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# Voting Rights and Wrongs: Philosophical Justification for Universal Suffrage

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## INTRODUCTION

Democracy gives citizens choices. Different candidates and policies provide voters with many different options. Voting rights give people a say in how they will be governed. We hope voters will recognize the best candidate or policy, and then vote for it. Psychological research, however, suggests this does not always occur. People have varying levels of knowledge and intelligence on many topics. While people recognize the wide range of knowledge and ability levels present in society, David Dunning and Justin Kruger discovered that people tend to have overly optimistic views of their own social and intellectual capabilities. Most people rank their own abilities as average or above-average when compared to others, while this is not actually the case. The knowledge-perception gap makes most people poor judges of what they themselves know and what other people know.<sup>1</sup>

Since most people cannot see the flaws in their own knowledge, chances are high they will not know when they are voting for bad policies. Similarly, if a voter cannot judge how much someone else knows about a particular topic, he is unlikely to make an informed choice about different political candidates.<sup>2</sup> Democratic societies encompass people with a range of different abilities. Certain people can be very good or very bad at different things. If we know that someone will be particularly bad at judging her own and

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<sup>1</sup> Justin Kruger and David Dunning, "Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments," *Journal of Personality and Social Psychology* 77 (1999).

<sup>2</sup> Ibid.

others' levels of expertise, why would we allow that person to vote? It seems likely that she would make a bad decision.

Based on this type of analysis, Jason Brennan builds a case for requiring citizens to prove their competence in order to vote. His article "The Right to a Competent Electorate" presents an argument that requiring citizens to pass an examination in order to vote will create a better electorate. To persuade people who believe citizens have a fundamental right to vote, Brennan aims to demonstrate that restricting the electorate is not unjust – or at least, less unjust than universal suffrage, or granting the entire population the right to vote.

The first chapter of this thesis will explain Brennan's argument, as well as some objections to it. That chapter concludes by looking at Brennan's comparison of universal and restricted suffrage, in which he argues that restricting the electorate is a more just system than one of universal suffrage. In the second chapter, I explore some objections to the moral acceptability of voter examinations. I will again compare the injustice of restricting the electorate to that of universal suffrage. This thesis aspires to show why Brennan's initial considerations are not all-encompassing. Once I have demonstrated which major considerations Brennan missed I will include them as factors to weigh when deciding which system of suffrage is more unjust. Adding this new set of factors leads me to conclude restricted suffrage is worse than universal suffrage. We should not restrict the electorate, and instead protect voting rights for all.

## CHAPTER 1

In this chapter, I will examine Brennan's justification for restricting the electorate. He compares the electorate to juries in order to gain clarity about who should or should not vote. In doing so, he makes the case that it is morally unacceptable for people without knowledge or reasonable moral values to vote. The chapter then explores some objections to Brennan's argument. At the end, I put myself in Brennan's shoes, and consider the factors he uses to show the larger injustice of universal suffrage. The second chapter will describe three more damaging objections, then conduct the weighing process again, considering these factors.

### **Brennan's Argument**

At the beginning of this section I will clarify some generally accepted notions about democracy and voting, political power, and the distribution of political power. These will become important in Brennan's argument. Then I will sketch how Brennan aims to illustrate that giving citizens universal voting rights is more unjust than restricting the electorate.

The right to vote gives citizens political power: a voter decides how he will be governed. However, voting rights give citizens more power than one traditionally recognizes: not only does the power to vote give a citizen a say over his own rule, it also gives her a say over other people.<sup>1</sup> The voter holds political power not just over himself, but also over all others who will be ruled by the result of the process. Brennan agrees each individual has a right to "govern and decide" for himself, but asserts that one has no

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<sup>1</sup> Jason Brennan, "The Right to a Competent Electorate." *Philosophical Quarterly* (forthcoming): 4.

right to govern and decide for others.<sup>2</sup> People intuitively accept this idea: each person believes he has the right to decide where he should live, what job he should hold, and so on. However, people do not believe he should be able to make decisions about where his neighbor should work, how his neighbor should spend her free time, and other decisions about her life. Brennan's argument hinges on the idea that voters hold power over others.

We might argue against Brennan by straightforwardly stating that votes often have no consequential significance. Democracies are often large, so that individual votes seem to have almost no impact on an election's outcome. This also means that each voter has only a minimal say over others. I could dismiss Brennan's concern given that no one effectively has power over others.

I will not give this response. Instead, I agree with Brennan, who regards political power, not consequential significance, as the integral piece to consider. Political power gives a voter the ability to weigh in on decisions about others, and so is morally significant. Regardless of how much power a voter effectively holds, the mere fact that he has some amount of power necessitates justification.

If an objector claims that voters do not hold any political power over their fellow citizens, then restricting voting rights would not disempower anyone.<sup>3</sup> Since being authorized to vote would not give any individual either political or consequential power, no one who voted would hold power over any others. This, though, does not save universal suffrage. If voters have political power, we can attempt to justify restricted suffrage by saying that we should not allow incompetent people to hold power over others. If voters do not have political power, disenfranchisement does not reduce

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid, 14.

anyone's power, and restricting the electorate will produce better outcomes because a higher percentage of voters are competent. Most people, however, would agree voting rights give people political power.

If we agree a voter has political power, we must decide how to justly allocate that power. Typical democracies grant universal voting rights, or voting rights to every citizen above a certain age. A voter in a traditional democracy may be ignorant, misinformed, disinterested, irrational, or morally unreasonable, yet can still exercise power over his fellow citizens.<sup>4</sup> Brennan asks how this system can be justified against the same system with the exclusion of politically incompetent or unreasonable voters.<sup>5</sup> Brennan believes restricting voting rights is the less unjust option.

### *Jury Comparison*

To show the injustice of universal voting rights, Brennan compares voting to jury service. Since people generally accept the reasoning behind jury selection, Brennan attempts to create an analogy between juries and governments. If he can successfully create a parallel between the two, this will help to justify restricted voting rights. If he can demonstrate similarities between juries and electorates, he will have grounds for subjecting the two institutions to similar standards.

A jury holds significant power over the defendant and can deprive him of his property, liberty, and in some cases, life. Juries make high-stakes decisions about other people's lives. Governments, in Brennan's view, hold these same powers over their

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<sup>4</sup> Throughout this thesis I will discuss reasonable and unreasonable morals without giving an account of what these might be. Brennan does not advocate for a specific view of morality, but believes his theory is consistent with a number of moral theories, so long as they are reasonable. He does not clearly distinguish between reasonable and unreasonable morals, but thinks both types exist. I agree with this characterization. For a fuller discussion, see *The Ethics of Voting* (Princeton: Princeton University Press, 2011), chapter 5.

<sup>5</sup> Brennan, "The Right to a Competent Electorate," 4.



citizens. Governmental decisions have two main features, which parallel the features of a jury's decision. First, the government has the power to impose its decisions on people through coercion. All citizens (and others within the government's domain) are forced to comply, even if one has valid grounds for non-compliance. Second, these decisions are significant, often to a large number of people. A government's decisions impact the lives of its citizens, and can deprive citizens of their lives, liberty, and property.

### *Hypothetical Jury Scenarios*

Brennan presents three hypothetical jury scenarios to explain their duties and the ways in which they may make decisions. He uses these examples to illustrate bad juries and bad decision-making:

1. *The Ignorant Jury*: The jurists pay no attention during the trial. When asked to deliberate, they are ignorant of the details of the case, but find the defendant guilty anyways. After the trial, they admit they decided the case this way (or we have some other strong source of evidence that this is how they made their decision).
2. *The Irrational Jury*: The jurists pay some attention to the details of the case. However, they find the defendant guilty not on the basis of the evidence, but on the basis of wishful thinking and various bizarre conspiracy theories they happen to believe. After the trial, they admit they decided the case this way (or we have some other strong source of evidence that this is how they made their decision).
3. *The Morally Unreasonable Jury*: The jurists find the defendant guilty because he is Muslim, and they are Christians who think Muslims pervert the Word of God. After the trial, they admit they decided the case this way (or we have some other strong source of evidence that this is how they made their decision).<sup>6</sup>

Intuitively, many people would judge these juries to have made decisions in an unacceptable way – the members are either ignorant of the facts, morally unfit to serve,

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<sup>6</sup> All jury scenarios from Brennan, "The Right to a Competent Electorate," 5.

or use poor decision-making methods. Brennan uses this intuition as groundwork to describe how to make decisions acceptably.

### **Competence Principle**

These hypothetical jury scenarios help Brennan produce a general principle stating how to make decisions properly. We require high-stakes jury decisions regarding the defendant's life be made by competent people in a competent manner. Based on the intuitions we have about acceptable procedures and who is competent to decide in jury cases, Brennan extrapolates this principle:

**Competence Principle (CP):** It is unjust to deprive a citizen of life, liberty, or property, or to significantly alter her life prospects by force and threats of force, as a result of decisions made by an incompetent or morally unreasonable deliberative body, or as a result of decisions made in an incompetent and morally unreasonable way.<sup>7</sup>

Brennan specifically writes CP in this way to disqualify a number of different people. He wants to disqualify “deliberative bodies” that are incompetent or morally unreasonable. This phrase is unclear, but it seems to me this means it is unjust to allow these types of people to be members of the deliberative body. Specifically, the members cannot have bad moral character, be incompetent in some relevant way, and/or make decisions using incompetent or morally questionable methods. This applies even if the members of the deliberative body are generally competent decision-makers. For the rest of this paper, I will use “unacceptable decision-makers” to describe this entire set.

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<sup>7</sup> Ibid, 6.

*Justifying CP in Jury Decisions*

To show CP's general relevance, Brennan must first establish its applicability within its initial sphere: jury decisions. We cannot justify enforcement of an incompetent jury decision by showing that most juries are competent.<sup>8</sup> Nor can we justify enforcing an incompetently-made decision simply because the specific members of the jury who decided the case generally make competent decisions.<sup>9</sup> A defendant could rightfully object to decisions in either of these scenarios.

To begin with a straightforward example, consider a teacher. Most teachers assign grades properly. A math teacher might teach her students algebra, give the exam, and grade them fairly. Just because she generally does so does not give her license to assign grades for a certain exam based not on the number of correct exam answers, but on the neatness of the student's handwriting. The same reasoning applies to juries.

It makes no difference if the jury decides correctly or incorrectly (in terms of truth of the decision) if the jurists decide in unacceptable ways. For example, perhaps a student's neatness directly correlated to how many questions he answered correctly. The teacher would have assigned the verifiably correct grade, but it would not be legitimate because of the manner in which she assigned it. These decisions, regardless of the correctness of their outcomes, are unjust and should not be enforced. CP disqualifies decisions based on the quality of the people deciding and the decision-making process used, rather than the substantive outcome.<sup>10</sup> This process matches our intuitions about the proper way to make decisions.

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid, 7.

<sup>10</sup> Ibid.

In the United States, the accused are entitled to a fair jury trial of their peers. The jury selection process implicitly follows CP. People do not serve if they are deemed incompetent by attorneys for both the prosecution and defendant or by the judge, and displaying moral bias is one of the ways to be removed from jury service. All trials are supposed to be conducted by impartial juries, and if it is discovered after the trial that the jury was corrupt or made its decision incompetently, there is the legal possibility of overturning the decision.<sup>11</sup> For these reasons, CP seems applicable to jury decisions.

### *Justifying CP's Broader Use*

If we can find relevant similarities between juries and governments, we should hold them to the same standards. In this case, the standards entail making decisions using proper methods, not just arriving at correct conclusions. Previously, I demonstrated pertinent similarities, namely that both governmental and jury decisions hold significant coercive power over others' lives. Because of the nature of the decisions, Brennan argues that governments are comparable to juries. It follows that citizens can demand competence from their decision-makers. Unacceptable decisions are unjust.<sup>12</sup>

Despite this argument, most democracies do not utilize CP when establishing voting rights, even though voters hold the ultimate power in this system of government.<sup>13</sup> Voters choose rulers who wield coercive power, and can sometimes vote on legislation that binds all citizens, without any screening.

However, many governments already implicitly recognize CP elsewhere. Some public service positions, for example, come with age restrictions or other certifications.

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<sup>11</sup> Ibid, 9.

<sup>12</sup> Ibid, 10.

<sup>13</sup> Ibid, 11.

Requiring certain qualifications for positions of power demonstrates CP in action.<sup>14</sup> The United States Senate must approve presidential appointees to many positions, such as Supreme Court Justices. In theory, this ensures that appointees are competent for the positions they will hold.

### *Brennan's Conclusions*

At this point, I hope to have represented Brennan's argument as clearly as possible. He tackles the question of who should hold political power over other people. He believes that only competent people are qualified to make decisions in the proper manner. To draw out common intuitions about proper decision-making methods, Brennan presents some hypothetical jury scenarios, and extrapolates a principle, CP. CP distinguishes who may make coercive, significant decisions over others' lives, and the ways in which they may be made. Brennan believes juries and governments are relevantly comparable, so CP applies to electoral decisions. This means it is morally wrong to allow incompetent people to vote.

### **Objections to Brennan's Argument**

In this section I will explore some objections to Brennan's argument as a whole. These objections can be split into three general categories. First, I will consider Brennan's comparison between juries and governments, and argue the two institutions are sufficiently distinguishable. If I can show that this is the case, CP might not apply to political decisions, even though it would continue to apply to jury decisions. Secondly, I will consider objections to CP itself, notably to the idea that we must test each individual

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<sup>14</sup> Ibid, 10.

voter for competence. Perhaps the principle only requires that the electorate prove itself competent as a whole. Finally, I will introduce a principle that, if correct, shows how restricted suffrage is unjust, like universal suffrage. I will more fully expand this objection in chapter two, but I raise it here to counterbalance Brennan's claim that universal suffrage is more unjust than restricted suffrage.

*Problems Comparing Governments to Juries*

Earlier, I articulated the reasons why juries and governments function similarly, namely that both are coercive and the decisions they make significant. They might not, however, be similar in relevant ways, most notably in their decision-making methods. As long as I can show a real difference between jury decisions and political decisions, it does not follow that CP must also apply to governments. I will conclude that only some types of political decisions are relevantly similar to jury decisions. CP applies only to this smaller set of political decisions.

CP aims to set a standard of good decision-making. In order to decide whether the principle should apply to governments in addition to juries, we must look for similarities between the two decision-making processes. If they are sufficiently different, this might be grounds for rejecting CP as a principle applicable to governments.

First, though, it is helpful to consider the types of decisions both institutions make. Juries make coercive decisions that significantly impact the lives of others. The defendant is either guilty or innocent, so the decisions have a verifiably correct answer. The jury may decide correctly or incorrectly. Political decisions are much more complicated. Certain political decisions have right and wrong answers. Votes on economic policy fit this distinction: a certain monetary policy will grow the economy by five percent, while

another will grow it by one percent. In this case, one must pick the former to choose the right policy.<sup>15</sup>

Some political decisions, though, do not have a right answer. Decision-makers must appeal to their own values in order to choose an option. Security decisions often fall into this category. Security requires tradeoffs. We can implement more stringent security procedures that infringe slightly on citizens' basic liberties, but tend to ensure people's safety, or we can protect basic liberties by refusing to impose certain procedures, even if doing so decreases safety. Here it is reasonable to think that neither decision is right or wrong; rather, each person must appeal to her own values to decide.

The same distinctions apply whether voters choose policies or candidates. In some cases, such as when one candidate wants to implement racist or sexist policies, there is a wrong decision. Most candidates do not hold such extreme views, though, and so any choice is reasonable. Democratic and Republican candidates promote different economic policies and prioritize different civil rights. There is sometime not an objectively correct choice between two candidates. How should voters vote? Brennan argues people should vote for whatever they justifiably believe will best promote the common good.<sup>16</sup> I agree, but I would argue that here either vote could fulfill that motive. I think he would agree with my assessment. So in this scenario the voter must appeal to something else. Personal preference, values, and other things that contribute to one's political beliefs will help to determine one's vote in this case, and a voter is justified in looking to those elements provided neither candidate advocates for wrong policies and so would be a wrong decision.

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<sup>15</sup> Brennan argues for this position in *The Ethics of Voting*, 128.

<sup>16</sup> *Ibid*, 133.

Furthermore, some political decisions do not matter in the way jury decisions do. In order for CP to apply, the decision's outcome must significantly impact other people's lives. While nearly all jury decisions fit this standard, not all political decisions do. Consider a scenario in which a municipality must decide how to spend its recreational funds. The funds have already been allocated to the specific department, and must be spent within the calendar year. Someone must decide: will the town build a basketball court or a swimming pool? This decision should not be construed to significantly impact anyone's life or life prospects, and so decision-makers should not be subject to the regulations of CP in decisions of this level of importance. Brennan does not mention this constraint, so it should be noted that CP only applies to decisions with a certain level of significance to others.<sup>17</sup>

There are clear distinctions between decisions the two institutions make. Juries are entrusted with determining the guilt or innocence of the defendant, and must do so by applying the facts of the case to the law. At least in theory, there is a correct application of the facts, and so a correct outcome. In contrast, political decisions may have a right answer, or may not. Some political decisions simply require a decision-maker to choose from a reasonable set of options, and to do so it is acceptable for her to appeal to her own values to come to a decision. Certain political decisions do not significantly impact anyone's life. So the principle does not apply to all political decisions. It only applies to the smaller subset comparable to jury decisions: political decisions that have a right answer, rather than a reasonable one, and with outcomes that significantly impact the

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<sup>17</sup> This might create questions about which voting decisions actually matter. This is easy to answer at the extremes: clearly questions about punishment affect others' lives in significant ways, while those about which recreational facility to build do not. There may be some grey area regarding how to distinguish significant decisions from non-significant ones, but I will not consider that here.



general population. Since not all political decisions fit this characterization, I have narrowed CP's scope significantly.

### *Objecting to CP*

Although I have confined CP's application to a smaller set of political decisions, I remain unsatisfied with the principle. Specifically, I do not believe Brennan establishes whether CP applies to groups or individuals. CP requires "deliberative bodies" to make decisions in the proper manner, but it is unclear if Brennan means to say each member of the deliberative body must pass the requirement, or if it is meant for the group as a whole. If I can show CP only applies to groups, rather than individuals, some number of incompetent people might be allowed into decision-making groups, as long as the groups as a whole continue to follow proper decision-making procedures.

In order to determine how to apply CP, Brennan returns to juries. He thinks if a twelve-member jury found a black defendant guilty, but it contained five racists and seven morally upstanding members, the moral composition of the jury would undermine the its authority.<sup>18</sup> The defendant is entitled to an unbiased jury trial, even if an unbiased jury would come to the same conclusion as a jury with some morally unreasonable members. Many would argue that the decision from a jury with morally unreasonable members should not hold, even if the members come to the right conclusion.<sup>19</sup>

If a twelve-member jury contains one morally unreasonable member who does not participate in the discussion, was the decision made in an improper way? Perhaps not,

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<sup>18</sup> Brennan, "The Right to a Competent Electorate," 14.

<sup>19</sup> This idea is similar to one Robert Nozick advocates regarding punishment. His principle requires that an individual be in the "best feasible position" to ascertain a defendant's guilt, and correctly given punishment from some other position is morally wrong. *Anarchy, State, and Utopia* (Basic Books, 1974), 105-107.

even if he convicted the defendant on racial grounds rather than facts about the case, as the rest of the jury did. Maybe this jury's decision cannot be overturned on morally illegitimate grounds even though it contained a morally incompetent member, and so we accept it. On the other hand, perhaps society simply does not want racist people to serve on juries, regardless of whether their views influence the jury's decision as a whole. Applying CP to the entire jury would not rule out juries with one racist member, but individually applying CP would prevent one racist from serving on a jury with eleven morally upstanding members. In Brennan's example, five members of the jury, which is not a majority, would convict based on morally inappropriate grounds, but the minority may have influenced others on the jury to vote in specific ways. Brennan would argue that their subpar moral character creates an unacceptable jury, perhaps because we can never be sure of a racist jurist's motives. Once again, maybe this is not the issue. If the five racists deliberate separately from the seven non-racists, and each group comes individually to the same conclusion, the racist jurists cannot be accused of influencing the morally upstanding ones. Still, the racists' presence on the jury does not intuitively sit well. Although we do not have clear intuitions here, it seems that people with unreasonable morals should not be allowed to make these kinds of decisions.

It is not clear exactly where we should draw the line between allowing one morally unreasonable member of a jury to participate in determining the right answer for the wrong reasons and invalidating the jury's decision because there are too many morally unreasonable members.<sup>20</sup> Here Brennan seems to argue that correct procedures

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<sup>20</sup> Drew Schroeder provided this objection.

outweigh correct outcomes: even if a jury with five racist members comes to the correct decision, the procedure invalidates it.

I can only hypothesize how he concludes this. It seems plausible to justify such thinking by saying each decision made in an improper manner creates a small injustice. While one poorly-made decision does not tip the scales significantly, many small injustices add up to a great injustice, one too large to be tolerable. When aggregating injustices, Brennan seems to think there is some percentage of the deliberative body as a whole that may use poor methods. Once the number of people using improper procedures reaches a critical mass, the aggregated injustice outweighs other concerns, and so Brennan deems the body unacceptable. Given his five racist jurists on a twelve-person jury example, it is clear this percentage may be a minority. However, he never specifies whether it must be a sizable minority (such as he demonstrated) or whether a significantly lower proportion of a given body (say, 5%) would also render the entire body unacceptably incompetent. It seems reasonable to me to say that some critical mass of incompetent people, while still in the minority, would render the entire body's decision unacceptable. I agree that one incompetent member of a twelve-person jury (and so perhaps 5% of the entire electorate) would probably not matter, but having five racist members (or an incompetent 49% of the electorate) would render the decision invalid because of procedural concerns. The critical mass tipping point would fall somewhere in the middle.

Although it is possible we would not have to apply some CP test to each individual voter, we must have some way of ensuring the proportion of people using unacceptable procedures stays below the threshold of acceptability. Perhaps we could test

some segment of the electorate as a representative sample. If the percentage of unacceptable decision-makers fell below the threshold, society would grant all citizens voting rights. If we could not rely on a representative sample, perhaps the only way to adequately enforce CP would be to test each voter.

Brennan does not clearly argue that CP should apply to individuals. It seems that there might be some low threshold of incompetent voters that we would reasonably allow, and so we could apply the principle to the electorate as a whole. I cannot, however, definitively conclude this is the case. To present Brennan's position favorably, I will grant him the right to apply CP to each individual. Doing so would create the most competent electorate possible.

#### *Restricted Suffrage is Also Unjust*

David Estlund argues restricted suffrage is unjust. The next chapter details the objection more thoroughly, but I mention it since it is an integral piece in Brennan's comparison of restricted and universal suffrage. Each person has the right to make decisions about himself. Estlund would permit someone to make coercive decisions about another's life only if he has reasonable justification for doing so. He formulates this principle:

**Qualified Acceptability Requirement (QAR):** no one [should have] authority or legitimate coercive power over another without a justification that could be accepted by all qualified points of view.<sup>21</sup>

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<sup>21</sup> David M. Estlund, *Democratic Authority: A Philosophical Framework* (Princeton: Princeton University Press, 2008), 33. Estlund also formulates the QAR this way: "political authority must be justifiable in terms that are beyond qualified rejection, though not necessarily beyond all actual rejection," (*Democratic Authority*, 34) and I believe this articulation is clearer, but I use the former in the text since Brennan refers to it.

I will present the full argument for this in the next chapter. For now, I hope the following example will demonstrate the requirement adequately.

Derek knows the Constitution by heart but has never been exposed to the principles of economics. His society disqualifies incompetent voters, but we could consider different yet equally reasonable factors when disqualifying people. I might believe Derek would make a competent voter based on his Constitutional knowledge, but my friend might want to disqualify him because he lacks any economic knowledge. Both views are reasonable, and both of us could reasonably object to the other: I might not think economic knowledge is essential to voting, and my friend could think the same about Constitutional recollection. So we cannot agree whether Derek would be a competent voter. However, both of us realize that the other's justification for allowing Derek to vote is reasonable, so it would be legitimate for him to vote.

Brennan accepts Estlund's arguments showing how restricted suffrage is unjust and morally objectionable.<sup>22</sup> I will return to these points later, but now that I have sketched Estlund's rejection of restricted suffrage, I will flesh out Brennan's argument by attempting to weigh the justness of restricted suffrage against universal voting rights.

### **Weighing Justice**

Brennan does not believe that democracy is as just as it could be, and wants to examine the most feasible just allocation of political power. He aims to prove that universal suffrage is more unjust and morally worse than restricted suffrage. As I outlined above, Estlund believes restricted suffrage violates QAR, and so is unjust. If we accept

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<sup>22</sup> Brennan, "The Right to a Competent Electorate," 22.

both Brennan's and Estlund's arguments, as well as the objections I have laid out in this chapter, at this point we can conclude:

1. Democracy, as it is generally practiced, is unjust because it violates CP.
2. A restricted electoral system in which only those who can prove competence are allowed to vote would be unjust because it would violate QAR.<sup>23</sup>

Brennan and Estlund have established that both universal and restricted suffrages are unjust. If there is no third option, which is the better alternative? Brennan claims, "the way in which democracy violates the Competence Principle is intrinsically worse than the way in which [restricted suffrage violates QAR]."<sup>24</sup> Brennan equates universal suffrage to the unjustness of improperly made jury decisions. Meanwhile, he believes restricting voting rights is as unjust as imposing voting age requirements. Generally, people find poorly made jury decisions more repulsive than voting age restrictions. Jury decisions made in an incompetent manner are morally objectionable, even if the jury makes the correct decision anyway. Most countries, though, impose voting age restrictions, and although they might be slightly unjust, the rules do not create a terrible injustice. This sums up his primary argument for restricting the electorate.

Implicitly, Brennan makes a secondary argument for restricted suffrage. He believes a restricted electorate will make empirically better political decisions than a system of universal suffrage. He uses predicted outcomes to justify restricting the electorate. These two considerations lead him to conclude restricted voting is the less objectionable of the two systems. At the very end of this chapter, I will recreate Brennan's weighing process. Before I get there, I will detail both arguments.

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid, 23.

*A Justice Comparison: Restricted vs. Universal Electorates*

Universal suffrage, according to Brennan, is about as unjust as enforcing unacceptable jury decisions. Universal suffrage violates CP and has serious consequences. Incompetent and unreasonable people can make decisions about citizens' lives, liberty, and property, which will then be enforced by threat of violence. While people are accustomed to this practice, it is intolerable, just as it would be intolerable in jury trials.

Consider a society that cannot devise a generally acceptable method of distinguishing between competent and incompetent people. It can only use methods that people find objectionable. This is not so different from contemporary society. Brennan wonders how unjust such processes will be. He answers, "[i]t depends on how good our [process] is, and on how well we can provide evidence that the [process] is a good one. The better we can show that the [process] tracks the real difference between competence and incompetence, the less objectionable it is" and, implicitly, the less unjust it will be.<sup>25</sup>

To determine the level of injustice done by excluding citizens using some process, Brennan suggests comparing it to existent laws excluding some citizens from voting. Most countries have age restrictions on voting, justifying them by saying children are not competent to rule. However, voting age restrictions are subject to Estlund's objection: a reasonable person could object to any set age. Reasonable people accept that most children would be incompetent voters, and most adults must put in some effort in order to vote competently. These same reasonable people recognize the gradual evolution from childhood incompetency to potential adulthood competence, which generally occurs late in adolescence. Voting age laws do not perfectly correlate to the transition, which occurs

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<sup>25</sup> Ibid, 24.

on an individual basis. Instead, it draws a clear distinction at age sixteen, or eighteen, or some other arbitrary number, creating two classes of citizens: those who may vote (and so rule) and those who may not.

Unless the law sets the voting age extremely low, to account for child prodigies, this distribution of political power fails QAR.<sup>26</sup> Setting the age arbitrarily high (at, say, sixteen) would disqualify educated fifteen year olds and child prodigies from voting. In this scenario, some person could reasonably object to allowing most, but not all, qualified people to vote. Setting the bar low enough to account for child prodigies (say, age two), would potentially violate CP. Not all two year olds are knowledgeable enough to vote, or even have the cognitive functions necessary to be able to make competent decisions. Generally, allowing children to vote violates CP.

Brennan claims a disqualification process would approximate the level of injustice that voting age laws currently impose on citizens. Like voting age laws, this process would attempt to track the real distinction between competent and incompetent people and competently- and incompetently-made decisions. This distinction is real, morally significant, and generally accepted by reasonable people. Just like age restrictions, it would fall short of actually tracking the distinction, so some reasonable people would object to the process.<sup>27</sup>

Brennan then advances a principled argument regarding the injustice of universal voting rights. He claims:

1. While both A) voting age laws and B) enforcing decisions by incompetent juries or ones made incompetently are unjust, B is a greater injustice than A.

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<sup>26</sup> Ibid, 25.

<sup>27</sup> Ibid, 26.



2. Restricting voting rights using demonstrable competence is about as unjust as A.
3. Universal suffrage is about as unjust as B.
4. Universal suffrage is a greater injustice than restricted suffrage.<sup>28</sup>

Restricted suffrage creates two classes of citizens “based on a distinction that all reasonable people can accept in the abstract” but about which there is much reasonable disagreement in actuality.<sup>29</sup> Universal suffrage is comparable to blindly enforcing jury decisions, even with evidence that they have been made using unacceptable methods or by incompetent people. People care much more about using poor methods when making jury decisions than preventing some competent young people from voting. The former feels like a much larger injustice than the latter. Therefore, Brennan concludes universal suffrage is more unjust.<sup>30</sup>

### *Outcomes*

We know, based on present research, what current voters are like: good voters hold systematically different beliefs than bad voters, many people do not understand which economic policies will benefit them, people often vote for incumbents, etc.<sup>31</sup> Meanwhile, we do not have empirical evidence about what decisions a restricted electorate would make. The current voting bloc has great potential for improvement, but we do not know what actual improvements would come about.<sup>32</sup> Brennan implicitly presents a second argument in favor of restricting the electorate: he believes this restricted group will make better political decisions than the universal electorate. Further, he claims better outcomes, at some point, trump voting justice, stating, “it is better to produce just outcomes in an

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<sup>28</sup> Ibid, 27.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid, 30.

<sup>32</sup> Ibid.

unjust way that to produce unjust outcomes in a just way.”<sup>33</sup> So not only will the restricted electorate produce better political decisions, it produces exactly what Brennan is aiming for: the best feasible outcomes using somewhat just procedures, rather than fully just procedures.

### *Looking Ahead*

Brennan considers two major justifications for restricted suffrage: he believes it is less unjust than a system of universal suffrage, and he thinks the restricted electorate would make empirically better decisions. These two points lead him to conclude that restricted suffrage is a better system than universal suffrage. I will show, however, that Brennan leaves out some important considerations of procedural justice. In the next chapter I will expand upon Estlund’s objection and offer my own. I will attempt to bring both QAR and CP into alignment with how they would be applied in current voting systems.

After fleshing out these objections, I will reconsider Brennan’s attempt to weigh restricted suffrage against universal suffrage. I argue that even if he is correct in his initial attempt, the new factors will tip the scales in the opposite direction.

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<sup>33</sup> Ibid, 29.

## CHAPTER 2

In the last chapter I presented Brennan's argument for restricting the electorate.

As a reminder, he used the Competence Principle to motivate his position:

**Competence Principle (CP):** It is unjust to deprive a citizen of life, liberty, or property, or to significantly alter her life prospects by force and threats of force, as a result of decisions made by an incompetent or morally unreasonable deliberative body, or as a result of decisions made in an incompetent and morally unreasonable way.<sup>1</sup>

Before I can present objections to restricting the electorate, I must investigate what that group looks like. The simplest, although certainly not the only, way to distinguish the competent from the incompetent would be to use a voting exam. Brennan does not fully outline what a potential voting exam would entail, so I begin this chapter by filling in the holes. I will attempt to construct the most feasible and comprehensive voting exam possible, in order to disqualify as many incompetent voters as I can. Brennan only states that an exam might test “generally relevant basic social science and basic knowledge about the candidates” in order to exclude badly incompetent people from participating.<sup>2</sup> He stresses that this kind of exam is not the only way to attempt to enforce CP, but he considers only this because he deems it most practical.<sup>3</sup>

Requiring potential voters to know basic facts about the voting process and political system would produce a more informed electorate. An exam would test voters on factual knowledge: what the president's job is, how a Senator filibusters, and how many states must ratify a Constitutional amendment. The test would also include economic concepts – perhaps potential voters would be required to identify different

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<sup>1</sup> Brennan, “The Right to a Competent Electorate,” 6.

<sup>2</sup> Ibid, 19.

<sup>3</sup> Ibid, 20.

taxation systems, and would have to prove they knew how to apply specific concepts to real-life problems. These questions would test voters' comprehension of the political system and relevant economic concepts, and ensure that voters could apply their knowledge in the voting booth.

Testing a potential voter's knowledge of specific candidates requires different questions. Questions in this section would ask about a specific candidate's policy positions on issues of local and national importance. For example, a voter would be required to accurately characterize candidates' views on illegal immigration, higher education funding, small business incentives, affirmative action and a host of other issues, depending on one's voting district.

To pass the exam, a potential voter must answer a certain percentage of questions correctly. An acceptable percentage could be set at the state or federal level. Local officials would administer the exams at designated testing centers to protect against cheating. The exams would be available up to and on election day, and as long as a voter passed the exam he would be allowed to vote.

### *What Comes Next?*

Now that I have considered what a voting examination might look like, I will show that such examinations are unfair to administer. First, I will return to Estlund's QAR objection from the previous chapter, and provide the full argument for that principle. In turn, the QAR motivates my own objection to applying voting exams. I argue such examinations are unacceptably discriminatory and unfair. At the end of the chapter, I will weigh the justness of restricting the electorate again, keeping these factors in mind.

## Estlund's Objection to Restricted Suffrage: The Qualified Acceptability

### Requirement

In chapter one, I mentioned David Estlund's objection to restricted suffrage. I will articulate his full view here. To argue against restricted suffrage, Estlund first presents the strongest argument for that position, then aims to reject the final premise.<sup>4</sup> Estlund provides the following justification for restricted suffrage:

1. *The Truth Tenet*: There are true, procedure-independent normative standards by which political decisions should be judged.
2. *The Knowledge Tenet*: Some people know more of these than other people.
3. *The Authority Tenet*: Those who know more are justified in having political authority over others.<sup>5</sup>

If these three premises are true, they justify restricted suffrage. Estlund grants that the first two tenets are difficult to deny.<sup>6</sup> Instead, he proposes rejecting the authority tenet. He says that reasonable people cannot agree on who knows best, and so the authority tenet does not apply. If he can do that, he will have denied a major justification for restricted suffrage, since the argument in support of restricted suffrage relies on this third step.

### *Rejection of the Authority Tenet*

One might intuitively think Estlund will reject the authority tenet by appealing to the "expert/boss fallacy." This fallacy states one person may have greater knowledge about a topic than the rest, but that alone is not sufficient to justify granting him any

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<sup>4</sup> Throughout "Why Not Epistocracy?" and *Democratic Authority*, Estlund argues against epistocracy, or rule by the wise, and positions himself against Mill's plural voting scheme. I will use "restricted suffrage" throughout the paper to correlate with Brennan's use of the same phrase, and because epistocracy has slightly different connotations. Despite the distinct word choices, Brennan believes he has modified Estlund's argument enough so that it applies to his own (see "The Right to a Competent Electorate," 35, endnote xiv).

<sup>5</sup> Estlund, *Democratic Authority*, 30.

<sup>6</sup> *Ibid*, 31.

power, let alone greater power than others.<sup>7</sup> This idea is accepted in everyday life: although my doctor may know better than I do what I should eat, I still decide what to put into my body each day. I do not grant my doctor power over my decisions regarding what to eat, even though his knowledge is greater than mine. So it seems that we do not use or accept the authority tenet in everyday life. This is not, however, the tactic Estlund uses to oppose the authority tenet. Nevertheless, Brennan's response to Estlund attempts to correct this fallacy, so I mention it here.

Instead, Estlund appeals to the idea of reasonable objections to undermine the authority tenet. A reasonable objection is one that people would acknowledge as reasonable, even if they themselves do not agree with it and even if the objection is wrong. An example is helpful here. Imagine a road trip, during which the three participants want to travel from Chicago to San Francisco. Person A wants to stop in Boise along the way, while B would prefer to stop in Salt Lake City, and C would rather visit Las Vegas. There is no one correct route to drive from Chicago to San Francisco. Even if there is one correct answer about where to visit – perhaps one of the cities is directly on the line of best fit between Chicago and San Francisco – all of these options the cities are a reasonable distance between the starting and ending points. That makes them acceptable route choices for the drive. If C had wanted to stop in Akron, the others could reasonably object to his request, since it does not fit inside the generally accepted range of places to visit. In this case, traveling to Akron is unreasonable because San Francisco is west of Chicago, and Akron is east of Chicago.<sup>8</sup>

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<sup>7</sup> Brennan, "The Right to a Competent Electorate," 18.

<sup>8</sup> I am setting aside cases in which one might have a good reason to travel to Akron before heading to San Francisco. This might change the reasonableness of the justification for wanting to head east to go west.

Distinguishing between reasonable and unreasonable objections is central to Estlund's view. He argues a person can only have coercive power over another if there are no reasonable objections to the justification of his power. It is wrong to make coercive decisions concerning others if there could be reasonable objections to the decision. As Estlund formally puts it:

**Qualified Acceptability Requirement (QAR):** no one [should have] authority or legitimate coercive power over another without a justification that could be accepted by all qualified points of view.<sup>9</sup>

One should not hold coercive power over others unless he can reasonably justify it to the set of all reasonable people.<sup>10</sup> QAR does not require that decision-makers actually justify themselves to all qualified points of view, only that one could, in theory, justify one's authority to those holding such views. Brennan, along with many other liberal political philosophers, accepts QAR.<sup>11</sup>

#### *Implications of QAR for Universal and Restricted Suffrage*

Estlund asserts that restricted suffrage does not pass QAR, and so is not justified. He thinks that universal voting rights do pass the requirement, and so can be justified.<sup>12</sup> If he is correct in applying QAR to both systems of suffrage, he will have a strong case for rejecting the authority tenet. Since the argument for restricted suffrage relies on the authority tenet, its rejection undermines this system's justification.

To meet QAR, each step of the argument must be justifiable to reasonable people.

If any reasonable objection arises at any point, the entire justification for restricted

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<sup>9</sup> Estlund, *Democratic Authority*, 33.

<sup>10</sup> *Ibid.*, 45-53.

<sup>11</sup> Brennan, "The Right to a Competent Electorate," 19.

<sup>12</sup> I will not discuss this point, since QAR establishes the unjustness of restricted suffrage, and CP has already shown the same thing about universal suffrage. For Estlund's defense, see *Democratic Authority*, 36-67.

suffrage is subject to this objection. So objecting to any step of the argument for restricted suffrage amounts to a violation of QAR.

Previously, Estlund acknowledged (1) and (2) are difficult to deny. It seems (3) naturally follows. If reasonable people agree on (2) in that they think more knowledgeable people exist, then (3) does naturally follow, justifying restricted suffrage. If, however, reasonable people agree that knowledgeable people exist, but cannot agree on how to identify such people, then we cannot apply (3) in reality. If all reasonable people cannot reasonably agree on who is knowledgeable, the authority tenet does not even come into play – experts cannot have more power because all reasonable points of view cannot agree on who the experts are.<sup>13</sup> This claim holds no matter what method of distinction is used (in other words, although a voter examination is not the only method to split the two groups, people will disagree about the split even if we use another method).<sup>14</sup> The authority tenet would restrict voting rights to those who know more about politics. Restricting the electorate divides citizens into two classes – one with power, one without – in a way that is not acceptable to all reasonable points of view. The argument passes QAR in theory, but fails it in practice, and so restricted suffrage cannot be reasonably justified in reality.

### *Brennan's Response*

Brennan recognizes Estlund's rejection of the authority tenet is a major blow to restricted suffrage's justification. To revive the argument, Brennan substitutes his own third tenet in place of Estlund's. Brennan realizes, as I pointed out above, that the

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<sup>13</sup> Estlund, *Democratic Authority*, 34-36.

<sup>14</sup> Brennan, "The Right to a Competent Electorate," 20.



authority tenet commits the expert/boss fallacy. His suggestion does not, so Brennan believes it justifies restricted suffrage. He formulates what he believes is a more intuitive principle:

3a. *The Anti-Authority Tenet*: When some citizens are morally unreasonable, ignorant, or incompetent about politics, this justifies *not granting* them political authority over others.<sup>15</sup>

This tenet provides a basis for disqualification from political authority; instead of arguing that those with more knowledge should be bosses, Brennan argues that those with little knowledge should not rule over others. Brennan's response solves the earlier problem with the expert/boss fallacy – he does not try to give power to the more knowledgeable among us. Rather, he tries to take it away from those who are obviously incapable. While this might seem like the exact opposite of the authority tenet (and so not change much), Brennan thinks otherwise. It seems to me he attempts to reconcile two conflicting ideas: the right each person has to make decisions about her own life, and the wrongness of allowing incompetent people to hold power over others. Brennan tries to split the difference: the anti-authority tenet is meant to disqualify incompetent people from making decisions about others' lives. It allows all other people to make their own political decisions, which also happens to grant them some measure of power over others. The authority tenet, in contrast, prescribes who is allowed to make coercive decisions, full stop. Since incompetent people exist, QAR does not obviously defeat (3a). However, it also does not directly address Estlund's objection to the authority tenet, so Estlund might still be able to defeat (3a).

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<sup>15</sup> Ibid, 18. Emphasis original.

*Estlund's Possible Response*

Estlund does not directly respond to Brennan's claim, but based on his earlier writings, I will attempt to articulate his potential views. It seems Estlund's earlier rejection of the authority tenet would also work against Brennan's anti-authority tenet. Just as all reasonable points of view cannot agree on who the authority figures are, the same line of argument applies to incompetent people. There is no easy way to distinguish a competent voter from an incompetent voter; reasonable people will distinguish the two in different ways, just as they will distinguish who the experts are in different ways. Estlund would reject the anti-authority tenet in the same way he rejected the authority tenet, and would not agree to Brennan's modified justification of restricted suffrage.

However, Brennan and Estlund, as reasonable people, would agree that there is a set of people so incompetent that no one could have a reasonable objection to disqualifying their votes. Just as reasonable people will argue over whether a specific person at the margin is an expert, they will also argue at the margin of incompetence. However, QAR allows for a set of people so far below any incompetence line that there will not be any reasonable objections. So disenfranchising the set of obviously incompetent people will not violate QAR. Brennan could revise his argument for restricted suffrage by deploying a more specific principle, such as:

*3b. The Unarguably Incompetent Tenet:* When some citizens are so far below the incompetence line that reasonable people should agree they are morally unreasonable, ignorant, or incompetent about politics, this justifies not granting the incompetent citizens political authority over others.

This seems like a good way to avoid violating QAR.

*The Subjugation Worry*

Disenfranchising extremely incompetent people might create a permanent, non-voting class. Even if Brennan can justify restricted suffrage, it might be reasonable to object to a system with such a class, although we accept that all the members of that class are incompetent. Recall that people have the right to vote in part because it allows them to make decisions about their own lives. Disenfranchisement strips a citizen of this right, so permanent disenfranchisement strips a citizen of this right forever. This seems more troublesome than temporary subjugation.

I emphasize permanence since there are real differences between intermittent and permanent subjugation. Traditional democracy intermittently subjugates the minority each time voting takes place. Anyone who voted for a losing proposition or candidate must submit to the majority's rule. We do not consider this unjust; it is simply how the process works.

Even permanent subjugation might not be wrong. If I vote with the minority in every election, the majority always subjugates me. This does not seem wrong. I am still able to vote and express my preferences; I simply have the bad fortune that my views do not align with those of the majority. Permanent disenfranchisement, though, leaves me no choices. Restricting my voting rights eternally is a more significant injustice than temporary subjugation, or even temporary restriction.

Permanent disenfranchisement wrongs the subjugated class. Unless we can justify the subjugation, it is intuitively unfair to always make decisions for others. Brennan's argument in favor of subjugating incompetent people relies on the idea that it is unfair to give those incompetent people a say over others. Restricting incompetent people's voting

rights might be unjust, since it prevents them from making political decisions about themselves. Brennan believes allowing incompetent people to hold power over others outweighs that consideration. However, it seems much more unjust to permanently disenfranchise a citizen than to subjugate her temporarily, since the first scenario means she will never contribute to political decisions that significantly affect her.

Permanently subjugating some citizens will prove troubling when I include it as a factor to consider later. I believe permanent disenfranchisement might violate QAR. More troublesome, though, is the thought that it is especially unjust to strip people forever of the right to make one kind of decision – voting decisions – about their own lives than to do so intermittently. Later, I will use the Subjugation Worry to argue that certain types of voting exams are unjust. This will then be added to the list of factors to consider when determining which electorate is more just.

### **The Demographic Objection**

One more component is necessary before I articulate an objection to applying voting exams. This piece will also prove helpful in the final section, in which I consider new factors. In addition to the possibility of violating QAR, Estlund worries restricting voting rights will create an electorate with biases. Briefly, the objection hypothesizes that the portion of the population with the ability to pass the exam may have certain damaging features that contribute to bad voting. These features outweigh the admitted benefits of having the baseline level of knowledge required to pass the exam.<sup>16</sup> Those who can pass the exam – the restricted electorate – may disproportionately belong to a certain race,

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<sup>16</sup> David Estlund, “Why Not Epistocracy?” In *Desire, Identity and Existence: Essays in honor of T. M. Penner*, ed. Naomi Reshotko (Academic Printing and Publishing, 2003), 63.

class, or gender, which means that underrepresented groups might not be able to make their political desires understood. This is a simple formation of the demographic objection.

Estlund makes a case for the demographic objection in order to bolster his argument against restricted suffrage. It is an important point, since Estlund's QAR argument requires that there be no way to distinguish between acceptable and unacceptable voters without there being possible reasonable objections. Brennan believes that if we could develop an exam that tracked the distinction exactly, there would not be any qualified objections to the way we distinguish between competent and incompetent people. Estlund's demographic objection attempts to show that Brennan underestimates the range of reasonable objections. He does not anticipate such a wide scope of objections to the composition of the restricted electorate. Estlund formulates the objection this way:

**Demographic Objection:** the educated portion of the populace may disproportionately have epistemically damaging features that countervail the admitted epistemic benefits of education.<sup>17</sup>

It is important to remember that under QAR, this objection holds even if no reasonable person actually states it. It is enough to violate QAR that a reasonable person *could* hold this concern.

Knowledge exams like those I outlined earlier might disproportionately favor members of a certain race, socioeconomic class, or gender, thus biasing voters towards those viewpoints. Minority interests might not be appropriately included (based on their presence in general society) because white voters do not know or care what minorities

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<sup>17</sup> Ibid, 62.

would decide politically. Reasonable people might worry about excluding minority interests, which means such a system would violate QAR.

To combat this worry, Estlund suggests checking to see if the proportion of these groups is the same in the electorate as their percentages in the general population, and correcting the imbalance, if there is one. This kind of proportional objection seems to disappear.<sup>18</sup>

A more stringent objector, however, could worry about the presence of what Estlund terms “empirically latent” features, such as racism and sexism, in any restricted electorate, even one created by perfectly distinguishing the competent from the incompetent.<sup>19</sup> He dismisses the idea of realistically testing for these features, which I will take up below. He does not dismiss the objection, though, and says that even if it is impossible to check for the presence of empirically latent features, it is reasonable to worry about them. Because it is a reasonable objection, it seems any restricted electorate violates QAR.

He takes the argument one step further, and imagines a person who does not object to the restricted electorate on the basis of some actual (i.e. present) demographic distortion, but on the “ground that there might well be one.”<sup>20</sup> Instead of accusing the restricted electorate of racism, sexism, or some namable damaging feature, the objector worries that group has some undetectable distorting feature. Estlund calls these appeals to “conjectural features.”<sup>21</sup>

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<sup>18</sup> Estlund, “Why Not Epistocracy?” 63.

<sup>19</sup> Ibid, 64.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

It seems that his argument is quite strong here: it is not that anyone must accuse the restricted electorate of having an epistemically damaging feature. Neither must the restricted electorate actually have any damaging features that we may be able to identify, although I will explore what happens when we can test for such features. It is enough that a reasonable person could have such a worry about the restricted electorate to make the system violate QAR. So if there is any reasonable objection to be made, restricting the electorate fails QAR, even if we can implement a perfectly accurate test. Electorates can correct for empirically verifiable objections to their makeup, such as an underrepresentation of minority voters, but there is no easy corrective method when the objection is not actual but theoretical. I accept Estlund's argument as valid and believe in the absence of empirical proof otherwise, all restricted electorates will fail QAR due to the possibility of reasonable objections. This is an important point, since it shows all restricted electorates are unjust.

### **Exams Do Not Disqualify All Incompetent People**

The kinds of exams Brennan advocates do not disqualify all types of unacceptable voters. CP holds potential voters to a higher standard than mere political knowledge; competent voters must also have reasonable moral standards and *make decisions* in a reasonable manner. Without tests to disqualify all kinds of unacceptable voters, it is not clear that testing helps to restrict the electorate to people who pass CP. In this section I will investigate new types of exams that might help to correct for certain omissions, then evaluate them.

### *What Do Traditional Knowledge Exams Miss?*

While an exam like the one described at the beginning might test a voter's knowledge, it does not take into account a voter's morals or her decision process when she casts her ballot. It is possible that a voter is knowledgeable about the election, the candidates, and the issues at hand in this particular cycle, which we could confirm with an exam. It is also possible that a voter would pass the exam yet fail to use that knowledge when voting, and instead use an unacceptable procedure. A voting exam, then, misses a significant proportion of voters deemed incompetent by CP. While it can test for knowledge, there is no way to test (or, really, to know) which factors a voter will consider when she casts her vote.

### *Creating an Unbiased Electorate*

No current exam can test an individual's thought process while casting her ballot. Still, in order to rule out as many incompetent people as possible, we could test for factors that would likely impact one's voting considerations. For example, we might worry that racist people will vote using racist motives. It is difficult to weed out racist people with a questionnaire: racist citizens could simply lie in their responses, then vote using racist beliefs. But we can reasonably approximate citizens' moral values, and rule out at least some morally unreasonable people, by testing them for stereotype biases.

Implicit stereotypes are unconscious, and the perceiver is not aware of their effect. Negative implicit stereotypes, such as believing women are worse leaders than men, could impact a voter's ability to properly weigh his voting options. It might lead him to vote in an unacceptable manner. Thus, excluding these types of people would help create a restricted electorate closer to the ideal electorate CP requires. Recall CP stems from



Brennan's assessment of three types of unacceptable juries: ignorant, irrational, and morally unreasonable. As such, there are three corresponding types of incompetent voters.

There are exams we could use to more accurately check for the presence of implicit biases, which will also prevent self-aware racists from lying on a questionnaire. This section will discuss implementing currently available tests, and ways to moderate any implicit stereotypes one might hold. The next section will explore the feasibility of these tests and evaluate both the implications and moral reasonableness of implementation.

Implicit stereotypes are generally stable and well-learned.<sup>22</sup> This makes them somewhat easy to evaluate. Psychologists have developed the Implicit Association Test (IAT) to measure levels of implicit association with certain ideas or groups of people. Psychologists have shown that people may not say what they truly believe, just as I worried about when discussing the racism questionnaire. This occurs because they are either unwilling or unable to do so. Unwilling means that an individual does not want to admit the correct answer. Unable means that a person is mistaken in his beliefs about himself. A self-aware racist might be unwilling to give the correct answer about her racist beliefs, since telling the truth would disqualify her from voting. People who hold implicit stereotypes about others are unable to properly report on their beliefs. The IAT penetrates both types of unreported beliefs, and measures implicit attitudes towards specific groups.<sup>23</sup>

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<sup>22</sup> Irene V. Blair, Jennifer E. Ma, and Alison P. Lenton, "Imagining Stereotypes Away: The Moderation of Implicit Stereotypes Through Mental Imagery" *Journal of Personality and Social Psychology* 81 (2001): 829.

<sup>23</sup> "Background Information," Project Implicit, accessed March 19, 2012, <https://implicit.harvard.edu/implicit/demo/background/index.jsp>.

To measure implicit attitudes, the IAT directs participants to pair two concepts together. For example, the IAT that measures age preference (old vs. young) requires participants to pair images and words associated with youth with words associated with good. Elderly and bad are similarly paired. Then the associations are switched (youth with bad, elderly with good). The participant takes the IAT on the computer, and each concept (good vs. bad or old vs. young) has a corresponding keyboard press. He must quickly press the correct button for the image or word that appears on-screen.

The more closely associated two concepts are in one's mind, the easier it is to pair them together, and the quicker one can correctly respond with keyboard presses.<sup>24</sup> The computer program measures the difference in time for different associations, and uses an algorithm to determine how strong one's preference is for a particular concept. One can have a "slight," "moderate," or "strong" preference for a particular concept (i.e. old vs. young, white people vs. black people, male vs. female, etc.). Test results may also conclude that a participant has "little to no automatic preference or association."<sup>25</sup>

The IAT is simple to perform and lasts under fifteen minutes. Current IATs measure people's implicit associations about race, skin tone, sexuality, religion, age, and the gender-career bias.<sup>26</sup> At this point, it seems like a good candidate to help societies exclude biased people. However, one major advantage of the knowledge exam is one's ability to improve upon one's past results. A potential voter may take the test and fail. He can study to try to improve his score, and if he does attain the necessary score, he will be

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<sup>24</sup> "FAQs," #2, Project Implicit, accessed March 23, 2012, <https://implicit.harvard.edu/implicit/demo/background/faqs.html>.

<sup>25</sup> Ibid, #11.

<sup>26</sup> "Demo Tests," Projection Implicit, accessed March 12, 2012, <https://implicit.harvard.edu/implicit/demo/selectatest.html>. The last test often reveals a link between males and careers and females and family life.

permitted to vote. Since people do not consciously appeal to implicit stereotypes, they do not control them. Without control over what is being tested, it seems unlikely someone would be able to improve his score. So perhaps one will never be able to pass the IAT, and will be permanently disenfranchised. This creates a subjugation worry like the one I discussed earlier.

### *Mental Imagery and Changing One's Implicit Associations*

If people cannot improve their scores on implicit stereotype tests, these exams would create a permanent underclass of non-voters. Testing for implicit stereotypes, then, would extend the Subjugation Worry I discussed earlier. However, implicit biases have shown to be malleable to some extent. Specifically, a study conducted at the University of Colorado at Boulder concluded that using counterstereotypic mental imagery produced substantially weaker implicit associations as measured by the IAT.<sup>27</sup> This section will discuss the background of stereotypes, then explain the method the study used to counter people's implicit biases. The final section will explore the feasibility of this option.

Mental imagery refers to the conscious and intentional act of creating a mental representation of a person, object, or event. It has previously been shown to alter both judgment and behavior in a wide variety of areas, from athletic performance to intellectual pursuits. Traditional stereotypes refer to the typical or strongest group association. For example, concepts of warmth, passivity, and dependence are often associated with females, as well as physical traits like long hair and occupations such as secretary and nurse. These concepts together form the traditional stereotype of women.

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<sup>27</sup> This conclusion and the further explanation come from Blair et al.

The counterstereotype (CS), which characterizes women as strong and independent, is less easily accessible.

The Colorado study focused on implicit stereotypes surrounding men and women. The study showed that picturing CS mental images of strong women produced significantly faster response times during stereotype-inconsistent pairing trials (i.e. when pairing females with strong characteristics or males with weakness). This was in comparison to neutral trials in which participants conjured a mental image of a relaxing beach scene. The second trial demonstrated that producing a stereotypical mental image of a woman (weak and passive) did not increase one's implicit bias, but a CS mental image of a woman (strong) did significantly decrease the participants' implicit stereotype. However, in all cases the mean stereotypical response was greater than 0. In other words, generally people still showed implicit biases against associating women with strong concepts, although mental imagery lowered the bias.

The study provides strong evidence for the moderating effect of CS mental imagery on implicit stereotypes. This evidence implies that there is a much stronger link between explicit processes (mental imagery) and implicit processes (unconscious biases) than previously thought. While it was already established that implicit stereotypes can influence one's actions and judgments, this study shows that explicit strategies may also influence the implicit stereotypes one holds. If this is the case, then it seems possible for people who have implicit biases to use mental imagery to mitigate the effects. Depending on what level of bias society deems acceptable, a citizen might be able to mitigate her bias enough to reach the level necessary to vote.

### *Implementation and Evaluation*

Brennan might want to use the IAT to disqualify morally unreasonable voters from the electorate. To make this a realistic scenario, the state or federal government would authorize people to vote based on their levels of bias. We might require that people showed little to no bias between different groups (men vs. women, blacks vs. whites, etc.). We might also allow people who showed a slight preference for one group over the other to vote, but disallow those who show a moderate or strong preference in either direction. In this case people would not have to erase the presence of implicit stereotypes, but simply mitigate them to an acceptable level.

Potential voters would take the exam that corresponded to the characteristics of the candidates in that particular election. For example, if one candidate was male and the other female, potential voters would have to score at least an acceptable level on the gender differences IAT. If the two candidates were of different racial backgrounds, potential voters would have to pass the threshold on that specific IAT to vote.

Just like a knowledge exam, if one does not score at an acceptable level on the IAT, he can retake the exam. People who previously were unable to vote because of the results of their IATs could use explicit strategies outlined above while retaking the test, and would potentially reach an acceptable score. Then they would be permitted to vote.

I will now evaluate the feasibility of implementing IATs in order to test people for implicit biases or biases they are unwilling to share. The exam is available online and takes under fifteen minutes to complete. It would be fairly simple to direct all potential voters to an online examination. If he scored within the appropriate range, he could then vote. Informing people about the opportunity to improve one's scores would not be any

more difficult. The same website where people accessed the IAT could also outline the bias-mitigation strategy. By making the information easily available, the state puts the power in the hands of the voters, even if it is required that a potential voter score within a certain range on the exam.

I have established that it would be feasible to implement the IAT as a measure to disqualify morally unacceptable voters. Next, I will consider the outcomes and implications of subjecting citizens to such a test. There is a major problem with this approach: forcing someone to admit that he might be unconsciously biased is mentally unsettling for that person. I will consider this, then argue that the negatives of implementation outweigh the benefits.

#### *The Cost of Discovering Implicit Biases*

Learning that I am unconsciously racist, sexist, or otherwise biased can take a great toll on my mental health. Especially if nothing in my personal history suggests that I might have a bias, finding out about this part of myself could be mortifying. The IAT's "Ethical Considerations" page discusses potential misuse of the test, and states: "[P]eople may use [the IAT] to investigate others' likes and dislikes, causing them harm in the process. Project Implicit, along with the investigators who have been involved in developing the IAT, urge careful consideration of costs associated with these possible misuses in contemplating any applications of the IAT."<sup>28</sup> The makers of the IAT realize the potentially damaging thoughts I might have if told I have implicit biases. Add in a new inability to vote, and I find myself in a deep mental hole. The cost of failure for the

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<sup>28</sup> "Ethical Considerations," Project Implicit, accessed April 15, 2012, <https://implicit.harvard.edu/implicit/demo/background/ethics.html>.

IAT is much higher than the cost of failure for the knowledge exam. If I fail either of them, I will not be able to vote, which might cause me unhappiness or shame. If I fail the knowledge exam, I might feel some further inadequacy for lacking the intellect or recall to pass. If I do not score at an acceptable level on the IAT, I might feel that my character has fundamental flaws.

I, the unconscious racist, have a further worry beyond my mental state. If my bias is strong enough, I might never be able to pass the IAT. With a knowledge exam, if I do not know the answers, I can study them, which gives me a reasonable chance to pass. But perhaps I hold extremely strong unconscious biases, and am unable to mitigate them to an acceptable level.<sup>29</sup> In essence, I will never be able to pass the test, and so I will never be able to vote. If voting is important to me, this is another major mental hurdle. It also recalls Estlund's earlier worry that voter exams create a permanent underclass who may never vote. This returns us to the Subjugation Worry. Perhaps this is not a problem if this group of people is composed only of overly racist people who cannot mitigate their biases, since we do not want these kinds of people voting. Still, society often influences people in unconscious ways, and it might be difficult for many people, especially older people, to change implicit biases they have held for many years. Generally competent people, then, would be restricted from voting, perhaps forever, which prevents them from making political decisions that greatly impact their lives. This might be more unjust than allowing implicitly biased people to vote, especially if these people proved competent in other relevant areas.

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<sup>29</sup> The Blair paper concluded that mental imagery seems to help mitigate one's implicit biases, but did not always reduce the implicit bias to zero (the average of all participants' scores after mental imagery was statistically non-zero). So it is possible that some people would not be able to mitigate their biases to an acceptable level, or at least would not be able to do so using this technique.

So perhaps the IAT is not an acceptable test. Forcing me to potentially discover that I hold unconscious biases creates fear. Using a test that I may never be able to pass lacks some element of fairness – I never have a legitimate chance to vote. Brennan does not consider these factors when weighing the justness of the two electorates. The next section attempts to rectify his oversights, and reweigh the justness of the two types of electorates.

### **Weighing Justice Again**

At the end of chapter one, I attempted to demonstrate Brennan's argument for restricted suffrage. As a reminder, he realizes that neither system is fully just: universal voting rights violate CP, while restricted voting rights violate QAR. However, he gives two arguments that conclude restricting the electorate is preferable to universal voting rights.

The first argument directly compares the two systems to other decision-making methods. He equates allowing universal voting rights to the level of injustice found in unacceptable jury decisions. If the members of a jury are ignorant, incompetent, or morally unreasonable, their decisions should not be allowed to stand, even if the jury arrives at the factually correct answer. Meanwhile, he equates restricting the electorate to voting age requirements, which almost all democracies have already. Voting age requirements, since they limit voters based on age rather than ability, unjustly prevent competent people from voting if they are too young. Most people, however, do not consider this injustice to be very large. Therefore, restricted suffrage is less unjust, and preferable, to universal suffrage. Brennan does not present a full second argument, but does suggest that restricted electorates will make empirically better political decisions



than universal electorates. Better outcomes serve as a secondary justification for restricting the electorate.

In this section, I will reevaluate universal and restricted suffrage, factoring in the objections I raised earlier in this chapter. Even if Brennan's first argument is correct, I will attempt to show why other considerations lead me to conclude in favor of universal suffrage. Specifically, I believe there are three major factors Brennan does not fully consider. First, Brennan's voting exam only disqualifies ignorant people, which means some portion of the restricted electorate still votes in way that violates CP. I will argue that this is both unfair to voters who would be prevented from voting based on their political knowledge, and that it would create a serious demographic objection. The second objection is the demographic objection, which serves as a potential refutation to Brennan's implicit argument that a restricted electorate will choose empirically better political decisions. A third, and more subtle, concern that Brennan fails to consider stems from the Subjugation Worry. Either knowledge exams or moral tests could create a group of people who could never pass such an exam, and so would never be able to vote. I will argue such an occurrence might unfairly restrict people's rights to participate in their own governance in a more serious way than the intermittent subjugation does.

#### *Why Not Use the IAT?*

To follow CP, society must restrict the electorate to knowledgeable, morally reasonable decision-makers. Using only a knowledge exam allows morally unreasonable people to vote. A society that wishes to restrict its electorate should use the best available moral exam. I have made the case for the IAT: it would be simple to implement and although it cannot directly test what reasons a voter appeals to in the voting booth, it

disqualifies implicitly biased people, which closely approximates people with unreasonable morals. Combining a knowledge exam and the IAT would create a restricted electorate much closer to the ideal restricted electorate CP requires.

Even though such a combination would produce a better approximation of CP's restricted electorate, it is morally unacceptable to use the IAT as a voting exam. As mentioned before, the makers of the IAT acknowledge learning about one's implicit biases can be mentally damaging. Subjecting potential voters to the risk of learning damaging information about themselves gives voting unacceptably high costs. Governments cannot justifiably place such requirements on voters, even if doing so would tend to create a less-biased electorate. Additionally, if it is empirically true that some people cannot change their implicit biases enough to reach the acceptable level, they will never be allowed to vote. This creates a subjugation worry I will return to later.

*Allowing Morally Unfit Voters is Unfair to Ignorant People*

CP shows an injustice occurs each time an ignorant, irrational, or morally unreasonable person contributes to a coercive decision regarding others' lives. Brennan's suggested voting examination distinguishes ignorant people from those with the requisite knowledge to vote, but does not distinguish between morally reasonable and unreasonable people. I have argued against implementing the IAT, which would disqualify people with unacceptably high levels of implicit bias. While having implicit biases does not correlate exactly to having unreasonable morals, the former approximates the latter well enough to make it a useful exam.

I will assume the reader accepts my argument and considers implementing the IAT wrong. Since it is wrong for society to use the IAT, morally unreasonable people

may vote, while people who do not pass the knowledge exam may not. Since any type of incompetent person voting violates CP, allowing morally unreasonable people to vote unfairly disadvantages people with low knowledge.

Even if someone rejects my argument against the IAT, and implements the test, I believe the form of the argument is still correct. My claim is: allowing any incompetent person – ignorant, morally unreasonable, or one who uses an unacceptable procedure to decide – creates injustice. It unfairly disadvantages incompetent people who can be ruled out by various methods.

The set of disqualified incompetent people have a legitimate complaint: they are equally unacceptable as voter as people who were not disqualified, but one group is allowed to vote. This is unfair to disqualified people. If the unfairness the disqualified voters face is greater than the injustice the general population faces when incompetent people vote, then we must choose the lesser injustice. Perhaps this comparison will force us to let all incompetent people vote.

### *Demographics of a Knowledge Exam*

I have just shown that disqualifying some incompetent people, rather than as many as possible, is unfair to the disenfranchised. Despite this, Brennan might argue it is still preferable to restrict the electorate where possible, since ruling out some incompetent people creates a better voting population. Knowledge exams might be useful here. Restricting the electorate in any manner, though, creates a serious demographic worry, and I want to argue that using a knowledge examination will consistently disenfranchise certain groups, such as the poor and less educated. A knowledge exam will tend to produce a restricted electorate with observable demographic tendencies that differ from

the overall population. The restricted electorate could also have empirically latent features that negatively impact its voting ability.

Restricting the electorate based on political knowledge will disadvantage poor and less educated citizens. While this outcome is not intrinsically unfair, I will use the demographic objection to argue that such a restricted electorate could make empirically worse political decisions, rather than the better decisions Brennan believes they will choose. This point counters his implicit argument that restricted electorates create better voting outcomes.

While morally unreasonable citizens will likely be found in all race, age, and socioeconomic groups, ignorant people tend to share a similar background. Ignorance about politics stems from a lack of education, often found in poor communities. While a citizen can overcome low levels of education by studying for a knowledge exam, not everyone has the time or the money to invest in such a procedure. Thus, knowledge exams will likely disqualify an unusually high percentage of poor and low educated citizens.

Although the restricted electorate might generally tend to make empirically better political decisions, using a knowledge exam to determine who may vote distorts the electorate's educational and socioeconomic demographics. The restricted electorate will likely not know what matters to the disenfranchised, who have similar interests based on characteristics they share (which also happen to make them unfit to vote). Even if the members of the restricted electorate attempt to discern what the disenfranchised need, that voting population will be unable to accurately anticipate what the poor and low educated want and most require to flourish. The restricted electorate, which is supposed

to make better decisions since its members are more knowledgeable about politics than the population as a whole, could make worse political decisions than the general population, particularly on issues that directly affect the disenfranchised. The restricted electorate might also have some empirically latent feature that causes the body to make worse political decisions all the time, which directly refutes Brennan's claim that restricted electorates make better political decisions.

Based on these arguments, I conclude that restricting the electorate using a knowledge exam creates a voting body with different demographics than the general population. This means that the electorate will make empirically worse political decisions at least some of the time, and it is possible that a restricted electorate with empirically latent features might make worse decisions all the time. These claims cast doubt on Brennan's conclusion that restricted electorates produce better political decisions.

### *The Subjugation Worry*

Implementing either the IAT or a knowledge exam would likely create a group of people who were unable to pass one exam, and so would never be allowed to vote. Since I have argued against the moral reasonableness of the IAT, I will set that exam aside and focus on knowledge exams; however, I believe my argument would apply to the IAT as well.

Voting gives a citizen a say in how she will be governed. Generally, we accept that people have the right to make decisions about their own lives. Voting also gives a citizen coercive power over others' lives in addition to one's own, so Brennan argues it is unjust to allow incompetent people to make decisions about others' lives. The

subjugation worry counters that it is especially unjust to permanently prevent a citizen from weighing in on decisions about his own life.

Consider the comparison Brennan makes between voting age requirements and restricted suffrage. Most people do not think voting age requirements are very unjust, even if they prevent some competent young people from voting (and so making decisions about their own lives). Voting age requirements end: eventually, a citizen will be allowed to vote just because she grows older. At some point any citizen can participate in constructing the coercive decisions by which she must abide. Permanent subjugation, on the other hand, never offers citizens this option.

If I did not receive a good education, and do not have the money and time to supplement what I do not already know with outside studying, I am effectively cut off from participating in a decision-making process that directly coerces me. I will never be able to participate in political decision-making. While it is unfair to subject other people to my vote if I am an incompetent voter, it is unfair to me to permanently subject me to the decisions of others, when I have no avenue to join the decision-making body as a competent member. I have the right to make decisions about my own life. If my society uses an exam that I can never pass, permanently disenfranchising me, this is much more unjust than voting age requirements, which only temporarily restrict my decision-making ability.

## CONCLUSION

This final section will detail the consequences of three factors Brennan did not include in his initial comparison of restricted and universal electorates. He noted that both universal and restricted voting systems are unjust, and argued that universal suffrage is the more unjust system. His explicit argument compared restricted suffrage to voting age limits, which most societies utilize and do not consider very unjust, even though they disenfranchise some competent people. He implicitly argued that restricting the electorate produces better political decisions. So he favors restricted voting over universal suffrage.

In chapter two, I argued that restricting the voting population with knowledge exams unfairly disadvantages people with low political knowledge in two ways. Both morally unreasonable citizens and those with low knowledge are incompetent and should not vote. Restricting the electorate with a knowledge exam only disenfranchises part of the incompetent segment of the population. It is unfair that some incompetent people are allowed to vote, while others are not simply due to the nature of their incompetence. Brennan did not consider the unfairness inherent in this kind of restricted electorate.

It seems, then, that in order to avoid such unfairness within the restricted electorate, society must test a potential voter's morals in addition to her knowledge. The IAT, while not perfect, would disqualify many people who are morally unreasonable. However, the ethical costs of the exam are unacceptably high for a government to require of its citizens in order to vote, and so I ruled out using the IAT. Using only a knowledge exam, though, will create an electorate with a demographic bias towards the rich and

well-educated. This group, even if it attempts to, might not be able to make the best political decisions for the poor and less educated, who are disproportionately deemed incompetent by a knowledge exam. Further, it is possible that the restricted electorate will have some empirically latent feature, which means it will make worse political decisions than an electorate that matches the general population demographically. If the restricted electorate makes empirically worse political decisions than a universal voting body would at least some of the time, and perhaps always, Brennan cannot justify a restricted electorate by saying it would produce better political outcomes.

Finally, I worry that any kind of exam will permanently disenfranchise some segment of the population. These people will never be able to pass the exam (no matter which exam society implements), and so will never be able to vote. Since voting gives a citizen the ability to weigh in on political decisions that pertain to her own life, it is especially unfair to permanently disenfranchise any group, much more unfair than temporary restrictions like voting age requirements.

These arguments refute Brennan's outcome-based justification of restricted suffrage, and provide two new considerations of unfairness when restricting the electorate. Including them shows that restricting the electorate is more unjust than Brennan initially thought. I conclude, contrary to Brennan, that restricted suffrage is more unjust than universal suffrage. Therefore, we should grant voting rights to all citizens.



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