfare benefits, for instance, is disproportionately punitive given the great importance of these benefits. Multiyear bans on public employment, on the other hand, seem justifiable because, although employment is an essential good, alternative employment can be found in the private sector. The length of the ban is justified by the infrequency of changes of employment.

Sanctions like these should be paired with a strict enforcement regime, but this should be one in which the first response to nonturnout is a letter asking for an explanation of nonattendance at the polls. Acceptable excuses should be defined by statute and include things like illness, travel, disability, and a conscience or religious exception. Response letters ought to be assessed on the honor system, such that if a citizen claims to be sick, the explanation will be accepted without further investigation (Hill 2010, 430). Australia uses

1. A “none of the above” option would also have the benefit of generating clearer and more authoritative information about political dissent. Blank or spoiled ballots can be interpreted in a variety of ways, and there is no obvious way to adjudicate between rival interpretations. Does a blank ballot signal dissatisfaction with the proffered candidates? With the major political parties? With the issues of a particular election? Or perhaps with the political system as a whole? Does it reflect thoughtless apathy about politics or a more considered indifference? A “none of the above” option, particularly one included on each ballot line as well as at the top, in addition to the option of submitting a blank ballot, would help differentiate between these interpretations by separating affirmative nonvoters from thoughtless ones and so yield useful information about the character of political dissent in the polity. That this information is generated through the electoral system will make it more authoritative and harder to ignore than if it is generated by survey evidence—as it has been thus far—and might for that reason encourage political entrepreneurs to appeal to this group of disaffected citizens. See Brennan and Hill (2014, 141–42), Engelen (2009, 219), and Hill (2002, 93).

such an honor system, and it works well (Hill 2004). It is important for the argument below that this honor system, along with the generous array of acceptable reasons for non-turnout, ought to make it relatively easy for those who do not attend to avoid sanction. Only those who fail to respond to the initial explanation letter or whose reasons are not part of the approved excuses will be fined and have the applicable inconvenience windows imposed. Despite the ease with which those sufficiently motivated can evade sanction, the Australian model successfully induces turnout between 90% and 95%. This success signals that a strictly enforced regime that nonetheless includes opportunities for evasion does not buy its tolerance for idiosyncrasy at the price of effectiveness as a precommitment mechanism or as a nudge. I discuss the important, and so far overlooked, implications of such a “de-feasible” sanctions regime below.

The final element of the mandatory turnout regime defended here is that it be paired with a suite of reforms designed to minimize the cost and bother of voting. Requiring turnout on the part of citizens obligates the state to make voting as easy as possible. There is a tremendous literature on noncompulsory means of increasing turnout by lowering the costs of voting, but it cannot be engaged with fully here. Suffice it to say that in the United States context, some combination of same-day or automatic registration (Lijphart 1997, 7), making Election Day a mandatory holiday or holding it on a weekend, extending early voting and mail voting (Franklin 1996), expanding the number of polling places and deploying mobile polling places (Hill 2004, 489), and reducing the frequency of elections by consolidating them into one annual Election Day (Boyd 1981, 1986) should be part of a package of reforms accompanying mandatory turnout to make voting easier.

It is important to note that these reforms are *not* recommended in order to boost turnout. Mandatory turnout can take care of that by itself, as discussed below. The purpose of these reforms is to lower the cost of turning out to vote given that doing so will be mandatory. Evidence that these reforms boost turnout is therefore being used here to infer that they lower voting costs. As a normative matter, it is essential that the costs of voting be minimized before or alongside mandatory turnout, since it would be impermissible on the account offered here to make turnout mandatory without meaningful efforts to minimize its costs, particularly in the United States where the costs of voting are especially high. In addition to answering the objection that turnout cannot be legitimately mandated before less coercive means are exhausted, these cost-cutting reforms should help assuage concerns that requiring turnout will harm the most marginalized members of society and risk punishing them for

an inability to attend the polls caused by the inconveniences of voting under the status quo.

Thus, this regime of mandatory turnout makes voting as easy as possible, strictly enforces appropriately severe penalties, and includes conscience exemptions both at the sanction and balloting stages. These features help neutralize several objections to other mandatory turnout regimes and also help mandatory turnout to be as effective as possible.

MANDATORY TURNOUT AS PRECOMMITMENT

Precommitment occurs when agents seek to further their ends by diachronically limiting their options (Elster 1979, 2000). At time t , I precommit myself to take action X (or refrain from taking action Y) at time $t + 1$ by deploying a mechanism to prevent myself from doing anything other than X (or to prevent myself from doing Y) at time $t + 1$. The definitive metaphor of precommitment is self-binding, following the story of Ulysses and the Sirens. Ulysses both wanted to hear the Sirens’ song and not to jump into the water to his death, so he ordered his crew to tie him to the mast of his ship, plug their ears with wax, and ignore any orders he gave them until the island of the Sirens was past. Ulysses thereby drastically limited his options but in so doing was able to achieve his ends of listening to the Sirens’ song and living to tell of it.

Precommitment devices are based on the reasons that individuals already have to follow a certain course of action. They are therefore based on what Bernard Williams calls *internal reasons* (Williams 1981). An argument based on internal reasons is one with its roots in what individuals already believe or affirm, such that we can trace a sound deliberative route from an agent’s existing “motivational set,” or existing store of reasons for action, to the proposal being made. This is as opposed to an argument based on external reasons, which lack any such connection with the agent’s motivational set. Genuine precommitment, then, is merely a means to help people do what they already, on some level, think they should do.

If, therefore, mandatory turnout qualifies as precommitment,² it will be because it aids people in acting according

2. Hill argues for mandatory turnout along broadly similar lines to this under the heading of “self-paternalism” and even uses the canonical example of precommitment in Ulysses and the Sirens (Brennan and Hill 2014, 190–91). But in coining the unnecessarily paradoxical term “self-paternalism,” she does not seem to realize she has reinvented a concept with a significant literature behind it. My contribution lies in recognizing this situation as a case of precommitment and connecting it to that literature, developing a normative-empirical method of how to identify it when it obtains, and deploying that method in the case of mandatory turnout in the United States. Moreover, this argument implies that other places that feature similar conditions could also qualify as precommitment, and it supplies a replicable method for identifying such conditions.

to the reasons they already have in their motivational sets with respect to voting. The main advantage of this justificatory strategy is that it grounds the justification of the institution in the motivations of the people who would be subject to it, making it more likely to be accepted and, if accepted, more enduring. (As we will see, this justificatory strategy extends also to the argument below about mandatory turnout as a nudge to surveillance.)

But how can we come to learn the content of individuals' motivational sets regarding voting? I argue that we can learn this through looking at survey evidence. Yet there is a serious objection to using survey evidence in any philosophical exercise: since individuals could always be wrong regarding what reasons or duties they have, invoking their actual views ought to carry no weight without independent support. If survey evidence is used to show that people think they have a reason to vote, this seems to prove nothing unless it is also shown separately that they do *in fact* have reason to vote. Put differently, untrue things might be widely believed, so citing survey data seems out of place in a normative argument about what reasons people truly have.

I propose that survey data can supply quality information about what reasons people have on the grounds that individuals have privileged access to their own motivational sets. For although the literature on internal reasons is divided on many important questions, there is general agreement that if someone thinks she has a reason and if that reason could in fact motivate her to act under appropriate circumstances, then she does in fact have a reason (Finlay and Schroeder 2015). This suggests that if individuals give a sign that they recognize a reason as applying to them, then there is an excellent chance that they do in fact have that reason. Survey evidence is relevant, therefore, because it is entirely capable of detecting such a sign. Thus, because individuals have privileged information about the reasons that could motivate them, and because motivation is agreed to be a sufficient condition of having a reason, appropriate survey evidence can in fact reveal what reasons people have.

So for mandatory turnout to qualify as a precommitment device, it must help citizens do something that they already believe they should do but have trouble doing on their own. We therefore need evidence that citizens believe that they should vote and that they fail to do so largely due to a poorly designed choice structure. There is substantial evidence to support both of these points.

First, Americans view voting as a duty and so think that they have sufficient reason to always vote. Essentially all of the relevant survey evidence supports the hypothesis that Americans believe they should vote and that their attitudes have changed little or not at all in the last 25 years. (Question

wordings, sources, and topline results for all 27 survey questions can be found in the appendix, available online.) Between 1987 and 2012, 19 polls asked Americans how much they agreed with the statement that "I feel it's my duty as a citizen to always vote," with the possible responses of "completely agree," "mostly agree," "mostly disagree," and "completely disagree." The responses are shown in figure 1.

These data show that, nine to one, Americans agree that it is their duty to always vote. The lowest level that the highest response category—complete agreement—ever reached was 46%; its average level over the period was 63%. If we group all those who agree as well as all those who disagree, we get an even more striking picture of the relationship, as shown in figure 2. Here we can see that roughly 90% of Americans agree—and have agreed for a generation—that it is their duty to always vote.

What is particularly remarkable about these data are their stability and the certainty they signal. There is little variation in the level of support over time, suggesting a stable and enduring preference. Moreover, the level of "don't know" responses, shown in figure 1, average only 1.3% and never exceed 3%, which suggests that this is not an issue on which people's attitudes are embryonic or uncertain.

Eight other polls using different question wordings from the period 1944–2014 provide insight regarding whether Americans think they should vote. These polls generally show results consistent with the above data. Four of the eight are similar to the question above and show substantially similar results. Of the four with markedly different questions, one shows similar results as above, one is consistent with those results, and two contrast with them. The first of these asks whether respondents *registered* to vote because they felt obligated to or that *registration* was a "civic duty," with 90% saying that it was a major (71%) or minor (19%) reason. The second question asks which of a list of five reasons was the "main reason" the respondent voted (to which 53% said "duty"). However, naming another reason does not exclude that the respondent considers voting to be a duty, so these data are consistent with the above results.

The two polls that contrast with the other 25 use an oppositional framing, asking whether voting is a duty as opposed to something else. One opposes duty to "a right to use if you want to" and the other to "a choice each citizen should make for themselves." The former finds that 59% view voting as a duty and 36% as a right, while the latter finds that 38% see voting as a duty as opposed to 60% as a choice. This latter question is an outlier by a substantial (20–50 percentage point) margin from the other 26 polls, and its wording opens the door to bias. The question asks whether it is "a duty of each citizen to vote for President and Congress," nar-

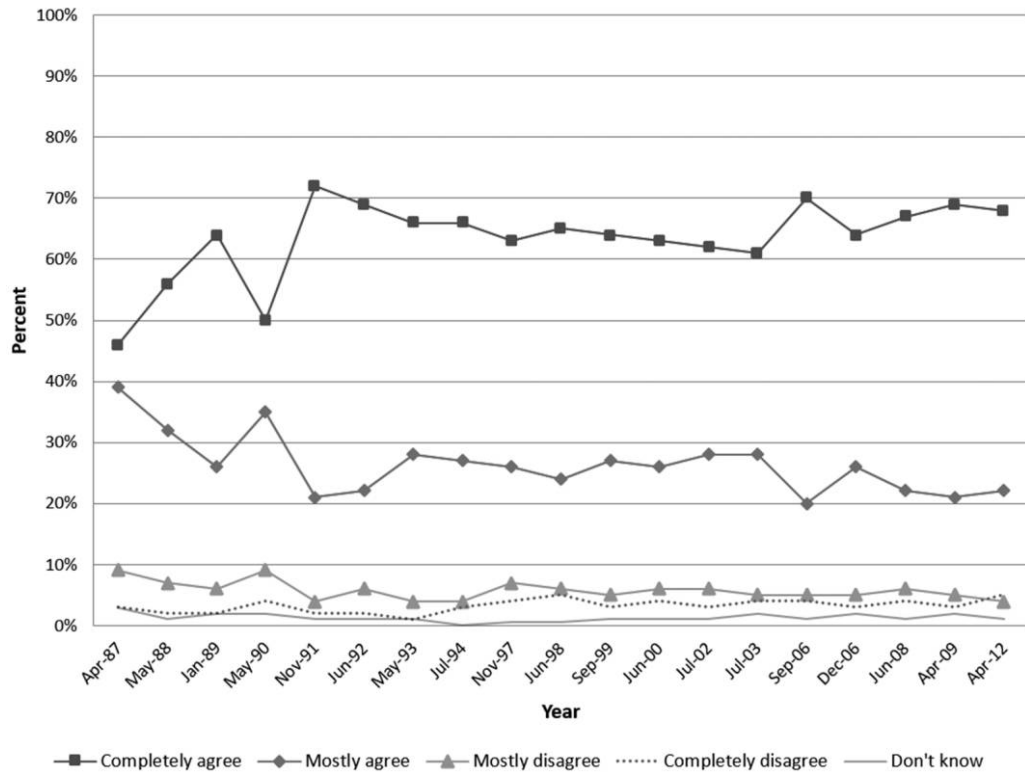


Figure 1. Americans agreeing or disagreeing that “I have a duty to always vote” (1987–2012). Source: Pew Research Center for the People and the Press (1998–2012), *People, the Press and Politics* (1987–1998). The detailed sources can be found in the online appendix.

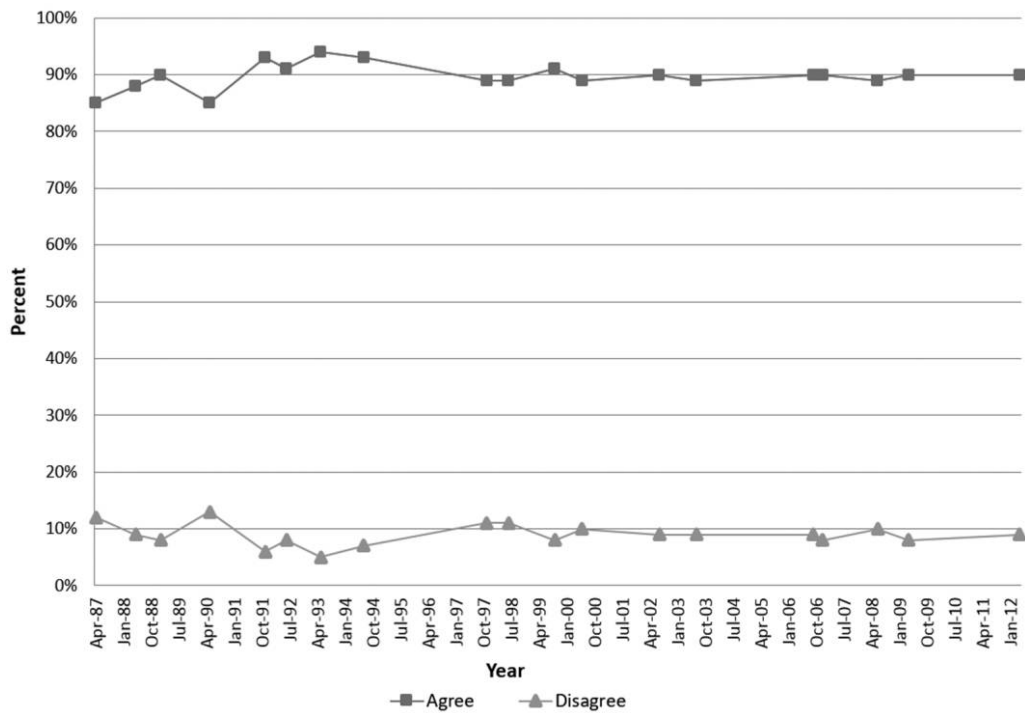


Figure 2. Americans agreeing or disagreeing that “I have a duty to always vote” (1987–2012; combining “completely” and “mostly”). Source: Pew Research Center for the People and the Press (1998–2012), *People, the Press and Politics* (1987–1998). The detailed sources can be found in the online appendix.

rowing the set of offices one might think are important to vote for and inviting approval or disapproval of incumbents to affect the response. The question also frames the alternative to duty with the intuitively attractive but perhaps misleading term “choice.” It is impossible to know for sure how these extraneous considerations affected the results, but they certainly introduce measurement error not present in the other questions and so reduce the results’ evidentiary value. In sum, out of 27 polls bearing on whether Americans think they should vote, 24 show overwhelming supermajority support, and only the most flawed one shows anything less than strong majority support.

These data are in agreement with empirical investigations of the so-called paradox of voting. The paradox stems from a rational choice calculation: the benefits accruing to any individual from their preferred candidate winning are too low to motivate voting due to the relatively high costs of casting an informed ballot, so rational individuals would be expected to refrain from voting. The paradox lies in the fact that millions of people do in fact vote. Rational choice theorists sought to dissolve the paradox by positing that individuals believe voting to be their duty, such that voting provides a benefit in the form of satisfying one’s duty—the famous *D* or “duty” term added to the calculus of voting (Riker and Ordeshook 1968). Empirical studies have in fact found that duty is a powerful cause of voting. In a review of studies on this question, Andre Blais concludes that, as an empirical matter, a “clear majority” of people vote because they believe it to be their duty (Blais 2000, 112). This provides independent confirmation of the hypothesis that most people want to vote and so supports the claim that mandatory turnout can be seen as a precommitment device.

It also seems to be the case that elections are poorly designed in the United States to help people do what they think they should do. The suite of reforms suggested above—making registration automatic or unnecessary, reducing the number of elections, and so forth—are recommended in light of evidence that they reduce the costs of voting. The fact that turnout can be improved simply by lowering its costs implies that the status quo does not do enough to help people vote. Thus, the 9 out of 10 Americans who wish to vote are not being helped to do so under the status quo.

We see further evidence of the poor design of the existing system if we look at data from the US Census’s Current Population Survey regarding why people reported not voting in the 2012 election (US Census 2015, table 10). These data can give us some indication of why about 90 million eligible voters did not vote in 2012. In these data, we find that many of the most common reasons have to do with convenience. The single most common reason for not voting was

being too busy or having a conflicting schedule (18.9%). Other convenience-related reasons were having registration problems (5.5%), having transportation problems (3.3%), having an inconvenient polling place (2.7%), and being out of town (8.6%). Another 14% did not vote due to illness or disability. Together, these inconveniences amount to 53% of all non-voters. This means that around 48 million people did not vote in 2012 due to the existing inconveniences of voting. To put that number in context, the margin of victory in the 2012 election was just 5 million votes, meaning that roughly 10% of these inconvenienced voters could have changed the majority vote winner. The current system takes few steps to help these citizens do what they think they should.

But why, we might ask, should we not simply enact cost-lowering measures and call it a day, having taken steps to help citizens do what they think they have reason to do? Why do we need to go so far as to make turnout mandatory? After all, lowering the costs of voting and requiring turnout are in some sense theoretically equivalent since they are both means to help people do what they think they should, and we might think it illegitimate to mandate turnout before less drastic means have been exhausted.

The main reason these cost-cutting measures are not sufficient is that no set of measures that excludes mandatory turnout is likely to achieve turnout that approaches the level consistent with US attitudes toward voting—that is, on the order of 90%. Comparative evidence suggests that all of the other reforms combined are probably not sufficient to reach this turnout level without including mandatory turnout (Lijphart 1997). This is in part because mandatory turnout is the single most powerful way to promote turnout. Regardless of differences in the estimated magnitude of the effect of mandatory turnout on turnout rates, most comparative analyses of electoral institutions agree that mandatory turnout has the largest single effect in promoting turnout compared to other interventions.³ Moreover, the size of the effect appears to be magnified by a lower baseline of participation, meaning that mandatory turnout has a larger effect where turnout is lowest, as it is by international peer comparison in the United States (Hirczy 1994). Without mandatory turnout, in other words, turnout is unlikely to match the level of expressed desire to vote, and the United States context provides ideal conditions for it to have its greatest possible effect.

3. Lijphart famously argues for mandatory turnout as the most powerful institutional tool for promoting turnout (Lijphart 1997). For the general and comparative effectiveness of mandatory voting, see Fornos, Power, and Garand (2004), Franklin (2002), Franklin, Eijk, and Oppenhuis (1996), Hill (2011), Hirczy (1994), Jackman (1987), Jackman and Miller (1995), and Louth and Hill (2005).

Another reason to see mandatory turnout as a precommitment device can be found if we consider other reasons for not voting reported in the Census data. Nonvoters who report being too busy to vote or that they forgot to do so (3.9% in 2012, and fully 8% in 2010; US Census 2011, table 10) may in fact have failed to vote due to volitional problems, such as weakness of will, being overcome by passions, temporary preference changes, or time discounting. Elster cites these factors, among others, as being strong reasons to deploy precommitment devices (Elster 2000, chap. 1). When these problems arise, they prevent us from doing at time $t + 1$ what we would have wanted ourselves to do then at time t . Precommitment devices are extremely useful in these circumstances because they remind us of our considered preference at time t and help us to act in accordance with that preference rather than the often ephemeral effects of a weak will, passions, preference changes, or time discounting. The reasons cited in the Census data provide some indication that such volitional problems operate in the context of voting, as we would expect given the prevalence of these problems, as well as because of the sometimes weak intrinsic pull the self-affirmed duty to vote has on many citizens. This suggests that mandatory turnout would indeed function as a precommitment device for citizens afflicted with such distracting influences.

These influences also further illustrate why mandatory turnout is needed and not just cost-lowering mechanisms like automatic registration. Insofar as we are subject to motivational problems like weakness of will, passions, and so forth, making voting easier will not be enough for most people to overcome them. The pervasiveness and strength of these motivational problems require a stronger intervention—in particular one that cannot be ignored. Yet all nonmandatory turnout mechanisms for promoting turnout can be ignored by default. Only mandatory turnout intervenes in the binding way needed to help citizens overcome motivational problems like weakness of will.

This argument also helps explain why precommitment ought to be a task for the democratic state and not just for private arrangements. The democratic state and the representatives who control it are the agents of the people, and they ought to serve the people's ends. It is facile to see this relationship solely in terms of mechanical responsiveness (Sabl 2015), delivering only what the people explicitly ask for as opposed to what best serves their purposes. Precommitment, like other policy innovations, is precisely something that people are unlikely to clamor for and yet would make them better off by their own lights. Just because citizens do not currently make use of precommitment devices to help

them vote does not change the fact that their self-professed purposes would be served by such devices. So long as essential rights like that to free expression are protected, it is entirely proper that the democratic state—as the people's agent—help them realize their purposes.

It might be thought that the defeasibility of the sanctions regime runs counter to the precommitment imperative of providing citizens with a reminder they cannot ignore since it seems to make it easy to evade sanction. But this neglects the specific nature of mandatory turnout. It is specifically a legal requirement to engage in a particular action, and the defeasibility of the sanctions regime does not change that fact. This makes mandatory turnout exactly the kind of intervention that individuals cannot ignore. The defeasibility does not enable ignoring the legal requirement but rather allows those who are sufficiently motivated to avoid sanction on the condition of paying a series of costs. The result is to change the default such that no one can ignore Election Day the way they can today, better enabling those who think they should vote to do so.

A potential objection to seeing mandatory turnout as a precommitment device stems from a general skepticism of applying precommitment in political contexts. Elster originally saw precommitment as a way to think about constitutions (Elster 1979). He later revised his view upon realizing that in politics, people are usually more interested in binding others than in binding themselves, and so legitimate instances of political precommitment are actually somewhat hard to find (Elster 2000, 90). One of the most important reasons for this is because in politics we often deal with collective agents whose constituent members do not always agree with, or do not have uniform reasons to engage in, an act of precommitment. Often a part of the polity is interested in binding a different part of it, or those in power today seek to bind those who come after them, as when a constituent assembly seeks to bind later legislative assemblies.

But this is by and large not the condition in the contemporary United States. Here, mandatory turnout counts as genuine precommitment because of the unusual consensus that exists regarding the value of voting. Very few issues command the degree of agreement that exists on this issue. Due to this near unanimity, almost all members of the existing citizen body could experience mandatory turnout as a precommitment device reminding them to do what they think they should, not as being bound by another to do their will. Moreover, to the extent that existing norms regarding the value of voting are reproduced in future generations of citizens, future citizens can be expected to share the reasons that current citizens have to want a precommitment device helping them to

vote (Elster 2000, 96). The remarkable stability in the survey data over nearly a generation suggests that the reproduction of these norms does indeed occur.

Another objection could come from those who affirm that they have a duty to vote but think it would be wrong to coerce them to act according to it. This could be because they see it as analogous to coercing a hypothetical duty to spend quality time with one's children. One might admit to having such a duty but disagree that it would be appropriate for anyone, including the state, to punish them for not doing so. Setting aside the point that this is an example from private life while voting is public and political, the theoretical issue seems to be that it is inappropriate to coerce some duties and that voting may be such a duty.

This might be a powerful objection were it possible to coerce a duty to vote. But, as argued above, a duty to vote involves the expression of one's authentic political judgment in a way that cannot be coerced. Coercion could get one to the polls, even put a ballot in one's hand, but it could never force the expression of one's true opinion. One could always mark a different option or, with the secret ballot, leave it blank. Because of this, fulfilling a duty to vote is always up to us. Thus, those who think it would be wrong to coerce them into fulfilling their duty to vote can rest easy as it is beyond the ability of mandatory turnout, or any other intervention, to so coerce them.

The evidence above shows that most Americans believe they have reason to vote. Per the argument above, this provides strong reason to think that they actually do have reason to vote since they are uniquely well situated to judge whether there exists a sound deliberative route from their motivational sets to, in this case, voting. But do people have sufficient reason or an all-things-considered reason to vote? This is a different and more complicated question, and answering it requires considering the costs of voting and the electoral system's default regarding turnout.

Consider, first, the costs of voting. The biggest cost, and one that is not usually discussed, is an initial outlay of effort in learning the political landscape and where one's views and interests situate one. Updating this information thereafter is fairly cheap, as is actually casting a ballot, particularly with the cost-lowering reforms discussed above. The costs of voting are not therefore prohibitive or even particularly high when amortized over many elections, especially in the information age. The reasons people have to vote are likely sufficiently strong to justify incurring the mild costs of voting.

But perhaps particular individuals' reasons to vote will be defeated by idiosyncratic reasons like pronounced sensitivity to voting's costs, leaving them without sufficient reason

to vote. Mandatory turnout would impose a burden on these individuals of at least explaining why they abstained, and this burden might seem to be unfair.

Yet why would we think this burden is more unfair than the burden citizens who want to vote face under the status quo? Under the status quo, these citizens must overcome the often daunting motivational problems discussed above, in addition to other hurdles. As we have seen, there is reason to think that simply lowering the cost of voting will not actually help everyone who wants to overcome these problems to do so. The predictable result is that, under the status quo, millions of people will be systematically prevented from doing what they think they should do. Is this fair?

One might respond that these burdens are fair because they are ordinary and faced in all actions, whereas the burden placed on those without sufficient reason to vote is artificial and thus avoidable. But this simply ignores that the sort of motivational problems discussed above are also avoidable—by means of precommitment.

This brings us to the essential point that all electoral systems necessarily have a default built into them that determines who faces a greater burden: those with or those without sufficient reason to vote. It cannot be emphasized enough: *there is no neutral default option*. Either the voting system makes their preferred behavior more costly for those with sufficient reason to vote or more costly for those without. The question must therefore be: which default is least unfair?

If both mandatory turnout and the status quo impose unfair burdens, we may seek to minimize unfairness through a necessarily speculative estimation of how many people are likely to have reasons fatally conflicting with that to vote. We should not expect this group to be large due to two dynamic effects caused by mandatory turnout. First, because voting is habit forming (Coppock and Green 2015; Gerber, Green, and Shachar 2003), contrasting reasons are likely to subside with time as more people acquire the habit. Second, mandatory turnout will create a new high-turnout coordination point for social interaction such that everyday social expectations will not only make room for voting but expect it, further depleting the stock of reasons competing with that to vote. It seems then that mandatory turnout is the least unfair default because it will reduce the costs of acting on self-affirmed reasons to vote for the majority of citizens while imposing a reasonably light burden on a dwindling population of people whose reasons to vote are, for whatever reason, defeated.

All this being said, there are obviously some citizens who do not see voting as a duty and so will lack reasons that offset the costs of voting. About 10% disagree with the statement that it is every citizen's duty to always vote. There may also

be a social desirability bias in the data such that some of those who report a belief that they should vote are merely saying what they think they should say rather than what they actually think. Many of them may also be engaging in cheap talk such that their commitment would dissolve in the face of efforts to hold them to it. Moreover, in the Census data, the second most common reason for not voting was not being interested (15.7%), and the fourth most common was not liking the candidates or campaign issues (12.7%). These two complaints add up to nearly 30% of nonvoters (or roughly 27 million people in 2012) and track many conventional narratives about nonvoters as apathetic or ignorant. For all these types of individuals, mandatory turnout cannot be seen as a precommitment device. It must be seen and justified instead as a nudge in Thaler and Sunstein's (2008) sense with respect to these citizens.

A NUDGE TO SURVEILLANCE

For those who deny that they have a reason to vote, a regime of mandatory turnout should be thought of not so much as a nudge to *vote* as a nudge to *surveillance* of politics and political actors. Since the formal sanctions for nonturnout are relatively easy to evade—making the sanctions regime “defeasible” as described above—the legal requirement to turn out will function primarily as a reminder for those citizens who do not think they have a reason to vote that their interests may be at stake in politics generally or in a particular election specifically. The only way to learn whether their interests are threatened is to become attentive to politics and to subject it to surveillance. Individuals can of course choose to ignore this reminder by making use of the unrestricted freedom to use their time as they please, as well as through the many available ways to avoid sanction. But the reminder will recur through the system of mandatory turnout and prompt them (or *nudge* them) to periodically check whether their interests are troublingly at stake in a given election.

Recall that Lever thought mandatory turnout should be called mandatory voting because the purpose of mandatory voting regimes is to get people to vote. The argument here is that we have a different reason to deploy mandatory turnout: to encourage citizens to pay attention to politics and so enable them to detect and counteract threats to their interests. If this is our aim in enacting mandatory turnout, we are no longer aiming to induce voting in violation of the freedom of expression. We are instead restructuring the choice situation faced by citizens around election time to encourage political surveillance.

Everyone stands to benefit from engaging in surveillance. In whatever way citizens understand their interests, those interests may be at stake in politics. This is equally true of

those who accept and those who deny that they have a reason to vote. The only way to assess whether one's interests are troublingly at stake is through surveillance and reflection about one's interests. For this reason, even those who have idiosyncratic interests that seem insulated from politics gain from the nudge to surveillance since the only way to know that one's interests continue to be insulated is to periodically reconsider them and check that they have not become implicated in the changing political agenda.⁴

By periodically encouraging such surveillance and reflection, mandatory turnout enables citizens to detect threats to their interests and, should they discover such threats, enables them to undertake political action in opposition to them. Thus, mandatory turnout can be seen to provide those who do not see any reason to vote with a reminder that their interests may be at stake in politics and with an opportunity to surveil and affect the making of those decisions through political action, perhaps including voting. Without mandatory turnout, it would be all too easy for these citizens to fall into utter disconnection from politics, with the result that their interests—and those of people like them—are not adequately served by the political system.

But does mandatory turnout actually have the effect of inducing surveillance? If it did, we would expect citizens in mandatory turnout states to seek out political information more than in other states. There is indeed evidence that mandatory turnout encourages higher levels of political knowledge, particularly among the least well educated. Stacy Gordon and Gary Segura, and in separate research, Heidi Berggren, find that in mandatory turnout states, voters are better able to place parties accurately on a left-right scale, indicating better knowledge of where parties stand (Berggren 2001; Gordon and Segura 1997). In a series of lab and field experiments, as well as using observational data, Victoria Shineman shows that knowing one is required to turn out will induce knowledge searches and improve recall of political information (Shineman 2013). In separate studies, Jill Sheppard and Miguel Carreras find that there are smaller disparities in political knowledge between traditionally advantaged and disadvantaged voters in mandatory turnout states, suggesting that mandatory voting incentivizes information gains among more marginalized citizens (Carreras 2016; Sheppard 2015). The ex-

4. This use of the idea of interests is meant to be maximally inclusive of all conceptions of interests, and in particular it is meant to be compatible with the view that interests are not pre-given or natural but are rather constituted by practices and institutions of deliberation and representation (Disch 2011; Urbinati 2006). It is this feature of interests that is alluded to here with the language of “reconsidering” interests in the context of a dynamic political world.

isting evidence suggests that mandatory turnout can induce information gains and thus surveillance.

It is important to understand how the nudge to surveillance differs from paternalistic coercion on the one hand and precommitment on the other. What differentiates nudges from paternalistic coercion is that they leave the individual free not to act as the authority or choice architect wishes them to. This is what Sunstein and Thaler must mean when they say that nudges do not eliminate any options (Thaler and Sunstein 2008, 6) since it is impossible for nudges not to eliminate *any* options; they must at least eliminate the important option that one not have one's choice situation manipulated by others. The best way to make sense of this requirement, then, is to say that nudges do not eliminate options *directly relevant to the authority's purpose* in deploying the nudge, leaving the individual free to act otherwise than the authority would like.

Mandatory turnout qualifies as a nudge in this sense because, although it technically eliminates the option of not turning out, it leaves citizens with all of their options intact relative to the purpose of the nudge, which is to encourage citizens to surveil politics for threats to their interests. Although mandatory turnout encourages surveillance, it also leaves citizens free to refrain from it. Citizens remain perfectly free *not* to surveil politics under a regime of mandatory turnout, and so they remain free and uncoerced vis-à-vis the purpose of the nudge. The nudge to surveillance is not therefore paternalistic coercion.

There is also an important difference between nudges and precommitment, but this difference brings out something essential that they share. The difference between nudges and precommitment is where the judgment of the individual comes into play. In precommitment, that judgment is front and center—the only reason to engage a precommitment mechanism is if it furthers individuals' self-affirmed motivations to act, that is, their internal reasons. In nudging, individuals' judgment comes into play in response to the manipulated choice situation, to decide whether to go along with what the choice architects have in effect recommended that they do. Put this way, we can see that the individual's judgment is more active and central in precommitment than in nudging, where its role is primarily reactive.

Yet the scope of individual judgment is especially wide in the nudge to surveillance, and this scope reveals how it shares its basic justificatory strategy with the precommitment argument. The scope of individual judgment is wide because surveillance, and the political action it enables, helps protect individuals' interests, *whatever their interests may be*. Instead of interpreting the content of individuals' interests as one must to justify classic nudges like saving for retirement or deterring bad eating habits, the argument here appeals to

the general desire to protect one's interests, however understood, from the predations of political actors. It is hoped that in doing so the argument draws from what people already want—to protect their interests—in order to justify the legal requirement to turn out. As with precommitment, this justificatory strategy appeals to individuals' own understanding of their reasons for action, seeking to offer a persuasive account of how mandatory turnout practically advances their interests as they understand them.

If we consider the reasons individuals say they are not interested in voting, we can see what else we gain from the nudge to surveillance created by mandatory turnout. Reasons like a lack of interest or dissatisfaction with the candidates and issues of the campaign can be expected to change somewhat with mandatory turnout, since people who are supposed to turn out will also be motivated to think again about the candidates and issues of the campaign and so to seek out some new information about them, as the empirical evidence suggests. Those lacking political interest will certainly not all be converted, but some portion of them may be persuaded to take another look at democratic politics and reconsider their disinterest. Even if they only thereby reconfirm that disinterest, through reflection they will have found their place in the democratic polity as what we might call "thoughtful apathetics." Such citizens are surely better than thoughtless apathetics who eschew politics and political engagement without considering their merits or how their interests might be at stake in politics. Moreover, the periodic reminder provided by mandatory turnout will encourage periodic reconsideration of politics, allowing for a new issue or agenda to reach people who are otherwise politically passive and demobilized.

As with precommitment, we might worry that mandatory turnout as a nudge to surveillance imposes an unfair burden on those with idiosyncratic interests that are less impacted by politics. For although it should be clear that mandatory turnout does not coerce political expression, it might coerce people to make politics one of the things they concern themselves with, whether they think it worthwhile or not. Yet just because individuals have some reason to pay attention to politics does not mean that they have sufficient reason to do so, all things considered. Compared with other interests or priorities, politics may not measure up in one's economy of concern and interest. This is an important and profound objection—important because it suggests that mandatory turnout is disturbingly coercive after all and profound because it requires addressing fundamental issues in political theory regarding the appropriate use of political power and how demanding of one's citizens a democracy can be.

A full response to this objection therefore goes beyond the scope of this article, but there are three points that can

be sketched to answer it. First, no one is forced to actually make politics one of their concerns since—due to its defeasible sanctions regime—mandatory turnout merely invites renewed reflection about whether one’s disconnection from politics is truly serving one’s interests, leaving individuals free to disregard the nudge’s purpose and ignore politics. Second, even if the nudge did coerce interest in politics, there is good reason to think that this would be a legitimate use of power, since even a minimal account of democracy’s proper task, like the protection of the rights and interests of all, cannot be fulfilled without the systematic representation of all and because the inattention of any particular set of individuals will defeat this aim by causing the underrepresentation of their interests. Third, there are better and worse reasons for individuals to decide that politics is not for them, and so we need something like an “ethics of political apathy” in order to determine when one may neglect politics in a democracy. One element of such an account would be the distinction between thoughtful and thoughtless apathy mentioned above.

CONCLUSION

This article has put forth the argument that mandatory turnout, if well designed, can be justified as a precommitment device when most citizens in a polity believe they have reason to vote. It puts forth evidence that most Americans today do indeed understand voting in this way. For those who do not see themselves as having a reason to vote or who reject the precommitment argument, mandatory turnout serves as a nudge to surveillance and so helps them detect dangers to their interests, whatever they interpret their interests to be. In this way, mandatory turnout can be seen to benefit all Americans according to their own lights.

These arguments also allow us to advocate mandatory turnout without having to resolve the question of whether voting is a right or a duty. It is enough to recognize that it furthers individuals’ purposes as understood by themselves. For those who think they should vote, mandatory turnout helps them act on reasons they recognize as applying to them. Those who do not agree can be accommodated through careful institutional design that makes the sanctions regime “defeasible,” allowing them to exercise their self-affirmed right not to cast a meaningful vote. The defeasibility of the sanctions regime also allows mandatory turnout to function as a nudge to political surveillance, better securing the interests of all, however they are understood. In this way, the defeasibility of the sanctions regime allows for mandatory turnout to serve the self-identified reasons and interests of both those who affirm and those who deny that they ought to vote.

It puts the former in a situation where they are more likely to accomplish their self-affirmed duty to vote and enables the latter to better promote their political interests while also letting them refrain from doing so.

Finding a way to accommodate both of these groups was only possible through the deployment of empirical evidence regarding how mandatory turnout regimes perform and survey evidence on public attitudes toward voting. The evidence about mandatory turnout’s performance illustrates the possibility of designing a strictly enforced and effective sanctions regime that is nonetheless easy for those so motivated to evade. And this, it turns out, is exactly what is needed to help the majority of citizens who believe they should vote to do so, without unduly burdening those who deny it.

ACKNOWLEDGMENTS

I would like to thank Melissa Schwartzberg, Ben Schupmann, Ashraf Ahmed, David Johnston, Jon Elster, Bob Shapiro, Andrew Sabl, and the participants of the Columbia Works-In-Progress Workshop for their extensive help in formulating and refining the arguments of this paper. I am also indebted to Jacob Levy for invaluable support and advice. I would also like thank two anonymous reviewers for their helpful advice and feedback.

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