

Response to Umbers: An instability of the duty and right to vote (Pre-print)

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Abstract

Lachlan Umbers (Res Publica. <https://doi.org/10.1007/s11158-018-9395-4>, 2018a) defends democracy against Jason's Brennan's (Philos Q 61:700–724, 2011) competence objection, by showing that voting even incompetently does not violate the rights of others, as the risk imposed is negligible, and furthermore lower than other permissible actions, e.g. driving. I show there are costs in taking this line of argument. Accepting it would make arguing for the duty to vote more difficult in two ways: since voting incompetently is permissible, and not voting imposes less risk than not voting, then not voting is permissible; in terms of fairness, voting incompetently is worse than not voting, if voting incompetently is permissible, then there cannot be a fairness-based duty to vote.

Keywords Right to vote, Duty to vote, Risk, Competence objection, Democracy, Fairness

Champions of democracy hold that there's a right to vote. Democracy, after all, minimally involves equal political participation or equal political influence, and currently the most prominent way of realising this political ideal is through universal suffrage. Some democrats go a step further and argue that there's also a duty to vote. The belief of this duty provides a solution to the rationality of voting; furthermore, if we genuinely have such a duty, it would be easier to argue for compulsory voting. The claims of a right and a duty are both desirable. However, there is tension between these two claims. Here's a tentative argument.

- (1) It's permissible to vote incompetently.
 - (2) It's impermissible to not vote.
 - (3) Voting incompetently is no better than not voting.
- Therefore,
- C: Either give up (1), or give up (2), or give up (3).

Some elaboration: On (1), a right to vote implies that it's generally permissible to vote, which entails a permissibility to vote incompetently. This understanding is what democrats explicitly defend, as we shall soon see. On (2), to have a duty to do something minimally involves the impermissibility to not do the thing. There's a duty to vote. Thus, it's impermissible to not vote. (3) is just based on intuition here, but I will provide a step by step justification in due course. For the argument to work, however, we also need

(4) Moral status is linear such that, on the same scales, actions no worse than permissible actions are permissible; actions no better than impermissible actions are impermissible.

(4) is just a typical way we make normative arguments. For example, if murdering one innocent person is wrong, so is murdering a different person or two innocent people. I'll say slightly a bit more on this when we get to a democratic champion's defence of (1).

This argument obviously requires closer examination. We need to scrutinise the basis of the permissibility claim (1) and the impermissibly claim (2). This is also how the democratic champion may put pressure on (3). They'll most likely argue that the comparison is misleading, as the two claims are not grounded on the same normative basis. Perhaps indeed voting incompetently is worse than not voting in some respect, but where the impermissibility of not voting is proclaimed, voting incompetently stays clean. If so, there's only surface tension, but no outburst.

I'll try to release the pressure democrats apply on (3) by scrutinising the basis on which they make claims such as (1) and (2). We'll then see whether according to their analysis, there is common ground shared by the two premises that legitimises the comparison.

1. A defence against the incompetency challenge

Democracy has constantly been under sieged. Most recently, the crusader of epistocracy Jason Brennan (2011; 2016) launched a forceful assault against the general permissibility to vote. The thought is simple. We have a right against unwarranted risk imposition from others regarding things that matter significantly to our lives. Incompetent

voters, in virtue of voting irrationally, irresponsibly, or immorally, impose undue risks on things that matter to us dearly. Therefore, voting incompetently is a rights violation and thus impermissible. Therefore, there's no *general* permissibility to vote.

Champions of democracy, unsurprisingly, have many defences against such an advancement. Here I focus on one: the negligible risk defence. Umbers (Forthcoming), a sentinel of democracy, draws from the rationality of voting (G. Brennan and Lomasky 1993), and argues that though incompetent votes do impose risk on others, the risk is negligible and thus doesn't amount to a rights violation. It goes like this. Under a permissive set up (two options, 0.51 voter bias towards one option) with only 200,001 voters, the probability of being the decisive voter is as low as 1 in 12.3 million (G. Brennan and Lomasky 1993, 57). In actual settings, where settings are less permissive, with more voters, more voter bias, and more options, the probability would be significantly smaller, most likely astronomically low. However unfortunate it would have been if an incompetently-casted vote became decisive, the approximating 0 probability renders the risk negligible. Thus, even the risk of voting most maliciously is lower than, say, driving. Since driving is most likely permissible, something both Umbers and I presume, and on the scales of risk and rights violation voting is no worse than driving, voting is permissible. Here we get a defence of (1), as well as an instance of (and thus lend credit to) (4), which is, to reiterate

(4) Moral status is linear such that, on the same scales, actions no worse than permissible actions are permissible; actions no better than impermissible actions are impermissible. Voting incompetently is no worse than driving, on the scales of risk imposition. Driving is permissible. Therefore, voting is permissible.

2. A fairness-based duty to vote

The negligible risk defence extract a certain theoretical cost: democrats can't appeal to difference making to ground the duty to vote. For in terms of risk imposition, not voting is no worse than voting incompetently, either because voting incompetently imposes more

risk, or because the difference between the two is negligible. Therefore, by (4) there can be no impermissibility to not vote just because of risk imposition.

Moreover, a number of other strategies would also be unavailable for democrats who intend to vindicate the duty to vote but are unwilling to sacrifice the general permissibility. Examples include appealing to altruism, universalizability, complicity to injustice, or civic duty. If not voting is not altruistic, in-universalisable, being complicit to injustice, and would go against civic duty however interpreted, so is voting incompetently, if not more so. Therefore, either there's no general permissibility to vote, or there can't be a duty to vote.

Thus, when defending the duty to vote, appealing to the bad taste free-riding leaves behind is most likely the best strategy the champion of democracy has. This is in part because fairness judgements don't appeal to difference-making, but more importantly because fairness is just about whether one has done her fair share. Bracketing other equivalent or better ways of contributing to the political process and focusing on voting, here's the general thought:

- (1) There's some common good that needs to be secured through collectively voting.
 - (2) Though not voting would not endanger the achievement, it's free-riding.
 - (3) There's something unsavoury about free-riding that makes it morally impermissible.
- Therefore,
- C: It's impermissible to not vote even if voting isn't instrumental to the achievement.

The common good here can be left open to interpretation. It may well be good epistemic outcomes, but it's obvious that voting incompetently goes against it, and the champion would not charge this way. It may well be a high turnout, but high turnout for the sake of high turnout is uninteresting.

A more promising strategy is to invoke democratic safeguard, that when a group votes, the powerful, the majority, and/or the government will take their rights and interests more seriously. Umbers (2018), the sentinel, has drawn much upon empirical research to show that the mere enfranchisement of historically disadvantaged groups helps to improve

their social and economic status (e.g. Aidt & Dallal, 2008). This safeguard against the tyranny of others, however, can only be secured by enough members voting. It shows that they, as a group, do have the capacity to somewhat affect who gets to be and stay in office, which leads to at least a minimal degree of responsiveness of the powerful. This is furthermore evidenced by politicians using voter turnout rates as index to political attentiveness, which translates into higher per capita federal expenditures (Martin 2003). Members who refrain from voting, so the argument goes, enjoy this safeguard but refuse to do their part. That's free-riding. Therefore, it's impermissible.

4. The same or different basis?

Therefore, we may reconstruct the argument, and show that there's only surface tension without outburst:

- (1) It's generally permissible to vote, for there's no rights violation.
 - (2) It's impermissible to not vote, for that would be free-riding.
 - (3) On the scales where the impermissibility comes into play, voting incompetently is clean.
 - (4) Moral status is linear such that, on the same scales, actions no worse than permissible actions are permissible; actions no better than impermissible actions are impermissible. Therefore,
- C: (1) and (2) is compatible.

So far so good. However, there may still be some room to turn the democrats against each other. We just need to question whether voting incompetently can be deemed no better than not voting on the scales of fairness. The common good in question here is the democratic safeguard the group enjoys. To free-ride is to enjoy this nonexcludable good while not doing one's fair share in realizing it. So, is voting incompetently in any way worse than not doing one's fair share in securing democratic safeguard? Arguably so.

Consider the concept of "voting correctly:" "a 'correct' vote decision as one that is the same as the choice which would have been made under conditions of full information" (Lau and Redlawsk 1997, 586). Relevant to the purpose of this paper, factors at the individual level that predict incorrect voting include having less knowledge of the world and politics, being inexperienced in voting, and not putting effort in trying to vote correctly (Lau et al.

2014). In short, incompetent voters in virtue of being ignorant and/or irresponsible are more likely to act against one's own interest.

Note that we need not investigate whether empirically voting incorrectly makes more a difference than not voting in terms of probability or risks. Instead, we can grant that both are negligible, despite not voting being more negligible. Like any other fairness argument, we just need to focus on whether one has done one's fair share by contributing. In cases where the individual's interest aligns with the group's, according to two equally plausible interpretations of how enough members voting achieve democratic safeguard, voting incompetently can be problematic in two ways:

First, it may be about whether a group really gains the capacity to enjoy democratic safeguard. In order to have the capacity to somewhat affect who gets to be and stay in office, a group needs to have a sufficient portion of members voting correctly. Voters who are incompetent to the degree that they vote incorrectly, are not just failing to do one's fair share. In addition to not actually contributing, what they do is undermine the attempt to achieve the common good. Each incompetent voter eliminates one effort of someone else doing their fair share. In comparison, refraining from voting at least doesn't exterminate anyone's contribution. Therefore, voting incompetently in terms of voting incorrectly is worse than free-riding, on the exact same scales of fairness related to achieving the common good of democratic safeguard through the group crystalizing the capacity to influence.

Second, it may be about whether a group is perceived to have the capacity to enjoy democratic safeguard. When a group is enfranchised, and furthermore members do vote, to the powerful, it may seem that the group has the capacity to influence. But such a perception can be undergirded or undermined by the voting behaviours of the members. While each vote is private, there are ways to determine whether members of a group vote in certain patterns. The more members vote in line with their group, the more the group

appears to have power. However, the more incompetent voters vote incorrectly, the more evidence others gain on the group's political inattentiveness, and in a way worse than not voting. It's not just eliminating someone's effort to secure a common good. It runs the risk of evidencing that the group robustly lacks the capacity to influence: they have the arsenal to defend themselves, but they lack the skills to use them. This also goes against the democratic safeguard.

In sum, voting incompetently is worse than, and thereby no better than, not voting on the scales of fairness regarding democratic safeguard; for this common good depends on enough members voting in the same direction, while incompetent voters not only fail to make any contribution, but actively weakens the defences with friendly fire. This applies more generally. Insofar as any common good depends on voters voting in certain specific directions, voting incompetently can be worse than, and thereby no better than, not voting on the scales of fairness.

5. An instability

Here's the final argument.

- (1) It's permissible to vote incompetently.
 - (2) It's impermissible to not vote, for that would be free-riding and thus unfair.
 - (3) Voting incompetently is no better than not voting, on the scales of fairness.
 - (4) Moral status is linear such that, on the same scales, actions no worse than permissible actions are permissible; actions no better than impermissible actions are impermissible.
- Therefore,
C: It's both permissible and impermissible to vote incompetently.

Democrats are unable to apply pressure on (3). The surface tension no longer holds. There's an outburst. A right to vote entails (1). A fairness-based duty to vote is essentially (2). (1) and (2) react against each other. There's an instability of the duty and right to vote.*

References

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