The American Spectator

Constitutional Opinions

**A Case Against Mandatory Voting**

Government should not force people to be free.

By Fred L. Smith – 7.25.11

Big government "solutions" for every social problem under the sun are all around us. I thought I'd seen them all -- until recently, when I found myself debating a statist proposal to *cure apathy*. Norman Ornstein of the American Enterprise Institute and I recently debated mandatory voting. He argued in favor and I in opposition. Ornstein brought up many interesting points, however, and I feel compelled to present my thorough responses below. I have always held the expansion of liberty as the most important goal of public policy, but it cannot be achieved through forceful regulation. The use of force to encourage freedom, I believe, is self-contradictory and practically and morally wrong.

**Mandatory attendance at polls is still mandatory voting.**

Ornstein was quick to point out that he doesn't necessarily support mandatory voting, but rather, in accordance with the system currently in place in Australia, "mandatory attendance at the polls." To me, this is just an attempt to deflect attention from the "mandatory" part. Poll "attendees" are still required to cast a ballot, and in Australia those who fail to do so -- even if they showed up at the polls -- can be prosecuted. Even choosing "none of the above" or "X," as is possible in Australia, involves casting a vote.

Ornstein touted as a success the fact that, under Australia's compulsory system, only about three percent of voters write in "X." Meanwhile, in America, over 40 percent of eligible voters don't even go to the polls in any given election. So Australia is better off, right? If Ornstein's goal is to get only three percent of eligible American voters choosing "none of the above," then he will also have to deal with 37 percent of uninformed, disinterested, and apathetic Americans being forced to cast ballots for candidates about whom they know little, if anything at all. What good could come of that?

**Consensus is not a democratic value.**

In his previous writings on the topic, Ornstein argues that mandatory voting will bring America to the center and eliminate the "polarizing" effect of partisan politics, especially in primary elections. His theory is that elective voting creates an environment where parties stir up their bases, leading to the election of increasingly more liberal Democrats and increasingly more conservative Republicans. With all of these radicals in office, he argues, "valuable Congressional time is spent on frivolous or narrow issues (flag burning, same-sex marriage) that are intended only to spur on the party bases and ideological extremes. Consequently, important, complicated issues (pension and health-care reform) get short shrift."

Who decides which issues are important? Shouldn't politicians respond to what their constituents tell them is important? I chided Ornstein for trying to make everyone play "nice," as if politics could somehow lead to consensus through a utopian deliberative process. The Australian system he cites has not produced a placid political process by any means -- and it's already been in use for decades.

**Jury duty and voting duty serve different purposes.**

The most common argument put forth by supporters of compulsory voting is that, just as Americans have a civic obligation to perform jury duty, they should face a similar obligation to vote. This seems like a tempting argument, but it is based on a fundamentally flawed understanding of the Constitution and the Bill of Rights.

The Sixth and Seventh Amendments to the Constitution specify that both criminal and civil defendants have the right to a jury trial by their peers. For you to enjoy that right, your peers -- and you in turn -- must serve on a jury. This is one of the few instances where the Constitution compels citizens into service. There is no constitutional right to serve on the jury -- it is a constitutional requirement on all voting citizens. This compelled service is correctly called a civic *duty*.

Voting is very different. No less than five constitutional amendments mention the right to vote, but nowhere in the Constitution is voting defined as a civic duty*.* As such, jury members are required to listen to both sides and then carefully deliberate before reaching a decision. Voters cannot be forced to listen to hours of campaign speeches before voting.

Most importantly, jury trials and elections serve different purposes in the American system of government. Juries act as a check on the power of the state, by shifting some of the judicial decision-making power to private citizens. Voting, by contrast, is the process by which citizens delegate power to government. Therefore, compulsory voting would entail forcing large numbers of people to make an uninformed decision on a matter of crucial importance.

Ornstein eventually conceded that compulsory voting would require "trivial" enforcement costs and would constitute a "trivial" loss of freedom. Yet the cumulative impact of past "trivial" costs has created today's huge budget deficit. And even "trivial" losses of freedoms over time move us in the direction of tyranny. Opinions may differ on whether greater voter turnout is a good thing, but no one should support policies designed to *force* people to be free.

***(Mr. Smith's research assistant, Jacqueline Otto, contributed to this article.)***

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