The Debate About Compulsory Voting

by John C. Courtney and Drew Wilby

In 2004 Liberal Senator Mac Harb sponsored a bill in the Senate calling for the introduction of compulsory voting in Canada. The Harb bill on mandatory voting is one of only two to have been debated at any length in Parliament since Confederation. Over a century ago the same question was deliberated by the House of Commons as a result of private members' bills introduced by Guillame Amyot. As was also the case with Senator Harb's proposal, none of the Amyot bills made it beyond second reading. This article compares the Harb and Amyot bills. Their arguments and analyses are revealing for what they tell us about the electoral politics of the time, the changed language of political discourse, and kinds of evidence that politicians more than a century apart employed in support of, or in opposition to, the proposals. In the 1890s compulsory voting was seen as a way of ending "electoral corruption;" in the early 21st century it was aimed at reversing declining voter turnout and at ensuring greater "political engagement." In terms of substantive argument the earlier debate was almost entirely without comparative reference points. That was not true of the later one. Even the titles given the bills by their respective sponsors may tell us something about the age in which they were introduced. The 1890s bill was called "An Act to make Voting Compulsory," in contrast to the arguably gentler form of obligation that was signaled by "An Act to make Voting Mandatory" in 2004.

In three consecutive parliamentary sessions – 1891, 1892, and 1893 a private members' bill on compulsory voting introduced by Guillame Amyot (Nationalist-Conservative, Bellechasse) was debated.[1] To Amyot the objective of compulsory voting was to secure "purity in politics." Elections, he maintained, had become corrupted through an odious custom in which parties, candidates, and voters took part. In a word, it was bribery. To ensure that their known supporters made it to the polls, candidates arranged for their transportation and, not infrequently, added a financial bonus to the voters once their vote had been cast. As described by Amyot:

> One of the great troubles we [candidates] have to contend with during elections is to get the electors to the polls. A great many say: 'This year I am going if my day's work is paid, or I will go if they send for me.' This is a mere pretext to be bribed. They know that if anyone goes for them, that person will be provided with some money or something else [a bottle of whiskey?] to pay for their vote.[2]

Of the handful of Members who debated the bills in the Commons (only ten MPs took part in the second reading stage in 1891, the largest number on any of the occasions on which the bill came before the House), none sup-

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ported the charge of political corruption more than Sir Richard Cartwright (Liberal, South Oxford). He concluded that over his "very considerable number of years" in politics:

> There are no sources of corruption in elections greater than those ... inflicted upon candidates by the temptation to bring persons from a distance to vote in any constituency. I know at the present moment enormous fraud and enormous corruption exists, and has existed for a number of years past in connection with the bringing of electors from distances.[3]

Compulsory voting was supported as well as a way to end the "impersonating" of voters by others. According to Cartwright the practice was widespread of "bringing persons forward to represent men who for some time have been absent from a constituency."[4] If all electors were required to vote, so the logic went, then each elector would have to appear in person and impersonations would end.

The bills Amyot introduced in 1891 and 1892 were identical. They were also easily attacked by their critics, not so much on the grounds of introducing compulsory voting as for the penalties that could be levied should an elector not vote. Any elector without a "valid and sufficient excuse" who failed to vote would be liable to a fine not exceeding $50. (The equivalent in 2005 Canadian dollars would have been $1,104!). An elector defaulting on the fine could be imprisoned for up to 30 days and would be disqualified from voting in any election for the next five years.

In an unusual and much criticized section, Amyot's original bill also enabled any adult (elector or not) to recover the $50 penalty in an action for debt before a court of competent jurisdiction. In other words there was a financial incentive for those who squealed on non-voters and who sought to prosecute them in court. This did not sit well with other MPs, one of whom saw it as promoting a form of extortion that would lead to even more electoral corruption and would produce, in his opinion, a worse class of informers than had flourished in the days of Charles II.[5]

The 1891 and 1892 bills contained an ingenious solution to an oft-heard criticism of compulsory voting, that is of obliging electors who might not wish to cast a vote to nonetheless vote or face prosecution. To avoid unnecessary compulsion of voters, Amyot proposed allowing any electors who preferred not to vote to remove their names from the list at least 30 days before an election. Such an option would have the double advantage, he claimed, of removing the "anxiety" of the unwilling voter and of lessening the "work of the candidates" by not having to solicit the support of the entire eligible electorate.[6]

Sir John Thompson, then in his last year as Minister of Justice before becoming Prime Minister, emerged as the principal spokesman for those on the government side of the House opposed to Amyot's initiative. In language that anticipated critics of mandatory voting in the late 20th and early 21st centuries, Thompson objected to the bill as a "very severe restriction, not only on liberty ... but [also] on the right of choice of the electors."[7] Voters should be free to decide not only for whom to vote but also whether to vote. The "right not to vote," in other words, was seen as the flip side of the "right to vote." That remains the case to this day for many opponents of obligatory voting in Canada.

The bill's undoing, in the term used by one of its critics, was its "draconian" penalties. Even Amyot's supporters in the House found the strict fine, jail sentence, and disqualification provisions of the bill objectionable. Some Members implied, although curiously they failed to press the point, that the act of requiring all voters to frequent a voting booth on election day could scarcely be expected to solve the problem it was intended to address. Candidates and parties would still have an incentive to transport voters, possibly slipping them money on the side, and electors would continue to accept, or even solicit, bribes. The only difference would be that under compulsory voting a larger number of electors would then be in the run for the money, as it were. Logically, the practical consequence of attempting to ensure a turnout of 100 percent of the voters would mean that even greater sums of money would be needed to entice voters to support a particular candidate or party than had been the case under a voluntary franchise.

In an attempt to gain more support for his proposal Amyot agreed to the bill's referral to an eleven-member select committee of the House in 1892.[8] The amended version that emerged from that committee the following year was a good deal softer than the original bill. It retained the "opting out" provision whereby an elector who chose not to cast a vote could at least 30 days in advance of an election have his name removed from the list, but it reduced the maximum fine for not voting to $10 and dropped the jail sentence for defaulters. The five year voting disqualification was removed as was the provision that would have enabled adults to seek prosecution of non-voters and lay claim to the assigned fines. Concerns from Mennonites and other Protestant sects who objected to voting on religious grounds led to the inclusion in the 1893 bill of "religious scruples" as a "reasonable excuse" for not complying with the law. (Catholics would be unable to employ the same excuse,

Amyot noted wryly. In his words, "if a Catholic should come before a court and say 'I did not vote because I have religious scruples' he would be laughed at. There is no such thing in the Catholic religion.")[9]

Amyot drew support for his 1893 bill from various quarters. He cited the formal approval of two Canadian labour organizations, the Knights of Labour and the Artisan and Workman guild. In one of the few comparative references of the debates he pointed to Denmark's requirement dating from 1849 that all electors were bound to vote or, lacking a "legal excuse," be subject to a fine. Curiously, the adoption in 1892 of compulsory voting by Belgium was at no point referred to. Amyot did claim, but without supporting evidence, that in "many" American states moves were then underway to introduce compulsory voting as a means of preventing corruption and bribery of voters. The number of states was far fewer than he suggested, however. Only New York and Massachusetts had legislation before their state assemblies calling for a compulsory vote (coupled with compulsory voter registration) in the early 1890s. In both cases the bills failed to pass even though, in the case of New York at least, the Governor was a strong advocate of compulsory voting.

To those who argued that compulsory voting was an infringement of individual liberty, Amyot drew comparisons with other "infringements" sanctioned by the law. His list included paying taxes, serving on a jury, and forbidding the sale of liquor without a license. "In fact," he concluded, "what is human society itself if not an abandonment of private rights for the general welfare of the partnership?" On that lofty plane his motion was put to an unrecorded vote on 2nd reading. It was defeated and never surfaced again.

Even as substantially amended as it was, the 1893 bill found little favour with the Members or their party leaders. Sir John Thompson, by then Prime Minister, and Wilfrid Laurier, the Leader of the Opposition, both objected in principle to compulsory voting. Thompson summed up the reservations shared by the majority of parliamentarians. As in the "leading the horse to water" figure of speech, the voter can be compelled by law to attend the polling station, have his name ticked from the list, and receive the ballot. But, Thompson argued, nothing in law can compel an elector to mark the ballot for any candidate. Accordingly, deliberate spoilage of ballots would be expected to increase under Amyot's proposal, and for what purpose? Simply to satisfy the requirement that all voters exercise their franchise. Such an outcome would scarcely be "consistent" with the purpose of the bill. In Thompson's words, "there should be as much freedom of choice on the part of a voter between voting and not voting as between voting for A or voting for B."[10]

The Harb Bill of 2005

Fast forward one hundred and fifteen years, and move from the Green to the Red parliamentary Chamber. Senator Harb's call for the introduction of mandatory voting stemmed from his concern with, in his words, "a rising electoral crisis" in Canada. Voter participation rates had gradually declined over the previous three decades and had experienced a "dramatic drop" in the 2004 federal election when a "record low of just 60.9 per cent" of electors voted. As "democracy depends upon the active participation of its citizens" and as "record numbers" of young people are no longer voting, Senator Harb claimed that the time had come for Parliament to adopt legislation requiring all eligible electors to vote.[11] The basic rationale for the legislation had shifted over the course of a century from electoral corruption and fraud to electoral participation.

Had it become law, Bill S-22 would have amended the *Canada Elections Act* in four ways. It would have:

- made it compulsory for an elector to vote;
- made it a punishable offence for an elector not to vote;
- added the words "none of the candidates" to the ballot; and
- allowed electors to write on a special ballot the name of a candidate other than those nominated on the regular ballot.

By Canadian standards these were revolutionary proposals. No Canadian jurisdiction has ever required its electors to vote, and certainly none has ever made non-voting a punishable offence of $50 (a relative pittance compared with the $50 fine of the 1890s), as Senator Harb proposed. To minimize the chances of ballots being spoiled by those who objected to "being forced" to vote, and to ensure that electors who did not wish to vote for any of the nominated candidates, the "none of the above" category was added. In arguably its most innovative feature the Senate bill, through the provision of special ballots, would have permitted electors to write in the name of any individual not otherwise nominated (a relative? a friend? an enemy?) that they would like to send to Parliament. No fine would be levied against an elector who could provide a valid reason (such as religious belief or illness) for not voting.

S-22 was debated on five occasions in the Senate, and although several Senators called for its referral to committee for more detailed discussion, the bill was dropped

from the Order Paper without vote in the 2nd Reading stage.[12] In all, eleven Senators took part in the debate. Only two (the bill's mover and seconder) fully supported the initiative. The remaining nine, of whom roughly half gave qualified support to referral to committee, expressed reservations with or outright opposition to mandatory voting.

The language of the 2005 debate was strikingly different from that of the 1890s. Debating the Harb proposal, Senators spoke of "acquired attitudes and habits of Canadians," "modifying behaviour for the common good," "rights in contradistinction to responsibilities," "false dichotomies," "conceptualizing" rights, "inclusive" rights and responsibilities, "voter apathy," "political culture," "alienation of voters," "diminution of electoral input," "civic literacy," "multicultural mosaic," "affirmative action," and, inevitably, "democratic deficit." Had an MP who had attended the deliberations on the Amyot bill somehow magically listened in on the S-22 debate he would scarcely have recognized the terms used in arguing the same issue in his own Parliament.

The case for S-22 rested on declining voter turnout levels and the concern that the long-term consequence would be harmful to Canadian democracy and government legitimacy. Noting that turnout in the 2004 federal election had reached an all-time low, Senator Harb claimed that the root causes of the decline lay in "disdain for politicians, apathy, ... the hectic demands of modern life, [and] a fading sense of civic duty." His bill was prompted by the need "to re-establish electoral participation as a civic duty in our society." The "duty" that citizens owed to society to vote was in his view analogous to other citizen duties such as "paying taxes, reporting for jury duty, wearing a seat belt or attending school until age 16."[13] According to the bill's seconder (Senator Terry Mercer) "the end – high voter turnout – has justified the means: mandatory voting."[14]

The critics of S-22 on both the Government and Opposition benches saw the issue differently. They accepted Senator Harb's concern over dropping participation rates and his diagnosis of its causes, but to a person they objected to Parliament sanctioning any measure of coercion in electoral law. Theirs was a case based, quite simply, on the voter's freedom of choice. To vote or not to vote should be a decision left to the individual elector. The Leader of the Opposition (Senator Noël Kinsella) issued what became the standard refrain amongst opponents of the bill: the right to vote enshrined in section 3 of the *Canadian Charter of Rights and Freedoms* "is inclusive of the right not to vote." To another opponent, the essence of democracy was not forcing "people to do things that they do not want to do."[15]

Senators critical of S-22 saw the answers to voter apathy, voter cynicism, and declining electoral participation lying not in mandatory voting but in a variety of societal and political reforms. Greater emphasis on educating the young and new Canadians about the importance of voting was seen as the change most needed. As well, and without any specifics in terms of policies or programs that might be instituted, Senators saw other possibilities for political engagement and, ultimately, greater electoral participation. Citizens needed to be more actively involved in policy discussions at times other than elections. The media shared part of the blame for declining voter turnout and should undertake to become more balanced and less negative in their coverage of politics. Politicians and governments should accept that they had fallen short of meeting their obligation to inform and engage the public in matters that directly affect them. Steps should be taken to correct that.

Senators on opposite sides of the issue demonstrated by their speeches that they (or, more likely, members of their staff) had done considerable research on the topic. The experience of other countries with mandatory voting proved to have great utility in the debates. Supporters of S-22 drew on the experience of Australia and Belgium with the mandatory vote; opponents pointed to the abandonment of the mandatory vote by both Austria and the Netherlands. Canada's Royal Commission on Electoral Reform and Party Financing (commonly referred to as the "Lortie Report" after its chairman, Pierre Lortie) was frequently cited. Survey data of voter participation reported by the Institute for Research on Public Policy (IRPP) were introduced in the debate, and to demonstrate that the decline in electoral participation was not a uniquely Canadian problem references were made to the comparative voter turnout rankings of Sweden's International Institute for Democratic and Electoral Assistance (IDEA). Published works of two political scientists were introduced – one by either side in the debate.[16]

The Parliamentary debates on compulsory voting of the 1890s and 2005 serve as fine examples of how the language of political discourse and the construction of political arguments have changed with time. Unlike the Senate debates, those in the Commons at the end of the 19th century were largely devoid of comparative references and were constructed entirely without benefit of empirical research. For their part the Senators drew on a variety of domestic and international sources.

As well, the debate on S-22 framed the issue largely in libertarian terms and resolved it on grounds of individual rights and freedoms. The "rights discourse" of which Alan Cairns and others have written was clearly present in the Senate in 2005. In the Commons in the 1890s, the

question had rarely been raised of an elector's choice about voting or not, and when it was it was done largely without explicit reference to "freedoms," "rights," or "responsibilities." The much more substantive and ultimately telling objection to Amyot's bill had come from MPs who found the penalties (even as modified as they were in the bill's final version) excessive and harsh. The penalties envisaged by Harb's bill were at no point mentioned in the Senate. In the 1890s it was the practical consequence of not voting that exercised Parliamentarians; in 2005 it was weighing individual rights against responsibilities.

Conclusion

The cases made in favour of or in opposition to the compulsory vote at the end of the 19th and the beginning of the 21st centuries highlighted the difference in perceived electoral problems of the time, the changing language of political discourse, the contrasting use of comparative reference points, and the profound attachment to individual rights and responsibilities that has marked Canadian politics since the adoption in 1982 of the Canadian Charter of Rights and Freedoms. The 2005 debate was prompted by a steady decline in voter participation, whereas the earlier one had been aimed at eliminating a singularly odious form of electoral corruption. That electoral corruption played no part in the debate on Bill S-22 must be seen as proof of the marked reduction in corrupt practices at election time over the course of the 20th century and the important role played by the Office of the Chief Electoral Officer in adjudicating elections and overseeing a strict campaign and party finance regime. The 20th century took the wind out of the sails of the only argument seriously advanced for compulsory voting in the 1890s.

Notes

1. They were, respectively Bills 53, 46, and 8. Other Proposals calling for compulsory voting have been considered in the House of Commons from time to time, including 1879, 1903, 1934, and 1948. None gained the support of more than a few Members. In 1936 and 1937 a Special Committee of the Commons examined the question and unanimously rejected the change. See Norman Ward, *The Canadian House of Commons: Representation* (Toronto: University of Toronto Press; 2nd ed, 1963), 162-63.
2. House of Commons, *Debates* (February 9, 1893), 517.
3. House of Commons, *Debates* (June 18, 1891), 1033.
4. *Ibid.*
5. George Cockburn (Conservative, Toronto Centre), Commons, *Debates* (June 18, 1891), 1036.
6. Commons, *Debates* (June 18, 1891), 1031.
7. *Ibid.*
8. As was the case with most other parliamentary committees at the time, the proceedings of Amyot's select committee were never published.
9. Commons, *Debates* (February 9, 1893), 519.
10. Commons, *Debates* (February 9, 1893), 525.
11. Senate, *Debates* (February 9, 2005), electronic version, 1-2. The proposal considered by the Senate was contained in Bill S-22, first introduced on 9 December 2004. See also Marc Harb "The Case for Mandatory Voting in Canada", *Canadian Parliamentary Review*, Vol. 28 (Summer, 2005).
12. 18 October 2005. A motion to refer the bill to committee on May 17, 2005 was never put to a vote.
13. Senate, *Debates* (February 9, 2005).
14. Senate, *Debates* (March 10, 2005).
15. Senate, *Debates* (February 9, 2005) and Senator Consiglio Di Nino, *Debates* (March 10, 2005).
16. Arend Lijphart, Political Science, University of California, San Diego, and John Courtney, Political Studies, University of Saskatchewan.