

# Voting Rights

## **1. The Incompetent Jury:** Consider three different juries:

- (i) *The Ignorant Jury:* The jury members do not pay attention during the trial. Completely ignorant of the details of the case, they deliberate and find the defendant guilty.
- (ii) *The Irrational Jury:* The jury members pay some attention to the trial. However, during their deliberation, they ignore the evidence and reach a 'guilty' verdict based on irrelevant factors (e.g., they WANT them to be guilty; or their parents told them as children to always vote "guilty"; or they want to impress someone else on the jury; or they just don't like how the defendant looks, etc.)
- (iii) *The Morally Unreasonable Jury:* The jury members pay attention but ignore the evidence, reaching a verdict of 'guilty' solely because the defendant is an atheist, and it is their moral belief that atheism deserves capital punishment.<sup>1</sup>

Brennan's claim: Any verdict reached by any of these three juries would be unjust.

Why? First, because their verdict has a **morally significant impact** on another human being. Juries hold significant power over individuals—affecting, e.g., their life, liberty, happiness, and property. Second, because their verdicts were reached for **the wrong reasons**. But, any decision which has these two features is unjust. Put simply, *defendants have a right to a competent jury*. More generally, the following principle seems true:

**The Competence Principle:** It is unjust to forcibly deprive an individual of life, liberty, property, or well-being on the basis of a decision made by an incompetent deliberative body.

*Note: "Incompetent" here refers to deliberative bodies that are (i) ignorant, (ii) irrational, or (iii) morally unreasonable.*

Conclusion: The Competence Principle entails that people who are ignorant, irrational, and/or morally unreasonable should not be allowed to participate in deliberative bodies that are making morally significant decisions (e.g., juries). [*Do you agree?*]

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<sup>1</sup> This may sound extreme, but this was actually written into the first legal code of New England! The Massachusetts Body of Liberties, in effect from 1641-1684, stated, "If any man after legal conviction shall have or worship any other god, but the lord god, he shall be put to death." (See point 94 [here](#).)

*(Note that we presently do adhere to some form of this principle for juries. Members deemed incompetent or biased can be rejected; the discovery that a jury has reached a verdict in some incompetent or corrupt way can lead to it being overturned; etc.)*

Two Mis-Conceptions: (1) First, note that Brennan is NOT claiming that the verdict reached by the three juries is unjust because it is MISTAKEN. Perhaps the defendant really IS guilty. Even, so, Brennan thinks that something unjust would STILL have occurred (because they were incompetent).

(2) Brennan is NOT claiming that jury members have to hold all and only CORRECT moral views. *(As this course will demonstrate, this is quite a tall order!)* Rather, he only maintains that they ought to hold REASONABLE moral views.

*(He admits that this is vague, but it should be obvious that this at least includes some minimal threshold such as believing that murder and rape are wrong, that no religious view or sexual orientation etc. deserves capital punishment, and so on.)*

Application to Government: But, The Competence Principle has broader implications:

“When high stakes decisions are imposed upon innocent people, the competence principle requires every individual decision to be made competently and reasonably by competent and reasonable people. It applies not merely to jury decisions, but to any significant decision made by those holding political power.” (709)

Governments (like juries) ALSO make morally significant decisions for others, forcibly (i.e., under the threat of violence for non-compliance) enforcing laws that they have passed, and so on. So, The Competence Principle applies here too. It is unjust for the president, the Senate, judges, police officers, etc., to make morally significant decisions regarding how our lives will go in an incompetent way. Simply put, we have a right to insist that judges have law degrees, that our police force is trained, that there be certain restrictions (such as an age requirement) on who can fill each of these offices, that there be checks and balances within the system to prevent gross incompetence, and so on.

*[This seems correct so far... Doesn't it?]*

**2. Application to the Electorate:** But, what of the voters themselves? The electorate ALSO decides how my life will go. They decide which candidates I can vote for, which ones take office, and some of the laws that affect me. Consider three voters:

- (i) *The Ignorant Voter:* Does not take the time to study the details about each candidate, or the evidence for and against each policy, and so on.

(ii) *The Irrational Voter*: Votes based on, e.g., wishful thinking, or disproven scientific theories, or to impress someone, or on the candidates looks, and so on.

(iii) *The Morally Unreasonable Voter*: Votes based on, e.g., the racist view that white people are morally superior to black people, etc.

All of these voters are incompetent. Furthermore, if there are MANY incompetent voters, then they could cause significant harms and injustices.

It stands to reason, then, that (by The Competence Principle) such individuals should not be members of the electorate. In short—just as incompetent jurors should not be allowed to serve on a jury—**incompetent voters should not be allowed to vote.**

For, we have a right not to be ruled by an incompetent electorate, and the electorate has an obligation not to impose any serious risk of harm upon the citizens:

“The governed have a right not to be exposed to undue risk in the selection of policy or of rulers who will make policy. When elections are decided on the basis of unreliable epistemic procedures or on the basis of unreasonable moral attitudes, this exposes the governed to undue risk of serious harm. Since the governed are forced to comply with the decisions of the electorate, negligent decision-making is intolerable. The electorate has an obligation to the governed not to expose them to undue risk.” (708)

Conclusion: Thus, ultimately, Brennan argues for an “**epistocracy**”; that is, an “elite electoral system” composed only of members who knowledgeable and competent.

The basic idea is simply this: When people vote, they end up having a say in what the government mandates for OTHER people’s rights. In a population of  $n$ , each person has  $1/n^{\text{th}}$  of power over me. So, to defend universal suffrage, the question to be answered is, “**Why should THAT guy have  $1/n^{\text{th}}$  of power over me?**” This question is even more pressing, given that many people ARE irrational, ignorant, or uninformed about the candidates or policies that they are voting for, or hold morally repugnant views, etc.

Note that we DO already endorse a weak form of epistocracy. For instance,<sup>2</sup>

- (a) Children, and anyone under 18, are not allowed to vote.
- (b) In [most states](#), individuals deemed “mentally incompetent”, of “unsound mind” or “insane” are denied voting rights.
- (c) In [all but 2 states](#), convicted felons lose their voting rights for some amount of time—and permanently in 9 states.

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<sup>2</sup> We might also include items like, e.g., age limits on Representatives (25), Senators (30), Presidents (35).

These are put in place, presumably, in the name of maintaining a competent electorate. If you agree with any or all of the restrictions above, then you ALREADY endorse some form of epistocracy! Brennan's suggestion is merely that we should go even further.

The most straightforward way to have an epistocracy would be to administer a test to potential voters, which tests them on the basics of politics and economics, candidates and their positions, and so on. Those who pass may vote. (Though, he also mentions a moderate view where everyone is ensured one vote, but "elite voters" get MORE votes.)

If this were in argument form, it might look like this:

1. (By the Competence Principle) Incompetent people should not be permitted to participate in deliberative bodies which are making morally significant decisions.
2. The electorate is a deliberative body that makes morally significant decisions.
3. Therefore, incompetent voters should not be permitted to vote.

[Interestingly, [Socrates advanced this same position about 2,500 years ago!](#)]

**3. Objections:** Let's look at some objections.

**1. Disenfranchised Citizens:** When our nation was founded, voting rights were decided by the states, which primarily allowed only white, male, land-owning, Protestant Christians over 21 to vote... under the pretext of having an informed electorate. (See [here](#) & [here](#).)

**Timeline of various groups being granted the right to vote:**

- 1777-1856 – White, non-land-owning males (e.g., 1777 VT, 1802 MD, 1851 VA, 1856 NC)
- by 1830 – Most states: Jews, Catholics, & "non-conforming Protestants" (e.g., Quakers)
- 1870 – Non-white males (15<sup>th</sup> Amendment)
- 1920 – Women (19<sup>th</sup> Amendment)
- 1924 – Native Americans (Indian Citizenship Act)
- 1971 – 18 year olds; lowered from 21 (26<sup>th</sup> Amendment)

Furthermore, historically, so-called voter "[literacy tests](#)" have been abused, and were primarily used in order to disenfranchise African American voters. (For instance, you can take the 1965 Alabama literacy test [here](#).)

It should be clear that non-universal suffrage has primarily favored white males and disenfranchised everyone else. Even worse, in passing, Brennan notes,

“empirical work on voter behaviour suggests that voters tend to be altruistic but badly informed when their votes do not count for much, yet tend to become more selfish and better informed in rare cases when their votes do count for much.” (710n)

If that is true, then we should expect the “elite electorate” (a very small pool where each vote counts for much) to serve the interests of their own demographic over the interests of the population as a whole. If the elite electorate ends up being primarily composed of a certain race or sex (which seems possible, if it really is true that [school funding is strongly correlated with race](#); also [here](#)), can we expect them to give equal consideration to the interests of other segments of the population when making decisions?

Reply: First, note that Brennan agrees that prohibiting someone from voting due to their race, sex, religion, etc., is a BAD reason to do so. But, that doesn’t mean that there can’t be GOOD reasons for doing so. And lack of knowledge and competence are GOOD reasons for preventing someone from voting.

Second, he does admit that, even though his intentions are good, there IS a possibility for abuse—and this WOULD be an injustice. In reply, he simply says that we should at least experiment with epistocracies. We could work very hard to make sure that the test was fair to everyone, etc. Perhaps it could also be very small, at first (he suggests trying it out in New Hampshire). If it turns out even halfway decent, whatever injustice the system includes will not be nearly as unjust as our current system, where each and every one of us is ruled by a largely incompetent many-headed master.

Third, keep in mind that we get to decide what form the epistocracy takes. Knowing the potential for abuse in advance, we can take measures to prevent it. For instance, perhaps we could implement policy based on the “**enlightened preferences**” of the people, as follows: First, determine the actual demographics of our nation, and then implement the decisions that an electorate composed of exactly this same demographic make-up WOULD decide if they WERE informed. (Brennan suggests this [here](#).)

**2. The “[Wisdom of the Crowd](#)”:** (or, the “Miracle of Aggregation”) Many studies show that large groups tend to converge on better judgments than most or even ALL of the individual members of those groups (e.g., collectively, they make better decisions, come up with better solutions, answer questions more accurately, and so on).

For example, in the “Jelly Bean Experiment”, 56 people were asked to guess how many jelly beans were in a jar. The average of the group’s answers (871) was closer to the real answer (850) than all but 1 of the 56 participants. (Read more [here](#) ; listen [here](#))

However, the “wisdom” (or accuracy) of a crowd is strongly correlated with its diversity. Only if the members come from a **diverse** range of backgrounds do they tend to be collectively more wise than any of the individual members. Brennan’s proposal is to take away this diversity and place decision-making into the hands of a very narrow demographic. In light of, e.g., the jelly bean experiment, might this result in even WORSE decisions being made?

Reply: Brennan dismisses this criticism without comment.

*(Should he have? What should we make of this objection? On the one hand, if we threw out the answers of those jelly-bean counters who were WAY off, we might expect the crowd’s average to get closer to the correct answer. But, perhaps not: The answers that were way too low and those that were way too high likely just cancel each other out.*

*Yet, does this carry over to morally significant, or factually complex questions, where the answer isn’t a number? Perhaps the “crowd” is less wise in such cases. After all, at one point, the “wisdom” of the crowd said the world is flat, and slavery is morally acceptable...*

*Another hiccup: It turns out that a crowd’s “wisdom” can be undermined if each individual can see how others are voting. For instance, you are more likely to think that a restaurant or a YouTube video was great if you can see that it already has a ton of ‘likes’ or good reviews, etc. So, perhaps interactions with others, polling numbers, etc. mess things up?)*

**3. Epistocracy is Inherently Unjust:** It seems unjust for someone’s life to be governed by others, when they’re given no say in the matter (i.e., no vote). In other words, it is plausible that disenfranchisement is inherently unjust. (Alternatively, we might also think that granting the right to vote only to some is unjust because *inequality* is unjust.)

Reply: Sure, your right to govern your own life should be protected. But, votes affect not only YOU, but everyone ELSE as well! And it is an injustice for you to help make decisions that will affect us all, if you are doing so incompetently. Recall Socrates’ ship analogy (from the video). Is it really the case that everyone on board a ship has a right to decide how to sail it? Even those who are incompetent sailors?

Second, note that Brennan is not arguing that epistocracy would ERADICATE injustice, but only that it is MORE just than democracy. [*What do you think? Which is more just?*]

**4. The Electoral College:** Is the electoral college already a sort of epistocracy? We cast our votes, but a small handful of “competent voters” end up getting the final say.