

Against Democracy Epistocracy

Abstract

There has been a recent resurgence in epistocratic arguments against our democratic institutions. Jason Brennan (2009, 2011, 2016) is a popular representative of the approach. Here, I criticise Brennan's account and offer an alternative analysis of modern democratic societies. I argue that Brennan has not shown that the currently enfranchised are relevantly incompetent such that they ought to be excluded from the franchise. Further, even had he shown this, his proposed solution suffers from the same injustices he diagnoses in democracies. I consider an alternative means of embracing a restrictive franchise.

1. Introduction

Brennan opens *The Right to a Competent Electorate* with the claim that "Many of my fellow citizens are incompetent..." (2011, 700) This claim sets the tone for the article, in which Brennan argues that incompetent voters harm democracy, and ought not to be enfranchised. This goes further than his claims in 2009, where he argued that certain citizens "should not exercise their right" to vote (544). It aligns with his claims in *Against Democracy* (2016), wherein he ups the ante again, this time claiming that "most of my fellow citizens are incompetent..." (142). Competence, then, plays a crucial role for Brennan in determining who should participate in politics. If his diagnosis of the citizenry is correct, then at least many, if not most citizens are incompetent and ought not to have the right to vote.

In this article, I first examine universal suffrage, which Brennan claims breaches his competence principle, thereby unjustly subordinating citizens to control by the incompetent or unreasonable. I argue that if we take seriously Brennan's claim that we have democracies with universal suffrage, then the content of the concept 'universal suffrage' cannot support his claims regarding competence. I then address Brennan's competence principle directly. I claim that we both have and enforce competence requirements for political participation, and that Brennan cannot merely rely on "uncontroversial platitudes" (2016, 162) about competence in defending his claim that most of his fellow citizens are incompetent. I present a range of reasons to reject his conclusions regarding competence based disenfranchisement. Finally, I recast the debate in light of these arguments, noting that there are and should remain some grounds for disenfranchisement of the incompetent, but disagreeing with Brennan as to their extent.

2. Universal Suffrage

Brennan does not think that democracies are particularly bad. He merely claims that if "any form of epistocracy, with whatever realistic flaws it has, turns out to perform better than democracy" we ought to implement it rather than democracy (2016, 16). His work is designed to show that our democracies are flawed, and that potential epistocratic regimes could replicate the instrumental value of democracy

without replicating the flaws he identifies. In order to achieve this, he must have a clear account of the flaws in democracy.

One such flaw, on his account, is universal suffrage. Brennan claims that “the best governments there are, right now, are all democratic with universal adult suffrage” (2011, 724). There is an obvious sense in which this claim is false. As Ludwig Beckman notes, “children, people with cognitive impairments, felons and resident aliens are almost everywhere excluded from participation in national politics” (2008, 36), yet democracies which exclude on these grounds are still taken to have universal suffrage. However, this is perhaps being uncharitable to Brennan. Such criticisms stem from what Beckman would classify as a maximalist account of the concept ‘universal suffrage’ (2008). Such an account only recognises universal suffrage if all within the state are enfranchised. No existing democracy has universal suffrage on this account.

Brennan must then have a different conception of universal suffrage in mind. Beckman describes two other possible accounts of universality. The first, minimalism, is compatible with a highly restricted franchise (Przeworski et al., 2000, 15). As Brennan is explicitly analysing enfranchisement, he cannot be utilising this kind of account. This leaves the conventionalist account (Beckman, 2008; Still, 1981). Under this account, a democracy has universal suffrage when it only applies the usual exclusions. These are exclusions of the kinds I noted above, which are commonly utilised and accepted by democratic states, who nonetheless claim to have universal suffrage.

Brennan appears to be a conventionalist on Beckman’s terms. In addition to the claim mentioned above, that the best governments we have are democracies with universal suffrage, Brennan claims that “most democracies already exclude some citizens from voting because they hold that some citizens are incompetent to vote” (2011, 718). Applying the principle of charity to Brennan’s claims, he is not being internally inconsistent. Rather, he is utilizing a conventionalist account of what universal suffrage entails. This does not get him out of his predicament, however. If we accept that this is occurring, then it seems that Brennan is equivocating on the concept of universal suffrage, as demonstrated in the following formulation he gives of his position on whether restricted or universal suffrage is more intrinsically unjust:

1. Both (a) voting age laws and (b) a policy of enforcing decisions made by incompetent or unreasonable juries are intrinsically unjust, but (b) is more unjust than (a).
2. Restricting suffrage to those who can demonstrate competence would be about as unjust as (a).
3. Universal suffrage would be about as unjust as (b).
4. Therefore universal suffrage is more intrinsically unjust than restricted suffrage.

(2011, 719-20)

A conventionalist conception of universal suffrage says that a democracy has universal suffrage even whilst restricting suffrage to those who can demonstrate competence. But if this is so, then universal suffrage is about as unjust as (a), not (as per 3), about as unjust as (b). The conception under which universal suffrage is about as unjust as (b) is a maximalist one. But, as Beckman notes, “the franchise is restricted in every democratic political system” (2008, 30). No democratic state is maximalist.

One may also want to challenge Brennan’s blithe dismissal of the injustice of voting age laws. The conventionalist universal suffrage that modern democratic states have does perform an injustice, not

against Brennan's competence principle (see 3, below), but against young citizens who fulfill the competence requirement of their democracies, but are nevertheless excluded from the franchise. There is a competence requirement, both widely accepted and utilized in defense of the exclusion of the young, which serves to render current democratic practice non-universal, and which, I have argued, is in fact being misapplied when used to rule out the young (Munn, 2012a; 2012b; 2016).

3. Brennan's standard for competence

Brennan's competence principle, which grounds his objection to democracy, is as follows:

"It is presumed to be unjust and to violate a citizen's rights to forcibly deprive them of life, liberty or property, or significantly harm their life prospects as a result of decisions made by an incompetent deliberative body, or as a result of decisions made in an incompetent way or in bad faith. Political decisions are presumed legitimate and authoritative only when produced by competent political bodies in a competent way and in good faith." (2016, 141-2)

Voting by incompetent actors is, on his account, sufficient to trigger the injustice. However, we should note that modern liberal democracies commonly have and enforce competence requirements on some potential voters. These standards are, admittedly, low. But that simply makes Brennan's claim that 'many' or 'most' of his fellow citizens are incompetent less plausible, if the actual competence required by a modern liberal democratic state is the competence Brennan is concerned with. The standard, generally, is something like the following: a voter must understand the nature and significance of voting and have the ability to make a choice between options (Appelbaum et al., 2005). This requirement parallels Craigie's standard criteria for competence in the medical domain (2011), which Brennan cites approvingly (2016, 162).

Again, we can rescue Brennan by articulating a practical claim, to which he must be committed in order to get his argument off the ground. This claim is that the competence Brennan requires of a voter in a modern liberal democratic state is higher than is currently recognised, even by those states which have articulated a competence requirement. It is important to note that Brennan avoids, in both 2011 and 2016, defending such a claim. He says that it is "not clear I need to defend a precise theory of political competence" and that he "need only rely on relatively uncontroversial platitudes about competence" (162). His concern must, however, be that current competence standards are so low as to be trivial to satisfy, and that the satisfaction of these trivial standards is insufficient to protect the life, liberty and property of the truly competent. This claim understates the effort democracies and democratic theorists have expended in carefully expanding the franchise, and considering competence based reasons for exclusion, while consistently rejecting the claims that particular prior excluded groups lacked the competence to participate (Beckman, 2014). In refusing to articulate a required level of competence, Brennan cedes ground to the democrats who have and use a competence standard, while claiming that some other, unarticulated standard of competence is breached by universal suffrage.

One might wonder why violations of this competence principle are so bad. On Brennan's account, violations of the principle put "citizen's lives, liberty and property, by force, in the hands of unreasonable and incompetent people" (2011, 717). The harm arises from loss of control over one's own life, liberty, and property. But Brennan's proposed solution, the exclusion of the unreasonable or incompetent,

compels them to have their lives, liberty and property constrained by a government which, while it may not have been elected by any unreasonable agents, they *had no part in* the choosing of. Such a consequence appears intrinsically equivalent to the injustice involved in the violation of the competence principle. It replicates the loss of control over one's life, liberty and property, but for a different group of citizens. So, Brennan has not given us a better result, even if he were able to avoid the other issues raised in this paper.

4. Rationality & Risk

Brennan seeks to minimize the injustice caused by our non-ideal system of government. In support of epistocracy, he claims that the injustice of democracy is greater than the injustice of epistocracy. But this relies on assigning particular weight to injustices, and one might push back against his characterization of the severity of these injustices. He claims that the injustice of denying a competent young person the right to vote, as we do through voting age restrictions, is "not a horrible injustice, as these things go" (2011, 719), while the mere risk of harm done by the exercise of political power by the incompetent is unconscionable, due to the harm it causes to the life, liberty and property of citizens. Again, the young citizens are deprived of their life, liberty, and property in an identical fashion by Brennan's system, and this is an actual, not merely hypothetical injustice.

A similar critique is available against Brennan's characterization of undue risk. He claims that "[t]he governed have a right not to be exposed to undue risk in the selection of policy or of rulers who will make policy. When elections are decided on the basis of unreliable epistemic procedures or on the basis of unreasonable moral attitudes, this exposes the governed to undue risk of serious harm" (2011, 708). This is, I agree, a risk. But it is not clear that any non-zero risk is undue. Rather, only risks beyond some threshold are undue. We need some reason to think that this risk is sufficiently great to be an undue one. Even if it is undue, it is an open question how best to avoid the risk. Brennan argues for removing risk by embarking on a project of narrowing the franchise. Other ways to remove the risk would be by restructuring our democratic procedures (preferential or proportional voting systems rather than simple majority ones), or by narrowing the range of available options for election: making it the case that unreasonable parties cannot run for office. While it is true that democratic governments "can impose policies that significantly alter citizen's life prospects for the worse" (2011, 706) it is not clear that it is unreasonable for them to do so. Regardless of which government is in power, it will be expected to make decisions of this nature. The primary differentiator will be which citizens are made better or worse off.

Brennan devotes a chapter of *Against Democracy* to a discussion of the rationality of political ignorance for voters (2016, 23-53). He claims that there are significant costs to individual voters of gathering the information needed to be politically well informed, and that there is very little incentive for voters to do so. As such, when coupled with the small chance of their vote making a difference, he claims that voters have an incentive to be irresponsible, to vote despite not being well informed. His proposal, in both 2011 and 2016, is that enforcing the competence principle may require that some of these voters be disenfranchised. (2011, 710). However, we should note that this punishes these voters for doing the rational thing. This seems to be the beginning of a vicious cycle, wherein we make it rational to not engage with politics, then remove the vote from people who do not engage with politics. Ought we not, rather, to make it the case that what is rational for the voter is to be informed and engaged? This would require a shift in other aspects of democracy – candidate selection; voting system; party politics, not amongst voters. It would have the (substantial) benefit of not punishing people for engaging in rational behavior. If we want a more competent electorate (as Brennan does), we should encourage people to take voting seriously. Including them does this, in a way that training them for possible future inclusion does not. Even if all children vote 'wrongly' it won't hurt the outcomes (List

& Goodin, 2001; Goodin & Lau, 2011), but it will help the voters in question learn how to vote properly (Cook, 2013).

Brennan approvingly quotes studies showing divergence from economic rationality amongst voters (Caplan, 2002; Althaus, 2003). He claims that “[i]f Caplan and Althaus are correct, then voters in democracy do worse than random in selecting leaders and policies” (2011, 722). But it is not at all clear that we should privilege economic rationality over other potential goals. For example, social justice at some economic cost seems reasonable for a competent voter to pursue, as does climate justice. So, it looks like Brennan is simultaneously overweighting economic rationality and underweighting other reasons for voting in determining rationality/reasonableness/knowledge.

5. Where to from here?

I agree with Brennan that we ought to have a restricted franchise. Unlike Brennan, I think that we can have competence based restrictions on enfranchisement while still being democratic, and that as such, there is no benefit to making the move from democracy to epistocracy. Further, I take it (contra Brennan) that most extant democracies have a restricted franchise. Our democracies do not have universal suffrage. They impose competence based barriers to entry for at least some potential voters, and often do so via statute. For example, the Australian Commonwealth Electoral Act (1918), s93(8), explicitly excludes any person who “by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting” from doing so.

We can improve these democracies by consistently applying the restrictive criterion. Modern democracies in fact require of adult citizens lower levels of competence than are demonstrated by many (excluded) young citizens. Allowing these young citizens to demonstrate their competence and thereby be included would remove an injustice from democratic regimes. We ought also to note that neither the existing competence standards, nor Brennan’s proposed more stringent standard, would control for whether a competent voter in fact exercises their competence when they vote. At best, satisfying a rigorous competence test of the kind Brennan envisages would show that the person in question could vote competently, not that they do.

There is broad agreement on a capacity standard, which means that at least this kind of restriction can pass a threshold such as Estlund’s qualified acceptability requirement (2007). The inclusion of those who meet this standard, while it may impose some negligible risk, does not impose an undue risk on other citizens of the state. While I agree with Brennan that “the governed have a right not to be exposed to undue risk in the selection of policy or of rulers who will make policy” (708), it is not the case that any non-zero risk is undue. For Brennan’s claims to hold, it must be the case that the inclusion of incompetent actors, in a given democratic state, in fact increases the risk of harm sufficiently above the baseline level to constitute an ‘undue’ risk of harm. In most democratic systems, this seems false. The better ordered a democratic system is, the less likely it will be. We should also note that the content of ‘undue’ shifts as we alter the structure of the system (rather than by altering the participants in it), which suggests that the solution lies in better political institutions, rather than changes to the franchise.

(2776 Words)

6. References

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