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The Secret Ballot, Privacy, And Democratic Participation

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AN OPEN DEMOCRACY

THE SECRET BALLOT, PRIVACY, AND DEMOCRATIC PARTICIPATION

**BY
RASMUS UHRENFELDT**

DISSERTATION SUBMITTED 2020



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PARTICIPATION**

By

Rasmus Uhrenfeldt



AALBORG UNIVERSITY
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Dissertation submitted

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List of Papers

The following is a list of the papers produced in the period of writing the dissertation.¹

Included in the dissertation:

“Deliberative Democracy and the Secret Ballot”

Published in: *Public Reason* Vol 10, No. 2, 2019.

“Publicity and the Ethics of Political Representation”

Under review at *British Journal of Political Science*.

“Who Let the Votes Out? An Epistemic Argument for Public Voting”

Resubmitted to *Episteme*.

“Compulsion, Secrecy, and Paper: A Bad Combination When It Comes to Voting” (Jens Damgaard Thaysen, Rasmus Uhrenfeldt and Jørn Sønderholm)

Published in *Public Affairs Quarterly* Vol 34, No. 3, July 2020.

“Voting, Privacy, and Electoral Autonomy”

Under review at *Social Theory and Practice*.

¹ The papers that do not have multiple authors listed in their description are solo-authored.

“Not So Secret After All: How Big Data Threatens the Secret Ballot and What (not) To Do About It (Jakob Mainz, Rasmus Uhrenfeldt)
Submitted to *Acta Politica*.

Not included in the thesis:

“Too Much Info: Data Surveillance and Reasons to Favor the Control-Account of Privacy” (*Res Publica*, July 2020) (Mainz, Uhrenfeldt)

“On The Expressive Value of the Secret Ballot” (Mainz, Uhrenfeldt)
(work in progress)

“Big Data Analytics and How to Buy an Election” (Mainz, Sønderholm and Uhrenfeldt) (work in progress)

“Book Review: Michael Neu, Just Liberal Violence: Sweatshops, Torture, War” in *Journal of Moral Philosophy* Vol. 17, No. 3, June 2020.

Summary in Danish

Ved moderne demokratisk stemmeafgivning foregår borgernes afstemning i hemmelighed. Borgere er frie til at stemme på deres foretrukne politiske kandidater, partier eller specifikke lovændringer, uden at deres stemmevalg offentliggøres. Mange opfatter desuden deres stemmevalg som en privatsag, som andre ikke har krav på at være informeret om. Denne afhandling foretager en kritisk undersøgelse af dette grundlæggende demokratiske princip. Denne undersøgelse er funderet i politisk filosofi og omhandler derved de principelle, teoretiske og etiske spørgsmål og dimensioner, som hemmelig stemmeafgivning indeholder. Mest grundlæggende står opdelingen mellem folkevalgte politikere og borgere. Det forventes, at politikere opererer i åbenhed, og at deres stemmevalg ved lovgivning offentliggøres – men hvorfor er borgere undtaget lignende forventninger? Bør vi ikke også kunne stille borgere til ansvar for deres politiske handlinger? Denne afhandling problematiserer den skarpe opdeling mellem politikeres og borgeres forpligtelser og derved også opdelingen mellem offentlig og hemmelig stemmeafgivning.

Der analyseres derudover også en række andre omstændigheder ved denne form for stemmeafgivning. Hvis borgere kan holdes ansvarlige, kan det så have en positiv effekt på vælgeropførslen? Gør borgere mere for at informere sig selv vedrørende politiske spørgsmål – og er den åbne stemmehandling overhovedet en legitim måde at påvirke borgere på? Slutteligt undersøges også

spørgsmål, som er presserende grundet moderne teknologisk udvikling. Store mængder af dataindsamling gør det nemmere at udregne og kalkulere borgeres politiske præferencer – hvor meget af denne type data bør indsamles, og hvilke problemer rejser dette for hemmelig stemmeafgivning?

Disse spørgsmål rækker dybt ned i filosofiske forestillinger om, hvordan demokratiet bør fungere, om, hvad der er legitimt for borgere at 'holde for dem selv', og hvad der er værdifuldt ved valgdeltagelse. Ved at fremhæve disse centrale filosofiske perspektiver, så står det mere klart, hvorfor og hvornår hemmelig valgdeltagelse er værdifuld, men også hvornår og hvorfor det er problematisk.

Summary in English

Citizens participate in democratic elections by voting in secret. They are free to vote for their preferred political candidates or party. Some citizens regard their voting-choice as a private issue that others are not entitled to know about. This dissertation examines this foundational democratic principle. It looks into the principled, theoretical, and ethical questions and dimensions that secret voting entails. One foundational issue concerns the separation between political representatives and citizens. When representatives decide on policy issues their vote is public – but why are citizens exempt from this practice? Should we not also hold citizens accountable for *their* political decisions? This dissertation problematizes the sharp division between representatives and citizens and their respective ways of voting. It also examines a range of other circumstances relating to the issue of secret and public voting. If it is possible to hold citizens accountable for their voting-choices, might this have a beneficial effect on voter behavior? Will voters take steps to inform themselves on political issues if they are required to reveal their voting-choices – and is this even a legitimate way of influencing electors? Finally, the dissertation also looks into pressing issues that relate to technological developments. Huge amounts of data-collection are making it easier to calculate what the political preferences of citizens are – how much of this type of data is it permissible to collect and how does this relate to the institution of the secret ballot?

These issues concern, fundamentally, different philosophical conceptions of how democracies should function, about what is legitimately private and what is valuable about democratic participation. By looking into these central philosophical perspectives it becomes clear why and when voting in secret is valuable but also when and why it is problematic.

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I have worked most closely with the other members of the Centre for Philosophy and Public Policy (C3P), which has been highly rewarding. It has drastically improved my own work and, equally importantly, it has been socially rewarding as well. The combination of academic professionalism and friendship has made these three years truly enjoyable. I have learned a tremendous amount, which, clichéd as it may be, extends far beyond the academic interests we happen to share.

In particular, I want to thank the following people: Jørn Sønderholm for three years of dedicated and professional supervision. Jørn not only has an impressive theoretical grasp on philosophy but also a gift for identifying and formulating interesting and relevant questions. His focus and determination kept me from straying (too much) from the

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1 INTRODUCTION

When we think of modern democracies, certain principles seem fundamental. One such principle is that electors cast their vote in secret. Since this is the standard practice when citizens participate in elections, it seems like a natural and entirely appropriate feature of democratic participation. Indeed, some electors are bound to feel that their voting-choices are nobody else's business. It is a choice, an important one for many people, that *they* make, and their reasons for making it – good or bad – are not something that others can appropriately demand that they make public. Feeling this way is neither unintelligible nor strange. Since citizens are accustomed to this form of voting – and accustomed, perhaps, to think of their vote choices as legitimate objects of privacy – this reaction is foreseeable.

To say that political elections are important is almost too obvious to deserve mentioning. The reason why it still deserves mentioning is not that people are ignorant of it, but rather, because saying it reacquaints us with the moral force of this statement. The outcomes of elections (typically) lead to legislative decisions, the transfer of resources, and the restructuring of institutions. They also often lead to the altering, and potentially the harming, of the legal standing of certain social, religious or cultural groups. Election outcomes sometimes also harm the collective ability to effectively combat serious challenges like climate change. To say these are matters

of moral importance is an understatement. For these reasons, elections and referendums are highly important. Yet, when citizens choose their representatives or authorize decisions directly, they do so anonymously. They can do so without making their choices or their reasons public.

This dissertation explores the issue of electors deciding their vote in secret. First, it engages with a normative evaluation of how the secret ballot aligns with the principles and values expressed in democratic theory. The guiding questions are here: how do (certain) ideals posited in democratic theory relate to the secret ballot? Does the practice of secret voting fulfill or run counter to the normatively desirable forms of behavior and institutional arrangements posited in the academic literature? In addition, which lessons can we learn from how other groups of political agents, such as representatives, must act? Since they act under conditions of publicity, why should these conditions not also apply to electors? The answers to these questions constitute the normative background against which other, more concrete issues are dealt with. One such issue concerns voter knowledge. If electors had to vote in public, would they not take some fundamental steps to inform themselves on the issues on which they are voting? If not, why not?² The second issue concerns the arguments *for* having the secret ballot for citizens. The central objective here is to carefully scrutinize those arguments and consider which (if any) of

² As it stands, this is an empirical question. In arguing for the possible epistemic benefits of public voting, I review some of the empirical literature while also making the theoretical arguments clear.

these arguments are persuasive. Undermining these arguments does not, by itself, constitute an argument for publicity – rather, it calls for a re-examining of the kinds of arguments that are given *for* the practice. The last part of the dissertation ties the secret ballot together with some issues that arise because of recent technological developments. These kinds of developments concern the possibility of inferring which kinds of political preferences citizens have based on massive amounts of data. This is an issue that arises specifically due to technological advancement and so its relevance will likely only become greater in the future.

1.1 THE CENTRAL ISSUES OF THE DISSERTATION

The central philosophical issue about public and secret voting concerns conceiving the role of the elector in a new light. By implementing public voting for citizens, their role as electors becomes closer to that of a lawmaker or a representative.³ This has a range of implications concerning the split between representatives and electors, their respective epistemic and normative obligations, and what others are entitled to demand of them. John Stuart Mill provides the historical

³ Lopez-Guerra 2014, 40.

context for a discussion of this in political philosophy.⁴ His writings also focused on conceiving the elector in a new light. Mill wrote:

In any political election, even by universal suffrage (and still more obviously in the case of a restricted suffrage), the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage, and give his vote, to the best of his judgment, exactly as he would be bound to do if he were the sole voter and the election depended upon him alone. This being admitted, it is at least a *prima facie* consequence that the duty of voting, like any other public duty, should be performed under the eye and criticism of the public; every one of whom has not only an interest in its performance, but a good title to consider himself wronged if it is performed otherwise than honestly and carefully. (Mill 1994, 325-6)

Mill understood the voter to be under ‘an absolute moral obligation’ to consider the public interests that are being voted on. Electors should not use the franchise for their own pleasure or benefit, but exercise it with the public interest in mind. Their role is not unlike that of public officials, who are also under obligations to vote with the public interest in mind. It is because citizens take on a decidedly *public role* when voting that their decision becomes a legitimate object of

⁴ Mill discussed this in: *Considerations on Representative Government*, chapter 10: On the Mode of Voting.

criticism and discussion for others. Nadia Urbinati is not exaggerating when she suggests that public voting served a *transformative* purpose for Mill.⁵ Public voting, in this sense, is suggestive of thinking of individual electors in a different light. It is suggestive, at least for Mill, of understanding the *use* of the franchise to be acting in a public role with a duty towards the public.⁶

It is not just the conception of the obligations of voters that is connected with public voting; different (large-scale) views of democratic decision-making are also connected with it. To see this, consider Will Kymlicka's characterization. He suggests that there has been a shift from a 'vote-centric' to a 'talk-centric' conception of democratic decision-making.⁷ The vote-centric model sees voting as a process in which (previously existing) individual political preferences are aggregated and translated into public policy. In this model, there is little room for the practice of deliberative engagements with the views and claims of others. The talk-centric model, on the other hand, views the political process as a public endeavor in which citizens are to substantiate and justify their ideas and claims to others. The deliberative phase of policy-making aims at changing and challenging the political preferences of citizens such that public policy is not the mere end-result of the aggregation of political views that citizens hold prior to

⁵ Urbinati 2002, 113.

⁶ We can also reverse the causal chain here: *because* the use of the franchise is a public responsibility, we ought to have electors vote publicly.

⁷ Kymlicka 2002, 290-1.

voting.⁸ Similar arguments appear in the literature on the ethics of voting. For example, according to some scholars, electors have obligations to vote on behalf of the common good or to abstain if they are uninformed or irrational.⁹ Both the development of the talk-centric model and the issue concerning the (moral) obligations of electors are (implicitly) connected to the issues of public and private voting. These different normative frameworks for understanding democratic decision-making have different implications for the institution of secret voting.

Consider, for example, the vote-centric view, according to which voting is little more than a mechanism for aggregating the political preferences of citizens. If this is all that is required, normatively, for democratic decision-making then secrecy seems (more) normatively appropriate. This is so because secrecy allows for the registration of political preference without incentivizing discursive engagement between citizens. Electors can vote without having to justify themselves or withstand scrutiny from others.¹⁰ The point here is merely that if voting *is supposed* to do little more than to, simply stated, count heads, then it is less obvious what might be wrong with private voting. If, on the other hand, we assume a talk-centric stance, then our evaluation of voting as private changes. If the voting-choices of citizens are to reflect public deliberation on policy issues, then this is, *prima*

⁸ Kymlicka 2002, 290-1.

⁹ Brennan 2009; Freeman 2000.

¹⁰ I am here speaking only about the voting-system itself. Whether or not electors welcome either scrutiny or the practice of justification can happen independently of the way in which voting is done.

facie, more suggestive of viewing voting as a public endeavor. Voting in public would make citizens interpersonally accountable for their voting-choices and make the act of voting more influenced by the arguments and views of others. In this normative framework, it becomes more obvious why voting in private might be troubling. Similarly, if electors have moral obligations – for example, to vote for the common good – then this can also help ground normative criticisms of private voting.¹¹ If electors are under duties to consider the common good, then it becomes clearer why it is improper that electors can vote in ways in which there is little pressure or incentive to consider the interests of others. These different normative starting-points are suggestive of different *prima facie* evaluations of public and private voting. These normative views of democratic decision-making do not, by themselves, advocate the *implementation* of public voting.¹² Rather, they constitute the normative basis on which one can think about these issues. Philosophical thinking on this issue, then, is about conceiving democratic participation in a new and different light. It is about formulating and justifying a view of democracy in which public voting

¹¹ There is an additional issue here concerning how one conceives of the cognitive content of political ‘beliefs.’ If such ‘beliefs’ are mere political *preferences* and they therefore resemble, for example, personal preferences in taste, then political preferences might be improper objects of public discussion and justification. On the other hand, public voting implies, *prima facie*, that voting can, appropriately, be scrutinized, criticized, or judged on public grounds.

¹² This might be due to several different reasons. First, it might be that under further examination neither public nor secret voting is not in tension with any of these normative frameworks. Secondly, there can be overriding practical concerns about public voting that make implementation undesirable.

is a fitting and normatively appropriate form of democratic participation.

This text is structured in the following way: in the next section, I describe the theoretical issues that are discussed in the literature. Second, I briefly consider some methodological issues pertaining to this dissertation. Third, I summarize the six papers that comprise this dissertation. Fourth, I present summarized conclusions from the papers. Lastly, I describe some further questions and issues that have arisen from the writing of this dissertation.

2 THEORETICAL ISSUES

It is safe to say that relatively little attention has been given to the issue of public and secret voting from the vantage point of modern political theory or moral philosophy.¹³ Jon Elster writes:

Today, the normative question of secret versus public voting in national elections seems settled in favor of secrecy. (Elster 2015, 11)

This has unfortunately resulted in a somewhat scattered discussion involving different distinct themes and arguments, seemingly to the detriment of a systematic development of central normative positions and ensuing public academic discussions. The somewhat scattered nature of the discussion has had an impact on the way this dissertation has been conducted. If a public discussion has progressed, it usually results in the emergence of several distinguished positions that have been defended against various objections. One obvious way to contribute to such a discussion is by arguing that certain positions are untenable while others are not. If there is little ongoing discussion of these issues, then this form of intervention is more difficult. This has meant that my approach has been, mainly, to identify

¹³ In his recent survey of these issues in the *Stanford Encyclopedia of Philosophy*, Axel Gosseries writes: "... except for Brennan & Pettit's (1990) paper, there is not much debate today anymore about the suitability of secret ballot." (Gosseries 2017)

certain key concepts in the literature and try to develop and combine these into self-standing arguments. This obviously also involves arguing that some positions are tenable while others are not, but it requires more effort in terms of building and constructing these positions, since there is less of a readily available spectrum of positions to criticize and expand upon. To give a couple of brief illustrations, I have located and put together some of the arguments pertaining to the epistemic potential of public voting in order to make a more sustained epistemic case for public voting.¹⁴ The same goes for the value of privacy as it relates to democratic participation. Several authors have discussed these issues, but it was necessary to combine a range of views into more self-standing positions concerning the value of privacy and how this value attaches to the secret ballot.¹⁵

With that being said, I now proceed to an overview of some of the central themes that philosophers and political scientists appeal to in their published writings on this issue. They include, mostly, issues of political representation, obligations of electors, and issues of privacy.

I will mention how and when these different themes tie in with the papers collected in this dissertation. My approach has been to mirror the conceptual usage of these scholars, so that when they attribute some

¹⁴ This is done in: “Who Let the Votes Out?”

¹⁵ This is done in: “Voting, Privacy, and Electoral Autonomy”

concern to privacy, secrecy or representation, I similarly express concerns using these concepts.¹⁶

Before moving on to this, however, I will describe some preliminary conceptual distinctions and clarifications. This is done relatively informally, intended mostly to give some basic sense of the terms used. Although there certainly are themes and concepts that recur throughout this dissertation that are worth clarifying, the six different papers all use the concepts deployed by scholars in the literature, whether these concepts are secrecy, privacy, anonymity, representation or something else. Moreover, the papers contain self-standing arguments that relate to different discussions, and there is, therefore, no single, overarching conceptual framework that they all refer back to. This structure should make the terms relatively self-explanatory within the specific contexts of the papers.

2.1 SOME CHARACTERISTICS OF SECRECY

Jon Elster suggests that an act, such as voting in a national election, is secret if only one person knows about it, and this is, when talking about acts, always the person herself.¹⁷ An act is minimally public if at least one other person knows about the act.¹⁸ While this captures something important, it does not neatly map onto the notion of

¹⁶ Unless there are substantial problems with the way these terms are used.

¹⁷ Elster 2015, 2.

¹⁸ Elster 2015, 3.

the secret ballot. Imagine that political parties have distinct voting-booths so that the voting-choice of each elector is publicly observable. If A has to vote in this way, but there is nobody to observe her, we would still say that A has utilized public voting, even though the only agent that knows of the voting-choice is A.¹⁹

Consider a second scenario in which there is a publicly accessible list of how each elector has voted. Anyone can access this list. If nobody checks up on how A has voted, only A will know how she has voted. It would nonetheless be strange to say that A has voted in secret. Again, what matters here is that it is possible for others to know of A's voting-choice, not whether they in fact know of it.²⁰ This speaks to two further features of a secretive voting system. One concerns the *way* in which others can know of A's voting-choice. As Elster notes, secrecy is ensured when it is impossible for "... an agent to communicate *credibly* to others how she acted, and thus impossible for others to shape her behavior." (Elster 2015, 7). It seems that Elster thinks of 'credible' as something akin to *verifiable*. It must be possible for other agents to verify that A has voted in a particular way. Understanding 'credible' in a different epistemic sense can have some strange implications. Imagine that B is a true and reliable friend of A. B feels an enormous moral obligation to always tell the truth, even when

¹⁹ For the remainder of this paragraph, 'A' will play the role of the voter.

²⁰ It is worth explicating that 'possible' here must mean that voting-choices are readily available somehow. It is physically possible to acquire knowledge about voting-choices even if electors participate in secret. One can demand that they photograph their ballot, for example.

it is to B's own detriment. B tells A that she has voted for X. There is seemingly no reason to distrust B in this situation and A accepts that B has voted for X. Under these circumstances, B is a credible agent and A seems to have *prima facie* reasons to believe her. This (obviously) does not entail that B has engaged in public voting of any sort. For it to be public, A must have the possibility of knowing of B's voting-choice in some verifiable way. Now this issue quickly ventures into complicated epistemic matters of verifiability, degrees of certainty, knowledge etc. I do not rely on contentious views about what constitutes secrecy or publicity in the papers and while these issues might be interesting, they play no large part in this dissertation.²¹ I will therefore not expand on these epistemic concerns any further.

The second feature that is central to the issue of someone other than A knowing is that a secretive system is structured in such a way such that others *cannot* know. As Hubertus Buchstein suggests, this typically means that secrecy is mandatory and that "... electoral authorities have to take care to create and safeguard secrecy." (Buchstein 2015, 16). This, again, speaks to how others can come to know of B's voting-choice. If secrecy is upheld, it is very difficult for A to credibly, or verifiably, know of B's vote. The mandatory status of

²¹ One of the papers of this dissertation goes into the epistemic territory of understanding what constitutes secrecy and how secrecy can be undermined. This is the paper: "Not So Secret After All: How Big Data Threatens the Secret Ballot and What (not) To Do About It." There are also some potentially epistemic issues surrounding whether to categorize mail-in ballots as part of a secretive, partly secretive or public system.

secrecy means that electors cannot themselves choose to vote in public. If they are afforded such an opportunity, the illicit practices of coercion, threats and bribery would still be viable, since coercers could force A to ‘choose’ to vote in public.²²

Also worth mentioning is that publicity can take different forms. As Elster suggests, there are both internal and external forms of publicity. Voting-choices can be *internally* public within a single group by only revealing voting-choices to the members of that group. Imagine that a group of jurors consisting of ten members must vote on charges of guilty or non-guilty. They are able to reveal their voting-choices internally to the group without also having to reveal them to anyone outside the group. If they do so, they have an internally public, externally secretive form of voting. It is fully public if it is unveiled both internally to the group and externally to agents outside the group. Systems of public voting can also make voting-choices public at different times. A vote may be instantaneously public – consider, for example, voting by a show of hands in front of others. Voting-choices can also be revealed post-fact, by for example, registering voting-choices and revealing them potentially years after the decision was made.

²² Buchstein 2015, 16.

2.2 REPRESENTATION AND THE OBLIGATIONS OF ELECTORS

I now move on to the different, theoretical themes that are important to this dissertation. One important part of the literature that deals with these issues is that of political representation. As mentioned, this was central to Mill's thinking about public voting and it is an important theme in contemporary scholarship. Discussions of political representation are important for thinking about this issue because representatives are often obligated to reveal their votes. This provides an interesting separation between two groups of political actors: citizens that vote in secret and representatives that vote publicly. Some of the central issues emerge from the split: issues regarding why only the latter group votes in public and whether the reasons they do so apply to the former group. I will start by describing Annabelle Lever's writings on the value of the secret ballot. This is one important and influential view that is not discussed center stage in the papers.²³ It is a central part of the current literature on this topic and so it is highly important to include it in this section.²⁴

²³ We are currently working on a paper that is devoted entirely to a discussion of Lever's views. This paper was at the time of submission not sufficiently finished to be included. It is entitled 'On the Expressive Value of the Secret Ballot'.

²⁴ Her view could just as easily be put under 'privacy issues' as she links this to her democratic conception of privacy.

2.2.1 ANNABELLE LEVER'S THEORY

Lever has influentially argued for what she calls a democratic conception of privacy.²⁵ According to her view, private voting expresses and constitutes an egalitarian ideal of democratic participation (Lever 2007; 2014). What is particularly interesting about this view is that it justifies the secret ballot on non-instrumental grounds. It is a view that argues for the intrinsic and constitutive value of the secret ballot.²⁶ To gain an understanding of this view, consider first something that is important in Lever's account, namely that citizens are afforded the right to vote in general elections and referendums on behalf of their citizenship. The right to vote entitles citizens to a say in the political dealings of their country, and they are extended this right on behalf of their citizenship. The right to vote is, then, what Lever calls a baseline-right.²⁷ Lever contrasts electors with a different group of political agents, namely democratic legislators.²⁸ The reason why legislators are afforded the right to vote in assemblies is not because they have a right to become legislators – rather, they are entitled to vote in assemblies because they are authorized by their constituents or the public to act in their name. As such, their vote relies on whether they are approved to vote by their constituents. Their right to vote is not a baseline-right.

²⁵ Her view is, as far as I know, the most sustained, published treatment of this in political philosophy. I reference this view throughout the six papers and deal with it more substantially in 'Publicity and the Ethics of Political Representation' pages 17-8.

²⁶ It is constitutive of the proper democratic roles of both representatives and electors.

²⁷ Lever 2007

²⁸ Lever 2015, 174

According to Lever, this marks one central and important difference between electors and legislators. The right to vote and the voting-choices of electors do not, and *should not*, depend upon either the authorization or approval of others. If the vote of electors *does* depend on the approval of others, that would make citizens' entitlement to vote be something other than a baseline-right. Their entitlement to vote would become dependent upon something more than their citizenship; it would become dependent upon the approval or authorization of others.²⁹ Much like the voting of electors should not depend on being authorized by others, it also should not be dependent upon the personal characteristics of electors. It should not depend on whether electors can demonstrate "... special virtues, attributes or possessions." Nor should it depend upon whether they "... are rich or poor, well-educated or not." (Lever 2015, 175). Similarly, citizens should not "... have to ask permission, or to defer to the opinion of others, in order to participate in politics." (Lever 2015, 176). This gives us two distinct circumstances that surround the voting of electors:

- (i) The voting of electors should not depend upon the approval or authorization of others.

²⁹ Lever 2015, 175

- (ii) The vote of electors should not be dependent upon personal characteristics such as education, intelligence, virtues, religion, psychological dispositions etc.³⁰

These two circumstances together comprise a normatively appropriate role for electors in Lever's view. The important point here is that this role is expressed through the use of the secret ballot. This is so because by voting anonymously, citizens register their voting-choices in a way that pays no attention to any of their personal characteristics. The secret ballot registers only citizens' votes while concealing their identities.³¹ To see this point more clearly, it is again instructive to consider the division between electors and legislators. In Lever's view, the public voting of legislators is legitimate because such legislators are authorized by their constituents to vote in legislative assemblies. Their role when voting, therefore, involves deferring to or asking for the approval of their constituents. The constituents thus need to be able to know how the legislators vote on their behalf. This kind of role is inappropriate for electors. If electors voted in public, this would express that (a) the vote of electors depends upon the approval or authorization of others and (b) voting is dependent upon the personal characteristics

³⁰ It is worth noting that Lever appeals to both the *right to vote*, and to the right to vote *how* one wants to. Therefore, when Lever for example suggests that the vote of electors should not be dependent upon personal characteristics, I take this to mean that neither their right to vote nor their voting-choice should be dependent upon personal characteristics.

³¹ A similar point is made in Knight and Johnson 1997, 288.

of electors. These circumstances should apply to legislators, but they are inappropriate for citizens.

Conversely, having electors vote in secret expresses that (i) the vote of electors does not depend upon the approval or authorization of others and that (ii) the vote of electors does not depend upon personal characteristics. Therefore, private voting for electors expresses a normatively appropriate role for citizens while public voting for electors expresses an inappropriate role for electors.³²

Daniel Sturgis also discusses the demarcation between electors and representatives. After noting that openness is generally an important value in the decision-making of representatives³³, Sturgis suggests:

Yet, presumably, it is because politicians are acting in the role as active decision-makers for the political community that we expect them to vote for the common good. When we vote, we are exercising the same authority. (Sturgis 2005, 23)

Sturgis here makes an argumentative move that is similar to Mill's, namely arguing that both representatives and electors must vote on behalf of the common good. If electors have an obligation to vote on behalf of the common good, then it becomes important to have measures that allow for checking whether citizens live up to these

³² Lever is concerned both with what public voting expresses and with the inequalitarian *outcomes* of public voting.

³³ Sturgis 2005, 22.

obligations. This, for Sturgis, gives a principled reason why public voting for citizens is appropriate.³⁴ I attend to these considerations in much more detail in ‘Publicity and the Ethics of Political Representation’, where I go through the basic normative framework of the accountability of representatives and then extend this framework to the electorate. This is a natural, further development of the Millian view. The issue of the obligations of electors is also central to the paper ‘Deliberative Democracy and The Secret Ballot’, where I evaluate some of the core tenants of deliberative democracy and the practice of voting in secret.

The requirements and obligations posited by the deliberative model of democracy are moral ones, but legal obligations are also important. The legal obligation of electors to show up on Election Day under systems of compulsory voting is the topic of ‘Compulsion, Secrecy, and Paper: A Bad Combination When It Comes to Voting’.

There is also an epistemic dimension related to the issues of publicity for representatives. By having the political discussion of representatives take place in public and by disclosing the voting-choices of representatives, a range of different epistemic effects might occur. Representatives are incentivized to discuss certain issues or to discuss issues in a certain way. By having to disclose their votes, they are pressured into thinking about what they can say in defense of their

³⁴ Sturgis 2005, 22-23.

votes. There are also potential drawbacks of publicity. If representatives must deliberate in public, it is possible that they will be less willing to change their views in order to appear decisive in the eyes of the public.³⁵ Several authors appeal to these sorts of epistemic considerations. Brennan and Pettit suggest that conditions of publicity will incentivize electors to offer justifications for their votes that appeal to the common good.³⁶ Engelen and Nys also suggest that selfish preferences are less likely to influence voting under conditions of publicity.³⁷ While these epistemic considerations are not uncommon, there is, as far as I can tell, no comprehensive normative and empirical defense of the potential epistemic benefits of public voting for citizens.³⁸ Presenting an explication of and an argument for these epistemic benefits is the central objective of ‘Who Let the Votes Out?’ In that paper, I bring together the central epistemic arguments made on behalf of public voting and further strengthen them. I then defend them against one important objection that suggests that public voting will lead to an epistemically troubling form of conformity amongst voters.

This epistemic concern, although slightly different, is also present in ‘Not So Secret After All’. The objective in that paper is to think about the kind of threats that Big Data Analytics poses to the

³⁵ Chambers 2004, 394.

³⁶ Brennan and Pettit 1990, 324.

³⁷ Engelen and Nys 2013, 495.

³⁸ By ‘normative’ and ‘empirical’ here I mean that there is no sustained argument for why public voting and the kind of ‘public-spirited’ form of voting it implies is normatively valuable and whether it is empirically likely that it will materialize because of public voting.

practice of secret voting. This is an interesting epistemic issue since knowledge of voting-choices is *inferred* from data sets rather than revealed directly.

2.3 ISSUES OF PRIVACY

Scholars apply and relate concerns of privacy to the issue of voting in different ways. In some cases, there is an explicit connection between the value of privacy to voting and to democratic participation more generally. This explicit connection is often that privacy is important for the kind of autonomy that is valuable for democratic ideals. In other cases, there is an implicit connection in the sense that issues of privacy are relevant for thinking about the issue of public voting. I describe both in the following.

2.3.1 PRIVACY AND AUTONOMY

One central dimension of privacy that authors often invoke in the context of political participation is that of autonomy. Ruth Gavison sums up this view succinctly:

Privacy is also essential to democratic government because it fosters and encourages the moral autonomy of the citizen, a central requirement of a democracy. Part of the justification for majority rule and the right to vote is the assumption that individuals should participate in

political decisions by forming judgments and expressing preferences. (Gavison 1980, 455).

Privacy, according to this view, is important because it helps to further the kind of autonomy that is valuable for democratic participation. This view takes different forms. Jeffrey Reiman has argued that privacy is important for autonomy because privacy shields individuals from external pressure and influence. Since meaningful democratic participation is premised on the notion of electors expressing their autonomous preferences, Reiman argues that privacy is important for democratic participation.³⁹ Cohen argues, along similar lines, that the tracking of behavior and expression will heavily incentivize people to think and behave in ways that are entrenched in social conventions and public opinion. People will be less prone to engage in more idiosyncratic ways of living and thinking, and this will negatively influence political deliberation and participation.⁴⁰

I take Cohen's epistemic concern here to be that the ability to critically evaluate or rethink social, political, or humanitarian issues depends, in part, on being able to see such concerns from, sometimes highly, different perspectives. It becomes increasingly difficult to develop such perspectives if people are more likely to think and behave in ways prescribed by public opinion.⁴¹ These are the issues I attend to in 'Privacy, Voting, and Electoral Autonomy'. In that paper, I locate

³⁹ Reiman 1995.

⁴⁰ Cohen 2000, 1425-6.

⁴¹ I have labeled this the 'epistemic worry for political participation.'

both Reiman's and Cohen's view as being subsets of a larger view that posits a value between privacy and democracy. I criticize these different views on different grounds. Most importantly, I argue that the value of privacy for the personal lives of citizens cannot easily be applied to political decisions undertaken by citizens.

There is also a link between decisional privacy and the issues related to voting. This connection does not play any substantial role in the thesis, so I will only briefly comment on it here. This connection is also described in the last section: *Looking Forward*.

Decisional privacy usually denotes a sphere of action or decision that is outside the scope of interference by the state and civilian actors.⁴² In part, the notion of decisional privacy is about the normative framework for thinking about which decisions are in the legitimate interests of others. This connects with issues pertaining to the secret ballot since important questions arise as to who has a legitimate interest in knowing the voting-choices of electors. Decisional privacy, then, can provide the normative framework for thinking about this issue.

⁴² Brettschneider 2007, 71; Rossler 2005, 80; Koops et al. 2017.

3 METHODOLOGICAL REFLECTIONS

The aim of this chapter is to make explicit the methodological approach undertaken in this dissertation.

3.1 NORMATIVE AND EMPIRICAL ISSUES

The questions and issues discussed in this dissertation are often closely related to empirical questions and issues. Consider the following, related questions that empirical science can help answer:

- (i) Empirical studies can show what the electoral effects are of implementing different voting-systems in different contexts – for example, whether it reduces turnout.
- (ii) Empirical studies can inform us about the psychological attitudes that citizens have (or will develop) if they have to engage with different kinds of voting systems.

It is important to distinguish these empirical issues from the philosophical objective, which is to think through how important concepts and normative principles relate to these matters. This will include deploying prescriptive notions such as: voter obligations, how

voting *ought* to function, electoral autonomy, political representation, privacy, and legitimacy. In relation to the issues of public and private voting, what is needed – in part – are also considerations about what *kind* of justification there is for either practice and what *kind* of normative worries relate to either practice.

Let us consider the latter point first. Evaluating normative worries means in part evaluating whether a worry is instrumental or intrinsic. As an illustration, consider the issue of an equal distribution of voting power. Imagine that someone proposes to give more voting power to the well-educated. Call this the plural voting proposal. Somewhat simplified, someone might object to the plural voting proposal on instrumental grounds. They can object that formal inequality in the electoral process will lead to unacceptable outcomes – for example – that it will produce policies that favor well-off parts of society while being unresponsive to those who are materially disadvantaged. This objection only defeats the plural voting proposal if these outcomes actually occur or are likely to occur. Intrinsic objections are not amenable to empirical circumstances in the same way. If someone objects that plural voting disrespects those citizens who have less power, then this does not hinge on whether some empirical state of affairs obtain. It is not important, for this objection, what the (political or otherwise) outcomes are of distributing votes in this way.⁴³

⁴³ This should not be misunderstood as saying that principled objections are not *related* to the empirical world. If the empirical world were radically different, perhaps it would not be insulting or disrespectful to afford some individuals less voting-power.

This same point applies to the issue of public and private voting, since either practice can be justified by a reference to intrinsic or instrumental worries.⁴⁴ This kind of, rather basic, conceptual hygiene is important for understanding how any practice is justified. If the plural-voting proposal is normatively improper for instrumental reasons, then it (can be) justified if instituted under empirical circumstances where the unwelcomed outcomes do not materialize. If it is improper for intrinsic reasons, then justifying the proposal will require something other than arguing that the harmful empirical outcomes will not be obtained. It will require, for example, showing that the intrinsic reasons are wrongheaded or that the practice, when properly analyzed, actually does not violate those principles.⁴⁵

Thinking through how concepts and principles relate to these issues involves two distinct tasks. The conceptual work consists in identifying whether particular set of affairs or set of objects can be accurately described by certain concepts.⁴⁶ For example, having an understanding of what the concept of democracy entails means that

The point here is rather that principled objections are not *refuted* by empirical data alone, not that the empirical world bears no relation to them.

⁴⁴ Annabelle Lever, for example, suggests that voting in secret is important for non-empirical reasons. See Lever 2015.

⁴⁵ This is not exhaustive. It might also be that the practice is justified because the benefits override the principled objections.

⁴⁶ This obviously depends on which view one takes concerning concepts. It might be that they are merely useful rather than accurate.

political systems can be categorized as democratic or not democratic.⁴⁷ The application of principles is a different process. Normative principles have propositional content while concepts do not. Such normative content typically includes prescriptive statements like obligation, permissibility, legitimate, warranted, good or bad.⁴⁸ As Christian List and Laura Valentini point out, concepts by themselves tell us little about whether that concept describes something that we should value or strive to realize. The concept of democracy is useful for evaluating whether a given form of government is structured democratically; it tells us nothing about whether this is important or not. To understand why we *ought* to organize political systems in a democratic manner requires normative evaluation.⁴⁹

This kind of normative work is central to this dissertation. For example, the two first papers, ‘Deliberative Democracy and the Secret Ballot’ and ‘Publicity and the Ethics of Political Representation’ apply normative considerations to secret democratic participation. The former suggests that some of the central ideals of deliberative democracy run counter to the practice of secretive voting. The latter argues that the

⁴⁷ List & Valentini 2016. We do not mean to imply that this process is easy. Democracy is a difficult concept so it might not be straightforwardly easy to determine whether a political system is democratic or not.

⁴⁸ List & Valentini 2016, 10-11.

⁴⁹ This ‘ought’ can be cashed out in different ways. Proceduralism holds, roughly, that democratic procedures have intrinsic value and, as such, democracy is valuable regardless of the outcomes it tends to produce. Instrumentalism holds, roughly, that democratic decision-making is valuable because of the outcomes it tends to produce – for example: social stability, economic flourishing, the upholding of human rights etc.

normative conditions of accountability of representatives can be extended to include electors and this constitutes a *prima facie* reason for publicity on their behalf. Similarly, ‘Voting, Privacy, and Electoral Autonomy’ examines the link between privacy and democratic participation. These are central ways of articulating the normative foundation for the appropriateness of secrecy on behalf of citizens and they are ways of thinking through the implications of this for democratic participation.

Likewise, the normative work also consists in evaluating what kind of justification there is for secrecy and the kind of potential harms public voting can cause. As mentioned, it is important to distinguish between intrinsic and instrumental forms of justification. In ‘Who Let The Votes Out’ I make the case that there is a potential epistemic upshot to public voting. By distinguishing between intrinsic and instrumental worries, we can separate the kinds of harms that are introduced by public voting. I argue in that paper that the worries about public voting are instrumental in nature, and, because of this, they will have to be weighed against the possible epistemic benefits of public voting.⁵⁰ If there were strong intrinsic objections to public voting, then I would not be able to isolate the empirical variables and suggest that these variables are important for judging whether public voting is appropriate. I would

⁵⁰ I cannot make the case here that there are no non-instrumental worries. In “Who Let the Votes Out” I also do not argue the case that there are no non-instrumental worries. Instead, I posit that the traditional and widespread worries often expressed are typically instrumental in nature.

have, as mentioned, to appeal to reasons why the intrinsic case is (also) flawed in some way.

3.2 IDEAL VS NON-IDEAL THEORY

It is relevant here to briefly comment on the distinction between ideal and non-ideal theory. It is both tempting and sometimes necessary to abstract away or idealize certain circumstances to isolate and think through certain normative issues. This process is not without potential problems and it, in particular, raises the issue of whether normative theorizing becomes idealized in a problematic sense. Laura Valentini has suggested that at least three distinct issues are being pursued in the ideal vs non-ideal debate.⁵¹ *First*, ideal-theory may mean full compliance while non-ideal may concern partial compliance. If the ideal vs non-ideal debate is conceived in these terms, then the focus is on “... the question of what duties and obligations apply to us in situations of partial compliance as opposed to situations of full compliance.” (Valentini 2012, 654). *Second*, ideal and non-ideal may refer to utopian and realistic. Understanding the discussion in these terms means that the ideal and non-ideal debate concerns whether there are feasibility constraints on normative theorizing. *Third*, ideal and non-ideal may be understood as ‘end-state’ and ‘transitional’ theory. This debate focuses “... on the question of whether a normative political theory should aim at identifying an ideal of societal perfection, or

⁵¹ Valentini 2012.

whether it should focus on transitional improvements without necessarily determining what the ‘optimum’ is.” (Valentini 2012, 654).

The potential worry about idealization that I have described concerns the second issue listed here. If normative theorizing about this issue is utopian in a problematic sense, it becomes too far-removed from contemporary political and social reality to be feasible.

While I obviously cannot do any justice to the substantial debate on ideal and non-ideal theory, let me briefly consider a couple of ways in which this issue relates to the specific argumentative structure of the papers. One way to engage in idealization is to imagine *Utopia*.

Utopia is a democracy that has succeeded in eliminating social and economic inequality. Utopia has very strong, well-functioning and well-funded public and civic institutions. Utopia also uses a public form of voting. In Utopia, public voting does not result in any widespread form of coercion, vote-buying or equivalent illicit activity.

Here, Utopia is not a theory nor is it a normative principle. It is description of a hypothetical empirical situation. I use this scenario in ‘Who Let the Votes Out’ in order to exclude a certain set of concerns. My objective there is, as mentioned, to consider the epistemic dimensions of public voting, and so I use Utopia to make explicit that I am not evaluating the potential harmful instrumental outcomes of

public voting. This form of ideal is not part of theory itself nor is it necessary that Utopia exist for public voting ever to viable.

We can add a normative justification for public voting that goes along with this scenario. Imagine that A argues that the interpersonal accountability that arises after voting in public is valuable. A proclaims that disclosing voting-choices and – in good faith – justifying one’s choice to others is a sign of respect for others and constitutive of a valuable form of political community. Because of this, A believes that public voting should be implemented if the empirical circumstances are the same as they are in *Utopia*. Notice, then, that while the conditions of A’s justification are idealized, this does not imply that the normative principle itself is flawed. A may be right in identifying a value of the kind of interpersonal accountability and political community of electors. The fact that the empirical conditions are idealized does not imply that the value or principle itself is wrongheaded. Part of the objective of this dissertation concerns thinking about the values and principles that relate to these issues. While the specific empirical circumstances that relate to these issues are certainly important, their idealization does not undermine the principles themselves.

There are further possible specifications of what is actually problematic about ideal theory. It is possible that the problem is not that theories of justice are too fact-insensitive, but that such theories do not include *more* fact-sensitive principles such as peace, security,

democracy etc.⁵² It is also possible that the problem is not that ideal theory is *too far* removed from contemporary political and social reality, but simply that *too much* political philosophy engages in ideal theory.⁵³ These issues will venture far outside the context of the specific papers of this dissertation, so I shall not pursue them here.

⁵² Valentini 2012, 659.

⁵³ This is how Estlund understands Charles Mill's criticism. Estlund suggests that Mill's criticism is essentially that ideal theory plays too big a role in political philosophy. This has been to the exclusion of normative thinking that engages more directly with issues of inequality, racism, structural injustice etc. See Estlund 2019, 16-7.

4 SUMMARY OF PAPERS

4.1 DELIBERATIVE DEMOCRACY AND THE SECRET BALLOT: CAN WE HAVE BOTH?

The main objective of this paper is to evaluate whether the ideals of deliberative democracy are in tension with the practice of secret voting. This approach provides a normative framework for evaluating secret voting and it provides an overview of how normative theories of deliberative democracy connect with secret voting. I discuss three potential areas of tension. Each describes how some of the ideals of deliberative democracy are in tension with the practice of secret voting. The three areas are the following:

a) The Justificatory Tension

This area of tension concerns, on the one hand, the requirements of justification and accountability on behalf of citizens (and representatives) who make political decisions through voting – and, on the other hand, secretive voting, in which such justification and accountability is made more difficult.

b) The Self-Regarding Tension

One deliberative virtue is that of being deliberatively engaged with the views, arguments and preferences of others. Public voting is more conducive and in line with this view of democratic participation.

c) Sincerity objection

Sincerity is a deliberative virtue. Being insincere can be a way of treating democratic deliberation in a self-serving and strategic way. This is in tension with the secret ballot, because there is little incentive for electors to vote on behalf of their expressed and publicly defended viewpoints.

I argue that a) and b) spell out substantial areas of tension while c), in the end, does not. I then suggest that one way to minimize the tension described in a) and b) is to adopt an epistemic approach to deliberation. By doing so, the value of deliberation consists in producing epistemic benefits by having the (right kind) of deliberative interchange. If this is the goal, then the deliberative value of justification as expressed in a) and of incentivizing other-regarding voting expressed in b) is conducive to the deliberative ideal of democratic participation if they produce certain epistemic benefits. This means that a) and b) are only areas of tension insofar as the deliberation that precedes or follows from electors justifying themselves is epistemically beneficial. However, this implies that the (epistemic) deliberative case against the secret ballot is understated. What needs to be argued is that not only is there an increase in deliberation, but that there is an increase in the right kind of deliberation.

Lessening the tension in this way works by adopting an epistemic approach to the ideals of deliberative democracy. If the deliberative virtues of justification and other-regarding are thought to have non-epistemic value, then the tension persists.

4.2 PUBLICITY AND THE ETHICS OF POLITICAL REPRESENTATION

This paper lays out part of the central normative framework for thinking about the concept of public voting for citizens. Its fundamental aim is to argue that the demand for publicity of representatives also (although to a lesser degree) applies to the decision-making of citizens. I present a range of different conceptions of how representatives ought to act towards the public – the delegate view, the trustee view and the hybrid view. I then describe the normative grounding of these conceptions. Here I turn to Richard Mulgan and Mark Warren, who suggest that central to the reason *why* it is normatively important that representatives are accountable in this way is that they decide on collectively binding issues. This is what Mulgan calls the *principle of affected rights*.⁵⁴ The paper then proceeds to argue that *if* this is central to why representatives must be publicly accountable, *then* the same rationale can be applied to citizens voting in referendums. In referendums, citizens are also directly involved in the process of deciding on collectively binding issues. I offer a few examples to think about. One of them is proposition eight, the California referendum that banned same-sex marriage. If decisions that affect or diminish interests or rights are central to the accountability of the decision-makers, then it seems, *prima facie*, that this also attaches to proposition eight.

⁵⁴ Mulgan 2003, 12-13.

I then tackle two important objections. The first is *the institutional objection*, which states that accountability on behalf of the electorate is misconceived because there are no institutional channels in which accountability can be exercised. I argue that this objection relies on the false assumption that accountability must function through institutional channels. We often exercise a kind of informal deliberative accountability on citizens who offer and proclaim their political views. This same kind of informal accountability can arise based on how citizens vote as well. It needs to appeal to the same kind of accountability that citizens exercise towards representatives (primarily through elections.) I label the second objection *the representative objection*. Representatives have certain obligations *because* they are representatives. The public can hold them *to* these obligations because representatives play a certain role. This does not apply to citizens, and so therefore, public accountability on their behalf is improper. I argue that this objection fails to acknowledge that electors can be accountable in ways that do not involve them playing the same role as representatives. Importantly, their accountability concerns them being engaged in decisions that have the same normative circumstances as decisions made by representatives.

4.3 WHO LET THE VOTES OUT? AN EPISTEMIC ARGUMENT FOR PUBLIC VOTING

This paper makes an argument for the epistemic benefits of publicity in voting. It does so by identifying the different scattered paragraphs on the potential epistemic benefits of publicity in voting and combining these into one sustained argument. This involves the conceptual work of theoretically structuring the argument while also drawing on some of the relevant empirical data.

The epistemic argument for publicity (EAP) suggests, in short, that because electors will have their voting-choices revealed, they will take steps to inform themselves on electoral issues and to think through their voting-choices. I draw on both Geoffrey Brennan and Phillip Pettit (1990) and Bart Engelen and Thomas Nys (2013) in making this argument. I call this incentive the *knowledge procurement incentive*. This incentive has two parts to it. One is that publicity will incentivize electors to inform themselves and the second is that it will incentivize the giving of public reasons. This argument faces a significant objection that has not been sufficiently discussed in the literature. I call this the conformity objection. The objection states that publicity will create conformity to the epistemic and political norms of the social surroundings of the electors, and these surroundings are not likely to foster the kind of epistemic enhancement that is valuable.⁵⁵ Although

⁵⁵ I call these ‘social surroundings’ observer-groups.

this objection can be formulated in different ways, I refer to the argument given by Bernard Manin.⁵⁶

I offer several different responses to this worry. For example, I argue that the conformity objection must differentiate between incentivizing voting on behalf of the common good and incentivizing information gathering. Even if one of these outcomes are not realized because of the conformist tendencies of electors, it does not follow that the other one also will not be realized. In addition, I argue that the conformity objection (argued by Manin) does not have to rely solely on whether the surroundings of electors are of the right kind. There is an internal dimension that incentivizes information seeking that is – to some extent – independent of the external interchange between electors. Lastly, I pay some attention to institutional design as a way of solving the issue of conformity. Some limited forms of publicity, like Brennan’s and Pettit’s model, might induce the right kind of information-seeking incentive without creating the kind of neutral or harmful behavior that Manin is (rightly) worried about.

⁵⁶ Manin 2015.

4.4 VOTING, PRIVACY, AND ELECTORAL AUTONOMY: A CRITIQUE OF THE DEMOCRATIC VALUE OF PRIVACY

In this paper, I criticize two separate views. I label these the democratic value view and the institutional value view, respectively. The first view holds that privacy is important for democracy decision-making. Privacy is important because it fosters the kind of autonomy that is valuable for democratic decision-making.⁵⁷ The second view holds that the institution of private voting – that is, voting in isolated voting-booths is justified because of, or reflects, the kind of autonomy that is important for democratic decision-making. Therefore, the first view concerns a normative value and the second view concerns institutionalizing this value.

The central issue with the democratic value view is that there is a problematic inference from the value of privacy for the lives of citizens to privacy having the same (kind of) value for political participation. To illustrate, Reiman argues that privacy is important for creating and maintaining autonomy.⁵⁸ However, when applied to the realm of voting and deliberation, it is not clear that this is by itself valuable. I argue this point by considering electors who vote autonomously but in an uninformed or morally arbitrary way. In addition, the value of privacy for citizens, according to this view, is that

⁵⁷ Brettschneider 2007; Reiman 1995; Cohen 2013, 1912-8; Cohen 2000; Susser, Roessler, & Nissenbaum 2018, 3; Nissenbaum 2010, 177.

⁵⁸ Reiman 1995.

it allows for citizens to withdraw from public, social pressure. While public pressure can certainly diminish the actions of individuals in a problematic may, it does not follow that the same kind of pressure is – in the circumstances of democratic decision-making – also problematic. It might be that such public pressure will cause political actors to reconsider or withhold action.⁵⁹

I then argue that the institutional value view does little to justify the contemporary use of the secret ballot at all. I offer three arguments for this conclusion. The first argument is that there is no clear connection between autonomy and private voting. There are countless ways of protecting the autonomous preferences of citizens: why then should we adopt this form of voting rather than a host of other possibilities for protecting autonomy? Secondly, I argue that the institutional value view misconstrues privacy as anonymity. Acting in private is not identifiable with acting anonymously. I might retreat to the quiet countryside because I have to make an important decision and I want to make the decision uninfluenced. This does not entail that others do not know that it was *me* who made the decision. It is therefore difficult to argue that the value of privacy justifies or is reflected in secret voting. There can be public forms of voting (non-anonymity) with the voting taking place in private. Third, the institutional value

⁵⁹ In the context of the paper, a political actor is someone who donates money to the controversial political cause of climate change denial. This example is called: “*The Autonomous Climate-Change Denier*.”

view does not justify that privacy is mandatory. A system with optional privacy will leave electors the opportunity to vote in secret or in public.

4.5 COMPULSION, SECRECY, AND PAPER: A BAD COMBINATION WHEN IT COMES TO VOTING

(Jens Damgaard Thaysen, Rasmus Uhrenfeldt and Jørn Sønderholm)

We argue in this paper that there is a moral issue with the combination of the three circumstances of voting: (i) it is compulsory, (ii) it is secret, (iii) it utilizes paper ballots. A political system that incorporates these three is committed to unequal enforcement of one of its laws. Because the ballot is secret, officials cannot know whether electors have cast a valid vote. A compulsory, secret system can therefore penalize those who fail to *show up at the polls* and not penalize those who show up *and* who do not cast a valid vote. We argue that failing to show up at the polling booth and showing up but not casting a valid vote are, with respect to compulsory voting, morally comparable actions. Both of these fail to do the required actions of casting a valid vote. Since political systems with the features mentioned above only penalize the individuals who fail to show up, they enforce this law unequally. This is, furthermore, a guaranteed outcome. A system that is compulsory and secretive is *designed* in such a way that penalization is unequally distributed.

We proceed to discuss three different possible solutions. One solution is to change the law such that it requires mandatory attendance rather than mandatory voting. While this is a promising solution, it would be a revision of both some of the claims of advocates of compulsory voting

and also a revision of the law in some of the countries that have a mandatory system in place.

4.6 NOT SO SECRET AFTER ALL: HOW BIG DATA THREATENS THE SECRET BALLOT AND WHAT TO DO ABOUT IT

(Jakob Mainz, Rasmus Uhrenfeldt)

In this paper, we look into some of the implications that data collection has for the possibility of voting in secret. Specifically, we argue that big data threatens the secret ballot because it makes it possible to make probabilistic inferences about past electoral choices with high degrees of certainty. We then discuss three different policy proposals that might accommodate this problem.⁶⁰ What is interesting about this issue is, in part, the fact that voting-choices are inferred probabilistically rather than revealed directly. In the paper, we illustrate this difference in the following way: imagine that Billy looks into Smith's private medical records and notices that Smith has diabetes. By doing this, Billy has directly come to know of Smith's condition. Imagine instead that Billy has thousands of data-points on Smith and, from these, he infers that Smith has diabetes. The unveiling of votes through Big Data Analytics is analogous to the second way in which Billy comes to 'know' of Smith's condition. Importantly, we argue in the paper that probabilistic inference is still a threat to the secret ballot, even though voting-choices are not revealed directly. One potential reason for holding the view that there is a relevant difference between these cases is that there is an element of plausible deniability when

⁶⁰ We aim to remain agnostic throughout the paper about whether the worries about public voting are legitimate worries.

something is inferred rather than directly observed. Even though Billy has inferred that Smith has diabetes, Smith is able to deny that this is so. Smith is not able to deny it if Billy has seen Smith's medical records. We argue, however, that plausible deniability does not settle the issue. For example, if there is a video camera located in the voting-booths that shows a false recording 30% of the time, every elector will have plausible deniability. Each can claim that their voting-choice was not observed because their footage is the fake footage. Even though these electors have plausible deniability, it seems that the secret ballot in this instance is not just threatened but also violated.

We then proceed to discuss three policy proposals that might combat this threat to the secret ballot: (i) prohibition of data sharing, (ii) prohibition of certain algorithms, (iii) prohibition of for-profit use. We argue that none of the three solutions are adequate and that the threat continues.

5 SOME GENERAL CONCLUDING REMARKS

The different papers have common themes but each paper has a distinct topic. They each have specific conclusions concerning their specific topics. Instead of merely describing each of these six specific conclusions, I want here to describe some more general conclusions that pertain to all the papers.

One general conclusion that these papers point to is that the normative literature on democratic decision-making has substantial resources that can be applied to the issue of public voting for citizens. These resources include views on the obligations of electors and representatives, epistemic benefits of publicity, and views on privacy. These can be extended to the issue of public voting in order to conceptualize and justify one coherent philosophical picture of this form of democratic participation. This picture can function as part of a normative starting-point or basis concerning reasons for publicity on behalf of electors. I have been careful throughout this dissertation not to recommend the practical implementation of any such system since its justifiability will also rely on the instrumental outcomes it produces. Making the claim that public voting is, all things considered, justified would have to involve a delineation of the harmfulness of the instrumental outcomes. It would have to say something to the effect that

the instrumental outcomes are not serious enough or that the instrumental outcomes do not result in the kind of harm that can justify the secret ballot. Although I have discussed these issues, the overall objective of dissertation has not been to conceptualize the different kinds of instrumental outcomes and render a verdict when they are sufficiently harmful to warrant the practice of secret voting.

Another general conclusion worth mentioning is that public voting is deserving of even more academic attention. In the papers, I present some normative challenges to the secret ballot and I also argue that some of the justifications for the value of secrecy suffer some issues.⁶¹ There is room for improving these justifications and room for expanding and improving the normative challenges to secrecy. This will make for a more balanced and sophisticated understanding of the practice.

⁶¹ The normative challenges appear in: “Deliberative Democracy and the Secret Ballot” and “Publicity and the Ethics of Political Representation”. I discuss some of the weaknesses in the justifications for the practice in: “Privacy, Voting, And Electoral Autonomy” and “Compulsion, Secrecy and Paper: A Bad Combination When it Comes to Voting.”

6 LOOKING AHEAD

It is inevitable that a dissertation like this leaves some issues and questions unexamined and unanswered. Part of the process of understanding an issue is recognizing how much there is still to consider. Here I briefly mention two areas that call for further research. The first area concerns the issues that spring directly from this dissertation and that warrant further investigation. They are issues that, if answered, would tell us something important about the themes of this dissertation and could help answer the questions raised by this dissertation. The second area concerns further, separate issues that bear an indirect relation to the themes of this dissertation.

6.1 DECISIONAL PRIVACY

One interesting way of approaching these issue is to apply the act of voting (and comparable political actions) to the notion of decisional privacy. Decisional privacy typically designates a sphere of decision-making that is free from oversight and scrutiny from both the state and the public.⁶² Relegating some actions or behaviors to the realm of decisional privacy entails that “... no further explanations are owed to other people concerning these decisions or modes of behavior.” (Roessler 2005, 80). We can apply the issue of voting to the notion of decisional privacy in two ways. First, there is the question of whether

⁶² Brettschneider 2007, 71; Rossler 2005, 80; Koops et al. 2017.

electors owe others (and whom) a justification of their voting-choices. If they do, then their voting-choices should not be seen as belonging to the realm of decisional privacy. Second, *if* A's voting is within A's decisional privacy, then unveiling A's vote (by use of public voting) with the intention of making A accountable to B, is an intrusion into A's decisional privacy. A could rightly claim that it is none of B's business.

The first issue concerns the *obligations* of voters and the second issue concerns the *institution* of public voting. In this way, the issues of decisional privacy revolve around a normative issue – designating which acts and decisions are in the legitimate interests of others – that is centrally important to the discussion of public voting. When thinking about the issue of voting within the context of decisional privacy, the guiding question becomes who is entitled, and why, to know of the voting-choices of citizens, and who is entitled to have voting-choices justified to them. Put differently, the issue is when the voting of A is anyone else's legitimate business. Philosophers and political scientists alike have discussed these issues, although such discussions are not always explicitly described as an issue of decisional privacy.⁶³ The notion of decisional privacy can potentially be helpful for evaluating whether (and when) voting should fall under this category.

⁶³ Urbinati 2002, 110; Yack 2012, 167. Waldron also holds a view that has some similarities with this. He writes: "... as a general rule, transparency is required, and people are entitled to insist on it. We are not required (or permitted) to subject each other to this scrutiny, but we are permitted to apply it to our rulers." (Waldron 2010, 194)

6.2 FURTHER ISSUES

6.2.1 PRIVACY AND POLITICAL BELIEFS

One larger issue that is of both philosophical and practical interest is the relation between privacy and the political lives of citizens.⁶⁴ One potentially interesting connection is to think about how claims to privacy might be instrumentally useful for avoiding political polarization. If politics comes to play a divisive role in society and communication across political lines becomes highly difficult, being able to keep one's political life private might become increasingly valuable. Robert Talisse has recently argued that part of the value of democratic decision-making is that citizens are also able to lead non-political lives and engage in non-political relations.⁶⁵ It seems *prima facie* plausible that privacy can be helpful for such objectives. Being able to control who (and perhaps whether) others can know of one's political beliefs might be a way of reducing polarization and keeping politics from consuming and infiltrating non-political activities. It might prove useful for cultivating and creating non-political relations. The larger connection between the political life of citizens and the value of privacy and the specific connection between political polarization and privacy is one that warrants further examination. As mentioned,

⁶⁴ 'Political lives' here refers to the political *activities* and the political *beliefs* of citizens.

⁶⁵ Talisse 2020.

while this is of philosophical interest, it is of utmost relevance in the current political climate and is likely to remain so in the near future.

6.2.2 NEW CONCEPTIONS OF DEMOCRACY

New conceptions of democracy also involve issues of institutional design. Expanding the role of citizens in politics will involve not only the altering of traditional institutional political schemes but also the addition of new ones. These new institutional schemes can involve mini-public, citizen assemblies, deliberative polling or more deliberative voting-systems. The issue of publicity is important for thinking about the institutional design of these systems. That is, why and how are the political actors in these engagements to deliberate and vote *in public* – and which kinds of effects might this publicity have in these specific circumstances? It seems safe to say that any potential beneficial results will be dependent on the specific forum or the specific voting system. It becomes increasingly important to think about how publicity will contribute to the legitimacy of citizen rule or to the epistemic benefits of these (new) kinds of decision-making. I hope that parts of this dissertation can be extended to these areas and perhaps contribute some of the normative and conceptual framework required for discussing these issues.

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Deliberative Democracy and the Secret Ballot: Can We Have Both? Three Areas of Tension

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Abstract: Recently, Bart Engelen and Thomas Nys have offered an analysis of some of the non-deliberative properties of the secret ballot. This marks an interesting theoretical approach that I will build upon in this paper. I do this by identifying and discussing three areas of tension between deliberative ideals and secretive voting. I divide these areas into three separate categories – which I label the justificatory tension, the self-regarding tension, and the sincerity tension. I argue that both the justificatory tension and the self-regarding tension signify substantial areas of tension between the current practice of secretive voting and some of the ideals within deliberative democracy. In the last section of the paper, I argue that one way to reduce the tension between the practice of secretive voting and deliberative ideals is to adopt an epistemic approach to deliberation.

Key words: deliberative democracy, secret ballot, public voting, ethics of voting.

Thomas Nys and Bart Engelen have recently argued that the practice of secretive voting is in tension with some of the values often encouraged within the theory of deliberative democracy (2013). For reasons I will describe shortly, this is a very interesting approach to adopt when analyzing our current practice of secretive voting. The approach that Engelen and Nys take is, self-admittedly, *not* an attempt to develop an extensive comparison between the theory of deliberative democracy and the secret ballot. (2013, 495). Instead, they use deliberative principles as their starting point for a critical evaluation of voter secrecy. It is my objective in this paper to provide some of what they have omitted, namely, an in-depth and more *theoretically specific* discussion of the relation between the secret ballot and deliberative democracy. That is, I try to argue how certain specific commitments in the theory of deliberative democracy ought to make us skeptical of the process of secretive voting. This approach is interesting for several reasons. First of all, it is surprising that one of the universal institutional structures in liberal democracies – secretive voting – has not undergone any full-fledged, systematic normative analysis from the vantage point of the ideals of deliberative democracy. This is striking, in part, due to the individual importance of both deliberative democracy and the secret ballot. The secret ballot, as an institutional design, is enshrined in Article 21 of the Universal Declaration of Human Rights and is at the center of the procedural workings of modern democratic systems of voting for citizens. Article 21, (3) states: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” (Universal Declaration of Human Rights 1948) Secondly, in the world of democratic theory, deliberative democracy is a major, and central, theoretical apparatus which commands the attention of several influential

scholars. (Elster, 2003; Gutmann and Thompson, 1996, 2004; Cohen, 1997; Bohman, 2000.) If there is real tension between a major theoretical framework, such as deliberative democracy, and the widespread form of secretive voting, then this seems worth exploring – if nothing else, so as to lay bare the reasons why such a tension is currently to be accepted as a political reality.¹

From here on, my approach is the following. First, I will shortly describe some of the core normative features of deliberative democracy. I then identify and discuss three areas of tension between deliberative democracy and the secret ballot. The first tension concerns voter justification, the second self-regarding voting, and the third sincerity in voting. After arguing that these three aspects are in tension with the practice of secretive voting, I proceed to discuss various objections to the existence of these tensions. I conclude that these objections fail for various reasons, but that one way to relieve the tension is to adopt an epistemic approach to deliberative democracy.

I. WHAT IS DELIBERATIVE DEMOCRACY?

Deliberative democracy is a vast theoretical enterprise designating a multitude of normative positions and principles (Elster 2003; Gutmann and Thompson 1996, 2004; Cohen 1997; Bohman 2000). On a fundamental level, it is a theoretical view that emphasizes the importance of justifying public policy with reasons acceptable to all who are bound by those policies. Justifying the exercise of political power is to be done on the basis of reasoning among free and equal citizens (Gutmann and Thompson 1996, 52, Cohen 1997, 412).

One way to identify some of the values of the deliberative model is to contrast it with an aggregative model. On one influential understanding of these two models, voting is the mere aggregation of fixed preferences, while deliberation seeks to base political decisions on the collective and *preference-altering* nature of public deliberation (Elster 2003). That is, deliberation attends to the formation and justification of preferences, while aggregation compiles individual political preferences, typically through a voting process.

In this paper, what I want to draw attention to is not the general relationship between voting and deliberation, but the *secretive* aspect of voting and its relationship with deliberation. Secrecy is a distinct feature of voting that adds to the normative worries highlighted by deliberative theorists. It is those worries to which I will soon turn. However, in order to gain some conceptual precision for the analysis to come, I will first describe two different conceptions of the value of deliberative democracy as this will become important in the latter part of this paper. The first concerns political legitimacy, and the second concerns epistemic benefits.² For my purposes, this distinction between the

1] This is obviously not a tension *felt* by all, since not everybody ascribes to the principles of deliberative democracy.

2] This distinction does not imply that these two conceptions can always be kept separate. For

legitimacy approach and the epistemic approach to deliberative democracy is important. It is important because I will argue that the tension between the ideals of deliberative democracy and the secret ballot does not concern not a tension between an *epistemic approach* to deliberation and voter secrecy.

Legitimacy:

Joshua Cohen locates part of the central value of deliberation in the relation between the legitimacy of political outcomes and the deliberative activities of those who are bound by such outcomes. He writes: "In particular, outcomes are democratically legitimate if and only if they could be the object of a free and reasoned agreement among equals. The ideal deliberative procedure is a procedure that captures this principle." (Cohen 1997, 73). The free exchange of reasons, in which citizens partake, aims to establish *the legitimacy* of the outcome of the democratic process. These outcomes are to result from the free exchange of ideas, arguments, and justifications about what constitutes the common good of a given society. Since political decisions are binding on all, the legitimacy of the outcomes should, therefore, consist of the deliberation of all (Manin 1987, 352). Another value that the deliberative approach emphasizes is the *respect* citizens are shown when they are afforded a fair hearing in the deliberative process both preceding and following policy-formation. By letting people have their say in a deliberative interchange, their standing to make claims or offer reasons is acknowledged, and they are therefore being respected in a morally substantial way (Chambers 2017, 268).

Epistemic Approach:

Some also locate the value of deliberation in the epistemic benefits it can provide. For example, if participants, through the giving of arguments and the weighing of evidence, produce more accurate beliefs, then this is an epistemic benefit of the deliberative interchange (Peter 2016, 142). On one view, the deliberative model can be seen as a truth-tracking procedure, which functions properly when it provides increasingly reliable information about the proper or morally right outcomes of democratic processes. Such a view entails, roughly, that there are right and wrong answers to some political questions, and public deliberation is one reliable way in which we can come to some approximation of these answers (Landmore 2017, 284). Deliberation might accomplish this on the basis of enlarging the pools of ideas and information, weeding out bad arguments and leading to consensus on the most reasonable outcome (Landmore 2012, 97). This, however, does not imply that consensus is thought of as a requirement in order for there to be an epistemic benefit to deliberative procedures. It might be that even if disagreement persists, the deliberative process sheds light on *the reasons* for the disagreement and therefore knowledge as to why the disagreement has yet to be solved.

example, one can hold that political decisions are only legitimate insofar as they are, to a certain degree, epistemically justified.

II. DELIBERATION AND (SECRETIVE) VOTING

The relationship between the principles of deliberation and the existence of majoritarian decision-procedures (i.e., voting) is a complicated one. It is, however, not difficult to see why deliberative democrats may regard secretive voting as problematic. This may stem from a more fundamental uneasiness between deliberation and voting in general. Jeremy Waldron sums up quite nicely what such uneasiness can consist of: “Voting shifts us from the qualitative consideration of substance to sheer quantitative business of seeing which proposition enjoys the support of the greatest number.” (Waldron 1999, 212).

If what we value is the *substance* of the public arguments and viewpoints that are put forward in the democratic dialogue, then voting may be seen as a rather crude form of decision-making. It collectivizes our individual preferences, giving no special attention to what these preferences are, how they are formed, and whether they're justified. The crudeness of this aggregation of preferences consists, at least in part, in treating each and every input the same. The fact that voting is *also secret* only seems to add to this crudeness. Not only are individual preferences undifferentiated, but they are also tallied up anonymously – meaning that it is difficult to hold citizens accountable for their act of political influence, and to call upon them to justify themselves. If we are convinced that the exercise of power should be justified to the citizenry, that wielders of power should be accountable, and that choosing our leaders should be based on publicly debated reasons, then it is not initially difficult to see why we might be worried about with the non-deliberative and non-justificatory structure of voting secrecy.³

III. CLARIFYING THE ARGUMENT

As mentioned, I will structure the following discussion by building on some recent arguments and observations made by Bart Engelen and Thomas Nys (2013). To put their argument into context, it is important to note that they *are not* proposing that a commitment to deliberative principles implicates – in any form – the abolition of the secret ballot. Nys and Engelen discuss many substantial potential problems that accompany certain forms of public voting. For example, an open system will yield strong social pressure on those who are socially and economically least well off. This will lead to voter abstention, which will threaten the inclusive ideal of democratic participation (Engelen and Nys 2013, 501–2). Other worries include the possibility of citizens yielding to social conformity, or the possibility of an increase in political polarization, in which citizens become more staunch and unflinching in their political convictions (Engelen and Nys 2013, 501). I agree that these are considerable problems, which would need to

3] Some praise the inclusive and egalitarian aspects of voting. (Mansbridge *et al* 2010, 85). This form of equal inclusivity – Mansbridge and others point out – “[...] makes a statement of equal respect parallel to, but qualitatively different from, the respect accorded by listening in deliberation.” (Mansbridge *et al* 2010, 85)

be acknowledged if one is to make an argument for the practical implementation of some form of public voting. However, this paper is an analysis of how some of the ideals and principles of the deliberative model are in tension with the current and widespread form of secretive voting. In other words, the normative principles within deliberative theory should lead us to be very skeptical of the use of secretive voting.⁴ The fact that public voting may currently be infeasible does not defeat the purpose of such inquiry. One way of seeking out potential problems with our current institutions is by seeing how they fall short of normative ideals.⁵ Also, there are multiple circumstances relating to the process of voting, which might, potentially, be made more deliberative. Understanding how the current process of secretive voting holds up to the ideals of deliberative democracy is useful in exploring such circumstances.

IV. THREE AREAS OF TENSION

4.1. *The Justificatory Tension*

So, in what sense are the principles of deliberative democracy in tension with the secret ballot? First, Engelen and Nys stress that one of the central normative commitments of deliberative theory concerns the justification of our public policies to those who are bound by them. They state, for example, that: “[...] it is not sheer numbers, but the views and arguments of citizens that should matter in a democracy. Democratic politics is about justifying the exercise of power by means of reasons that all citizens can reasonably be expected to endorse.” (Engelen and Nys 2013, 495). As Engelen and Nys point out, under a secretive system, voters experience little in terms of an incentive to justify or explain themselves. One of the problematic aspects of voter-secrecy, then, is that it helps to shield each voter from potential deliberative pressure of giving some explanation or justification for how they vote (Engelen and Nys 2013, 497). With no verifiable way to hold people to account for how they vote, they can cast their ballot however they like, for any reason they like. Now, this is obviously also possible in a non-secretive system, in which people can still vote for whatever reason they feel like. What seems to make up the central difference for Engelen and Nys is that secrecy denies us the possibility of *actually knowing* how people vote. If people actually were *to know*, they could hold others accountable for their choices in the voting booth.

It is important to distinguish two ways in which this will increase the deliberative circumstances of voting. First, citizens can now engage each-other after elections, and they can demand a justification – they will be able to say: “You voted for x, explain

4] There is a slight terminological clarification to be made here: when it is suggested that some principles are in tension with some practice, it does not mean that those principles are therefore *themselves* endorsed. It means, instead, that *if* one endorses those principles, *then* these areas of tension arise.

5] Engelen and Nys also use it to show how demanding deliberative principles are for citizens.

yourself!” Such an interchange could, presumably, continue even after the election is over. Second, this will also create an increase in the internal deliberative workings of the voters *before the election*, since they now can *reasonably expect* to be asked to justify themselves. They will thus be faced with an incentive to think – from the perspectives of others – about how they will explain themselves, which will mark an increase in internal deliberation.⁶ What I want to do now is to explicate how this tension relates directly to some of the core commitments of deliberative theory, and to draw some important distinctions based on this.

In order to do this, consider the following description of the notion of reciprocity from Amy Gutmann and Dennis Thompson: “Reciprocity holds that citizens owe one another justifications for the mutually binding laws and public policies they collectively enact.” (2004, 98). Importantly, they add that very few traditions give the notion of reciprocity the same central role as it is afforded in deliberative democracy. (Gutmann and Thompson 2004, 98). Now, as they are formulated here, reciprocity and secrecy are not at odds with each other. It is certainly possible for citizens to offer justifications and reasons in a deliberative interchange, and then – assuming that deliberation does not yield agreement – use a majoritarian and (secretive) decision-mechanism. In this sense, secrecy and reciprocal justification are certainly not conceptually incompatible. Instead, the deliberative worry about voter secrecy is that voting is *part of the process* in which we choose not only political representatives but also public policy.

It is, therefore, proper to make the *circumstances* of the voting process *more* deliberative. On this view then, deliberation and voting co-exist: voting is an inherently non-deliberative way of (temporarily) ending the preceding deliberative interchange. What the position entails, instead, is a commitment to making the *circumstances* and the *process* of voting more deliberative by creating a greater incentive for deliberative interchanges and accountability on behalf of voters. By making the voting process more open, we are approximating the deliberative ideal that citizens should stand in a justificatory, reciprocal relationship with each other. Again, we can distinguish two dimensions of this claim. First, openness is conducive to an increase in both internal and external deliberative pressure, which can increase the public deliberative pressure on voters before and after elections. Second, openness makes voters accountable to each other, such that they must offer justifications for their acts of political influence. It is also important to note here that the *value* of voter justification can also be understood in several different ways. Justification may be valuable because it is instrumental in creating a valuable form of a political community. This form of a political community is one in which citizens show respect for each other when each seeks to justify the political influence they exert through voting. Secondly, voter justification may be epistemically valuable because it is conducive to creating better input for political decisions. On this second view, the value of an increase in justificatory deliberation consists in getting

6] On the notion of internal deliberation, see Goodin 2000.

citizens to vote on the basis of the substantial arguments that ‘survive’ the justificatory process. The justificatory process is the process of internal reflection that voters undergo, and the justificatory exchanges they partake in with each other, before and after elections. The value of this deliberative increase consists of creating the best epistemic circumstances for citizens to cast their vote. I will explore this distinction in the last section of the paper.

Let me summarize this first area of tension: if what is normatively important is the substance of the reasons and justifications we give each other, then a system that makes it possible for citizens to offer no justifications at all, let alone reasons that all citizens can reasonably be expected to endorse, leaves much to be desired.⁷ Again, it is certainly possible to value both the process of justification and also value secrecy. The tension that Engelen and Nys pinpoint, as I see it, is that secrecy de-incentivizes and reduces deliberative aspects of the voting process. Comparably, then, public voting is more conducive to at least some of the ideals of deliberative democracy. This tension can be labeled the *justificatory-tension with secrecy*.

4.1.1 Objections to the justificatory tension

One way to mount a general counter to the justificatory tension is to argue that there is a second-order deliberative justification for the non-deliberative circumstances of voting. (Mansbridge *et al.* 2010, 88) For example, if the *procedure* of voting has undergone proper public justification, then *the process* retains deliberative legitimacy – even if the *individual votes* can be cast without giving a justification. Similarly, it can be argued that secretive voting retains deliberative legitimacy because the process of secretive voting has undergone the proper public deliberative justification, even if the individual votes have not.⁸ However, I do not believe that this response gets at the essential issue. First, the potential deliberative worry about secrecy is that the *votes themselves* are not exposed too much justificatory pressure. This worry seems to persist even if *the procedure* has undergone proper public justification. A slightly different proceduralist response to the justificatory tension is to suggest that as long as the proper deliberation has taken place, the outcomes are legitimate (Christiano 1996, 35). Again, I do not think this response poses a solution to the justificatory tension with secrecy.⁹ This is because the justificatory tension does not assert that outcomes are to be deemed illegitimate because they have been chosen in secret. Rather, the point is that the secretive *procedure* limits important parts of the deliberative scheme: that of justification for, and accountability of, political actions that are collectively binding.

7] The non-deliberative structure of secret voting is also noticed by Frederick Schauer (1999, 20).

8] Whether or not this process has been publicly decided upon is an empirical question that I, at present, cannot attend to.

9] Nor is it directly intended to in this context. It is merely used as a possible objection.

Lastly, even if we do accept the procedural response, it only shows that we *can* make the procedures more deliberately justified, but it is not clear why we should not *also* make the votes *themselves* more deliberately justified.¹⁰

Moving away from procedural responses, we can question the justificatory tension with secrecy on more fundamental grounds. For example, Russel Hardin has argued that it is only public officials who should be expected to give reasons for their decisions and not citizens. It is inherent in the political role of public officials that the public can demand justifications, while citizens do not have such public obligations. (Hardin 1999, 221-2) If deliberative democracy concerns only the relationship between public officials and citizens, then claiming that citizens should justify themselves [and their votes] is surely an unwarranted extension of the principles of deliberation. However, Hardin's description of the obligations of deliberative democracy seems too restrictive. Indeed, as he himself notes, most normative theories of democracy place obligations of justification and accountability on behalf of public officials – surely, deliberative democracy must entail more than just this (Hardin 1999, 221).¹¹ On a very influential account, the task of justification is quite explicitly given to *both* officials and citizens (Gutmann and Thompson 1996, 52). Hardin is, of course, right in noticing that different obligations and demands of justification apply differently to citizens and public officials. However, citizens are most certainly to be included within the deliberative scheme, as it is their preferences, arguments, and proposals that the deliberative interchange seeks to establish and promote.

Therefore, these objections are not successful in countering the tension between secrecy and deliberation.

4.2. The Self-Regarding Tension

I will now turn to the second area of tension: the all-affecting nature of voting. How we act as a collective, especially in voting, is something that will impact the whole of society. We ought, therefore, to take into consideration the common good, instead of merely attending to our own personal preferences. This public-mindedness, also a virtue in deliberative democracy, is, according to Nys and Engelen – difficult to square with a secretive voting system. This is due to how secrecy makes voting a *private* act, while voting in public induces voters to attend to more public reasons for their vote (Engelen and Nys 2013, 496).

This privatization of motivation in voting runs counter to the public ideal of deliberation, in which citizens are to acknowledge and engage with other political actors to discover, or establish, what is of common interest to them. With an open vote,

[10] This argument is similar to the argument Jonathan Quong (2004) makes concerning the wide view of public reason.

[11] Hardin leaves himself some room to ascribe obligations to citizens by saying 'primarily'. Also, it is possible that deliberative democracy does entail more than this, but not more in terms of obligating citizens.

on the other hand, people can face inquiries, questions or demands for justification for how they vote. Since citizens can verifiably know how people vote under such a system, there will be a stronger incentive for voters to offer reasons that others can understand or acknowledge since purely self-regarding political preferences will be harder to defend publicly (Nys and Engelen 2013, 496).¹² Due to this form of public deliberation, voters must think in terms of what other citizens are likely to appreciate or acknowledge. This pressures voters into adopting different viewpoints, enlarging the sense of what matters for the public good or society at large (Benhabib 1996, 72).

By making the voting process more deliberative in this way, there will be an increase in pressure to offer reasons *in* public, but also to offer reasons the *content* of which are public, in the sense of being acknowledged or understood by others. Obviously, there are empirical complexities that arise here. What if voters just conform to the prevailing social norms of their community? What if they cloak their essentially private interests as being ‘in the name of the common good’? These are important questions, but as of now, what is of interest is the claim that some of *the principles* of deliberative democracy are more aligned with that of giving other-regarding or common-good reasons. This can be labeled the self-regarding tension with voter secrecy.

4.2.1. *Objections to the self-regarding tension*

One principled response, then, is to question the role of these self-regarding reasons in deliberative democracy. Jane Mansbridge has, for example, argued that self-interest has a legitimate place in democratic deliberation because it serves two important functions. By clarifying and exploring our private interests, we are identifying the different preferences that must be attended to when publicly deliberating on the common good – it thus helps to give us information about the particular interest that ‘go into’ the deliberative process. Second and more controversially, is the claim that self-interests are themselves justifications, and thus serve as *reasons* for implementing certain policies (Mansbridge et al. 2010, 73–74). Such an argument does not take us very far. The reason for this is that even if self-interest can play a legitimate deliberative role, they may continue to do so under public voting. So, even if we grant that self-interested reasons can serve as justifications, very little follows from this. The deliberative argument here must be that public voting is *more conducive* to the giving of public reasons – and this does not suggest that self-interested reasons can, or should, play *no role* in deliberative interchange.

There are, however, empirical reasons to be skeptical of the self-regarding tension. There is empirical data suggesting that citizens actually do not vote in self-regarding, or purely self-interested ways (Chong 2013, Funk 2000). Voting in secret, then, does not seem to purge us of altruistic or other-regarding concerns. This, however, only shows voters vote altruistically even when they do not vote publicly. This does not suggest that

12] See Brennan and Pettit 1990 for a similar argument.

public voting will not yield *an increase* in the public *content* of reasons and an increase in the amount of *public discussion* of voters.

4.3. *The Sincerity Tension*

One last area of tension I want to highlight concerns sincerity. Engelen and Nys suggest that the secret ballot can be seen as a corrupting influence on democratic citizens, as there is something deceitful about keeping voting shrouded in secrecy (2013, 496). Although they do not explicate or develop this point much further, I believe that more can be said for it. I think we can elaborate on it by summarizing it as a concern about *sincerity* (Gardner 2010, 936). Under a secretive system, there is no way of knowing whether citizens actually ‘follow-through’ on their convictions, ideas or expressed standpoints. Secrecy, then, allows for voters to take a public stance, and then to vote for something completely different (Gardner 2011, 931-32). This, Gardner suggests, has implications for some normative conceptions of deliberation:

“Deliberative theories tend strongly to disfavor insincerity because it is a form of strategic behavior that is thought to undermine true deliberative engagement and thus to impair the ability of deliberators to reach a genuine consensus.” (2011, 936)

A similar concern has been expressed by Rawls, namely that “[...] public discourse runs the risks of being hypocritical: citizens talk before one another one way and vote another.” (2005, 215).

How does insincerity pose a possible problem if we want to satisfy the conditions of deliberation? Prima facie, it is not difficult to initially see why sincerity is a deliberative virtue. If we want to have policies and legislative changes publicly justified to us, and have the arguments of citizens publically heard and acknowledged, then we need to know about the truthful opinions and real circumstances of the lives of citizens in order for the deliberative enterprise to establish or clarify the policies that should pertain to these citizens. Being insincere can be a way of treating the democratic forum as an opportunity to advance one’s interests on the basis of power or strategic manipulation, which runs counter to the normative ideal of trying to connect public policy to the outcomes of the honest argumentative back-and-forth of citizens. How, then, does insincerity pertain specifically to the question of secret voting? The worry, as stated above, is that secrecy allows for us to vote *not* on behalf of the preceding deliberative engagements, but for any reason – indeed, reasons that may run counter to our deliberative agreements or clarifications. Now, what does it mean to say that people can vote in a way that is not a continuation of the preceding deliberative interchange? I take it to mean that if we agree – through the use of public deliberation – that candidate A will best serve our interest, then the secrecy of the ballot allows for me to go vote for candidate B instead, thus not ‘carrying out’ the action that we agreed to be the best option. I have therefore been insincere in my public expressions of my support of candidate A, and this form of

insincerity is made possible because of the secrecy of the ballot.¹³ This can be labeled as the sincerity-tension with voter secrecy.

4.3.1. *Objections to the sincerity tension*

I do not think that sincerity presents as substantial a tension as either the justificatory or the self-regarding tension. I will here present some reasons why I believe this to be the case.

First of all, it is not clear that it is voter *secrecy* that matters all that much in this instance. To better see this, contrast it with a public system. In a public system, you can, rightfully perhaps, impugn me for voting differently than what we publicly established to be the proper candidate. But, this does not show me to be insincere in the pre-voting process of the election. I may have come to realize that a different candidate is actually a better fit for the arguments and concerns we both deliberated on. Also, publicity in voting cannot – by itself – reveal what my *reasons* are for voting a certain way. They can only hide or publish *how* I vote. Open voting can only reveal that *at least some of my reasons* have changed, if my pre-election reasons included *my desire to vote for A*, and I ended up voting for B instead.

Lastly, there is a question concerning the size of the group doing the deliberation. Following Gardner, what is worrisome about insincerity is the *strategic* element of it (Gardner 2011, 931-32). This seems like a legitimate worry in smaller-scale settings. To better see this, imagine a small group of people facing a decision on how to allocate some limited amount of resources. They start off by trying to allocate these resources by public deliberation, by a fair and respectful weighting of the concerns of the members of the group. After engaging in this process, they find out that they will not be able to distribute the resources merely on behalf of public argument, so the process ends with a vote. Imagine this vote to be secret. If the deliberative process has yielded some preliminary agreements, such as a decision on how to allocate at least some of the resources, then if someone votes contrary to this agreement, she is not acting on behalf of their public considerations of how to achieve the optimal outcome. She may be more interested in voting in ways that serve her strategic goals, rather than to vote on behalf of their public agreements. This seems to hurt the deliberative process in this scenario, because the deliberative process is not, in the right way, causing, or influencing, the outcome that was publically decided on.¹⁴

Some problems arise when this strategic worry is applied to decisions in mass-democracies. First, if one's vote has limited causal power – such as in general elections in large democracies – then there are weaker reasons for one to vote strategically due to the diminishing returns of the vote. Second, it is not clear as to what constitutes

13] Assuming, of course, that I knew I wouldn't vote for this candidate at the time of voicing my public support.

14] In this situation they only vote because of practical necessity.

the deliberative engagements that one must vote on behalf of in mass democracies. Is it troublesome to have citizens vote in a way that deviates from what was agreed on, or publicly argued for, in previous engagements with friends, family members or co-workers? I doubt that we have very strong intuitions in the affirmative here. Also, such engagements seem too far from removed from any concrete political change to be properly deemed *democratic* deliberation. Therefore, there seems to be an ambiguity as to how we are to understand what it means to vote on 'previous deliberative engagements' in mass democratic societies. This does not show that strategic voting cannot be a legitimate worry as it relates to secrecy; it only shows that such a worry relates to the electoral scale that is under discussion, from general elections in mass democracies to decisions undertaken in smaller electoral contexts. For these reasons, the sincerity tension might apply to a small-scale deliberative setting, while it seems less significant in mass-scale democratic settings. Hence, the sincerity tension, as presently stated, presents less tension than the justificatory and self-regarding aspects.

Let me take stock. So far, by attending to some of the comments by Engelen and Nys, I have identified three aspects of secretive voting which are in tension with some of the theoretical virtues of deliberative democracy. For the remainder of this paper, I suggest that an epistemic approach to deliberative democracy is one efficient way to relieve some of this tension.

V. WHY (SOME) DELIBERATIVE DEMOCRATS MAY NOT FAVOR PUBLICITY

At this point, I want to argue the three aspects of secretive voting under discussion are not in tension with some of the *epistemic aspects* of deliberative democracy. Simone Chambers has some very helpful distinctions relevant for this discussion. She points out that we may have reasons that are by their nature un-shareable, yet not selfish or purely self-regarding. These include, for example, comprehensive world-views that others, due to different metaphysical commitments, cannot accept (Chambers 2004). Likewise, she points out that the distinction between private and public reasons does not necessarily track any epistemic qualities. We can have well-reasoned, reflective forms of self-regarding justifications and have poorly-reasoned or shallow forms of other-regarding justifications (Chambers 2004). Opening up deliberation to a wider public may yield an increase in the *public* reasons offered under some circumstances, but this does not mean that these public reasons are epistemically sound or well-thought-out positions. Chambers puts her point like this:

"The problems associated with going public are not problems of private reasons but rather the problem of shallow public reason: wanting to please the largest number of people possible or wanting to appear firm and decisive in the public's eye. Thus the appeal is general but the content is suspect." (2004, 394).

By opening up a deliberative process to the general public, an incentive can be created to meet the discursive demands by giving shallow or superficial reasons, which threatens to flatten the discursive landscape. Chambers calls this plebiscitary reason, and it consists of the following well-known strategies: manipulation, pandering, image-maintaining (2004, 398). Engelen and Nys are also aware of these potential epistemic pitfalls. They argue, for example, that public voting can lead to voters refusing to adjust or change their positions, due to not wanting to appear weak (Engelen and Nys 2013, 500). With this in mind, consider the two strongest tensions once again. The first is the justificatory tension, which is the tension between the normative deliberative requirement of giving reasons and a secretive voting process in which reason-giving is de-incentivized. One reason why deliberative democrats ought, in principle, to favor publicity is that the process of justification yields an internal and external increase in voter deliberation. Ideally, such a process promotes voting based on the arguments and reasons that emerge, and are promoted, in the public political arena, which is to be preferred to a system in which voters can choose to vote for whatever reason they like, for no reasons, or for bad reasons. Following Chambers, however, there may be worries about the possible epistemic effects of this. For example, citizens may pander by offering reasons their social surroundings find acceptable, or citizens may vote a certain way to maintain or regain a public image. If we're epistemic deliberative democrats, these circumstances are important. They are important because if the justificatory process is to yield epistemic benefits, then the process of voter justification must be exercised in the right way. Therefore, it is not sufficient that public voting induces both pre and post-electoral public deliberation by voters, because that deliberation may lack the prerequisite epistemic qualities.

Consider, now, the self-regarding tension. The principled deliberative worry about secrecy in this respect is that secrecy runs counter to understanding political decisions as a public, collective enterprise. Public voting is more in line with the goal of offering public reasons that others can acknowledge. Again, following Chambers, there are epistemic worries present here. For example, it might be that the deliberative interchange between voters is not conducive to advancing the best arguments. Perhaps voters will give any justification that grants them social acceptance. This does not necessarily mean that public voting cannot be conducive to reaping epistemic benefits. It merely suggests that if we value democratic deliberation because it is conducive to reaching epistemically justified outcomes, then there are *additional epistemic* circumstances that need to be spelled out in order to show that deliberative democracy is principally opposed to secrecy. Expressed differently, *epistemic deliberative democrats* are only principally opposed to voter secrecy insofar as secrecy yields an epistemic deficit – and it is not obvious that this is the case.¹⁵ We need a richer description of the epistemic benefits of publicity to be able to argue that there is a principled discrepancy at work here.

[15] That is: epistemic deliberative democrats are only opposed to secrecy *qua being* epis-

Some might find this claim puzzling. A skeptic might ask: If we are not in favor of increasing the deliberative circumstances of voting, because publicity may increase the risk of certain epistemic pitfalls, then is any deliberative claim being advanced at all? If the skeptic is right in claiming that no deliberative claim is made at all, then that is a problem for my argument. It is a problem because it would mean that I would be proposing to solve a tension between deliberative democracy and secret ballot by simply abandoning some central ideals in deliberative democracy – which is hardly a very satisfying solution.¹⁶ However, I do not think the skeptic is right about this. I agree that it does seem puzzling to suggest that deliberative democrats may have reasons *not to* make some circumstances more deliberative, but such a position is possible from within a deliberative viewpoint. It seems puzzling only if we assume that deliberative theorists are committed to *making everything more deliberative*, rather than judging everything by deliberative standards (Gutmann and Thompson 1999). If the assumption that deliberative theorists are committed to making everything more deliberative is dropped, the position I have sketched appears much less problematic.

Another skeptical reply to my argument is to say that there is an epistemic uptake by virtue of there being an increase in justifications given, even if they are epistemically unsound, and as such, public voting *is more conducive* to the ideals of the epistemic approach to deliberation than secrecy. I partly agree with this reply. However, the strength of this reply would rest on the epistemic substance and the circumstances in which those justifications are given. It is not obvious that the increase in the giving of justifications equals an increase in epistemically qualified voter deliberation. Such a case would require additional argumentative support.

Therefore, in order to properly analyze the process of secretive voting from the vantage-point of deliberative principles, it is important to distinguish between valuing justification and the giving of public reasons for epistemic or non-epistemic reasons. What I have suggested is that if we take an epistemic approach to deliberation, both the justificatory and the self-regarding tension lose substantial steam.¹⁷

As mentioned, however, this is only true for the epistemic approach. The tension still exists, at least as I have argued, if we accept that justification and accountability are deliberative values which are not exhausted by their potential to yield epistemic benefits. For example, if we believe that justification and accountability have intrinsic value, then the mere fact that voters become accountable to each other, regardless of epistemic benefits, may have value within deliberative democracy. This area of tension

temic deliberative democrats.

[16] It is not unsatisfying because we necessarily should be adamant in upholding deliberative ideals. Rather, it is theoretically unsatisfying because my aim is to discuss the tension that exists when one wants to uphold values of deliberative democracy *and* the current practice of secretive voting. Simply abandoning either is not in any sense an interesting solution.

[17] My argument does not warrant the conclusion that the tension is not there, but rather than there are insufficient reasons to believe that it is there.

between justification and secrecy is not dissolved by accepting the epistemic approach. The argument sketched here as to why epistemic deliberative democrats may not, principally, be opposed to secrecy, can vary in strength. A stronger version of this claim would be an argument showing that secrecy may, in fact, be *epistemically superior* to publicity in the context of voting. I have not defended this stronger version. I have instead raised some issues concerning some important distinctions between different versions of deliberative democracy and tried to show that there is insufficient ground for claiming there to be a principled discrepancy between secrecy and an epistemic version of deliberative democracy.

VI. CONCLUSION

I have discussed several parts of the relationship between deliberative democracy and the secret ballot. Voter secrecy has a multifaceted relationship with deliberative democracy. On the one hand, majority voting as an institutional design gives each political input the same weight. Each citizen that partakes in this process has an equal say. The secrecy of the ballot adds to this egalitarian inclusiveness by shielding voters from external social pressure. Each citizen partakes in the electoral process with no direct claim of justification or reason-giving required for this action, signaling that each adult can take part in the process, regardless of their reasons for doing so.¹⁸ These inclusive aspects of secrecy also contain the non-justificatory elements – which I’ve suggested – are opposed to the ideals of deliberative democracy. Analyzing the relationship between secrecy and deliberation seems to bring out these different aspects – which I have outlined in three different ways – as the justificatory tension, the self-regarding-tension, and the sincerity-tension. I’ve suggested that both the justificatory and the self-regarding tension are significant tensions, while the sincerity-tension remains, at present, unpersuasive as substantially worrisome from the viewpoint of deliberative democracy. Lastly, I’ve argued that there are insufficient reasons to suggest that epistemic deliberative democracy is in tension with voter secrecy. Needless to say, such conclusions are merely preliminary, I hope, however, that they provide some conceptual tools for further analysis and discussion.

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¹⁸] Annabelle Lever has argued that this egalitarian aspect of the secret ballot signals the inherent democratic value of voter privacy. (2015)

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Publicity and the Ethics of Political Representation

In this paper, I challenge the division of secrecy and publicity as it pertains to representatives and citizens. I argue that some of the normative reasons why representatives vote publicly are transferable to similar normative reasons for why citizens should vote publicly in referendums. Specifically, I argue that if representatives vote publicly because they ought to be accountable for their exercise of political power, then the same reasoning applies to citizens voting in referendums. I advance this claim in two steps. First, I lay out the standard justification for publicity on behalf of representatives. Second, I argue how such justification ought also to include citizens.

I. Introduction

There is a division of labor in most liberal democracies consisting of political representatives and citizens. Representatives legislate, deliberate, and structure laws, while citizens are usually confined to voting for representatives in elections.¹ The relationship between representatives and citizens has been an ongoing topic of philosophical discussion.² This democratic division of labor between representatives and citizens is usually accompanied by an asymmetry concerning secrecy and publicity. That is, representatives usually vote publicly while citizens usually vote secretly. I will refer to this as *the asymmetry*. There is surprisingly little discussion when it comes to relating the issues of democratic accountability to the question of the asymmetry between the secret ballot for citizens and public voting for representatives. It seems that the issue is, according to one influential commentator, normatively settled in favor of secrecy for citizens and publicity for representatives.³ In this paper, I argue that there are good reasons for challenging this division of secrecy and publicity. I will argue that *if* public voting for representatives is important due to accountability, *then* normatively similar reasons for publicity are ascribable to citizens as well. That is, some of the good reasons we have for wanting publicity

¹ Citizens also deliberate but rarely do their deliberations directly end up in actual large-scale political decisions.

² Mansbridge 2009, 2011; Young 2000; Christiano 1996; Urbinati and Warren 2008. See also Mill, *Considerations on Representative Government* Ch. 10.

³ Elster 2015, 11.

on behalf of representatives also constitute good reasons for wanting publicity on behalf of electors. Specifically, if representatives must vote publicly because they are accountable to the public for their enactment of collectively binding laws, the same reason applies to electors.

It is important to note that different levels of policy-making employ different forms and degrees of secrecy. For example, the process of the European Council of Ministers is partly secretive, and the Council “... and its subordinate institutions debate largely in private and they often arrive at decisions without taking a formal vote.”⁴ Even though such empirical circumstances concerning secrecy and publicity vary, this is not crucial for my argument. There is a theoretical linkage between accountability and publicity, which is sufficient for my objectives in this paper, even if this theoretical linkage does not perfectly map onto the empirical world.

Since my argument is conditional, it admits to differing scales of both publicity and accountability. For example, *if* publicity of representatives is warranted (partly) because representatives are *directly* engaged in the law-making process, *then* publicity is (partly) warranted for citizens *when* citizens are similarly directly engaged in law-making. This argument is consistent with publicity being *less* important for citizens than for representatives. In addition, there are strong reasons, both historical and contemporary, for the secrecy of the ballot.⁵ Therefore, what I offer are pro-tanto reasons, not all-things-considered reasons that warrant *the practical implementation* of public voting for citizens. Rather, the objective is to provide a substantial challenge to the normatively settled status of the asymmetry between representatives and citizens.

II. Publicity and Secrecy

Secrecy and publicity can manifest in different forms and serve different functions in political and judicial processes. In the deliberative stages of policy-formation, for example, public oversight may be conducive to the giving of public rather than private reasons or it might help to expose corruption or selfishness. The effects of publicity may also be harmful: it may lead to a downgrade in the epistemic quality of deliberation, because speakers, due to publicity, will care

⁴ Stasavage 2006, 164.

⁵ Manin 2015, 209

mostly about pleasing the largest amount of people.⁶ Similarly, publicity might incentivize refusals to re-evaluate political beliefs because such refusals signal weaknesses.⁷ Publicity may also be ill-advised in jury proceedings. The deliberation of jurors is often secretive, the main argument for which is the “... chilling effects on free deliberation that could occur if the jurors knew that their discussion might become public, the need for a finality of the verdict, and the legitimacy of the jury system.”⁸ The argument *for publicity* in jury proceedings, on the other hand, is that juries are “... prone to mistakes, because of incompetence, normative prejudices, or cognitive biases.”⁹ It is also an important factor whether someone is obligated to *give reasons* for their decision. Public oversight can help in assessing whether the proper arguments, or reasons, have been offered in support of some decision. If individuals or groups are under no obligation to give reasons, then, this may limit the need for publicity in the deliberative stages of some decision-making. Since juries do not give *reasons* for their decisions but render *verdicts*, this may reduce the need for publicity on their behalf.¹⁰ I will consider how these issues relate to democratic representation.

III. Democratic Accountability: Some Standard Views

The role of representation carries with it different ethical duties of public office.¹¹ Deciding which, and to whom, representatives have such duties is a theoretically complicated and contentious issue. It is sufficient for my purposes merely to highlight the connection between the role of representation and publicity. That is, if citizens are to be able to exercise their demand for accountability, some amount of publicity in public governance is needed. This is due, in part, because publicity is supposed to discipline institutions and office-holders and to prevent and deter corruption.¹² I will here describe several of the traditional views of representation to establish that publicity is important on most of these views. This overview is by no means exhaustive either in listing the different possible views or in the qualitative descriptions of them. It is, however, sufficient for present purposes.

⁶ A slight terminological issue: in a certain sense, publicity does not *cause* anything. Those actors who behave differently *due to publicity* cause things.

⁷ Chambers 2004, 391-94.

⁸ Elster 2013, 126.

⁹ Elster 2013, 126–27.

¹⁰ Elster 2013, 13.

¹¹ Urbinati and Warren 2008, 400.

¹² O’Neil 2006.

Agent-Principal:

One standard view of representation is the agent-principal relationship in which the principals (the public) elect agents (representatives) to act on their interests and opinions.¹³ On this standard view of representation, publicity is needed because the principals must be able to monitor the behavior of the agents.¹⁴ Such monitoring creates possibilities of either sanction or reward. On this view, the citizens "... have primacy; they are the ones to whom the legislators are responsible."¹⁵ So, for example, in order to evaluate whether a candidate truly is fiscally conservative, it is important to know how the candidate has voted concerning public social spending. To know whether a candidate lives up to her campaign promise of being anti-interventionist, the public needs to know how the candidate votes on issues of military spending and overseas military activities. As such, the Principal-Agent relation is conceived as one in which the principals must "... monitor the agent closely, rewarding the good behavior, and punishing the bad."¹⁶ On the Agent-Principal view, citizens are to investigate whether or not their representatives are adequately advancing their interests, whether they fulfill their duties and responsibilities, and whether their actions match their publicly announced campaign promises. If representatives are seen to fail in any of these areas, citizens can choose to exercise their democratic prerogative and vote for different representatives or showcase their dissatisfaction in other ways. Conceptualizing political representation as the Agent-Principle relation, then, involves the notion of publicity on behalf of representatives due to their accountability to the public.

Trustee View:

Another view is the trustee view of representation. On this view, representatives are given more authorial independence, and as such, citizens are less required to exercise their judgment concerning the political behavior of representatives.¹⁷ Therefore, the form of publicity that enables citizens to judge and direct their representatives is less urgent on the trustee view. However, this reduces only *one incentive* to have the vote of representatives be public. There are other reasons

¹³ Urbinati and Warren 2008, 389.

¹⁴ Mansbridge 2009, 369.

¹⁵ Christiano 1996, 208.

¹⁶ Mansbridge 2009, 369.

¹⁷ Rehfeld 2009, 215.

for publicity on behalf of representatives. For example, publicity is important in order to judge whether or not some individual representative is morally accountable for the enactment of some law or whether the voting of a candidate is suggestive of her acting on special interest, or under the influence of bribery or corruption. Such measures of public accountability are still relevant, even if the role of representatives is to formulate and enact policy proposals without too much public interference or oversight. Perhaps a more far-reaching trustee-view which sees representatives as political actors with high degrees of moral and epistemic qualities, will leave less room for public accountability in the form of public voting. It might be suggested that if we can get such political actors to act on our behalf, we should let them figure out the proper course of political action and have the public play only a limited role in this process. While such a position is possible to hold, it does not pose a problem for the overall argument suggested in this paper. My suggestion is that on some of the traditional and often-held views on representation, there is a need for public accountability, and the far-reaching trustee view does not seem to be a traditional view of representation.

Hybrid-View:

On the hybrid-theory of representation, citizens choose a broad outline of the ends of policy while representatives are in charge of achieving those ends. As such, representatives are delegates on behalf of the policy ends, while they are trustees on behalf of achieving those ends.¹⁸ Again, some publicity on behalf of the political actions of representatives is needed on the Hybrid-View. To evaluate whether representatives are *moving towards* the broad outline of policy set by citizens, some amount of publicity is needed. For example, if citizens delegate the responsibility to representatives for implementing some basic measures of a social welfare state, it becomes increasingly difficult for citizens to judge which representatives are moving toward establishing such measures if they have no information about how representatives vote concerning social spending, for example.

Deliberative Accountability:

¹⁸ Christiano 1996; Christiano 2010, 256-9.

Accountability is also often conceptualized as something more than mere sanction and reward. For example, Mansbridge suggests that in "... *narrative and deliberative accountability*, the representative explains the reasons for her actions and even (ideally) engages in two-way communication with constituents, particularly when deviating from the constituent's preferences."

¹⁹ This understanding of accountability does not emphasize the (formal) sanctioning in which the polity punishes the electorate by choosing not to re-elect them. Instead, deliberative accountability concerns the potential of citizens to require public officials to discursively justify their decisions and actions. One need not subscribe to the deliberative understanding of accountability per se to see the 'giving of reasons' as important. Engaging in such deliberative activity is a generic part of accountability, as accountability typically involves giving an account of or justifying decisions and actions.²⁰ Even on this view, which seeks to implement a system less reliant on sanctioning representatives, some basic amount of publicity on behalf of representatives is required. If there is an increased need to engage in deliberative accountability when representatives deviate from the preferences of the constituency, then this implies that the constituents can *know* when this deviation happens. Publicity on behalf of representatives helps supply this knowledge, and as such, helps to ground the possibility that citizens can hold representatives to deliberative forms of accountability.

The Normative Grounding of Accountability:

So far, I have sketched different understandings of which obligations representatives ought to have towards the public. These different understandings relate to both *how* and to *which degree* representatives ought to act on behalf of the public. Now I turn to the question of what representatives are accountable *for*. Richard Mulgan has developed a distinction that is useful here. He suggests that there are two distinct justifications for accountability. He calls them *principle of ownership* and *principle of affected rights*.²¹ The principle of ownership states that relations of accountability arise when account-holders delegate power to agents to transact on their behalf. Because the agent has been authorized and granted power by account-holders, the agents become accountable to their agents. This principle applies to democratic decision-making. Since representatives are granted power by the public to act on their behalf, the public is the account-

¹⁹ Mansbridge 2009, 370.

²⁰ Warren 2014, 41.

²¹ Mulgan 2003, 12-13.

holder to whom representatives are accountable.²² The principle of affected rights, on the other hand, states that "... those whose rights or interests are adversely affected by the actions of someone else have a right to hold that person to account for the manner in which they have been treated."²³ These two principles are complementary. Government has significant power that can adversely affect the rights and interests of citizens; therefore, it becomes particularly important that citizens are able to hold government to account for how that power is used.²⁴

Mark Warren suggests a similar normative justification for relations of accountability. He conceptualizes the normative importance of democratic accountability in terms of the 'all affected principle'.²⁵ Democratic accountability instantiates the all affected principle "... by connecting those entitled to influence collective decisions by virtue of their real or potential affectedness to agents who make and organize these decisions on their behalf."²⁶ On this view, those who are affected – currently or potentially – are, by virtue of being affected, entitled to influence those collective decisions that affect them. To spell out the significance of this view concerning *democratic accountability*, consider Mark Warren's description of one of the central features of democratic accountability: "Problems of *democratic* accountability arise from individuals' dependence upon these delegated powers in two senses: *negatively*, insofar as they are vulnerable to the powers agents wield, and *positively*, insofar as their capacities to exert influence over collectivities depend upon agents' responsiveness and answerability."²⁷

The all affected principle, therefore, instantiates accountability in two ways. Citizens, by virtue of being affected, are entitled to hold influence over those political decisions that influence them. Second, by virtue of being affected, citizens are normatively justified in being able to "... demand and enforce answerability from those who hold and use delegated powers."²⁸ They are justified in doing so because of their vulnerability to the collectively binding decisions of representatives. Taking notice of both Mulgan's and Warren's descriptions here helps to

²² Mulgan 2003, 12.

²³ Mulgan 2003, 13.

²⁴ Mulgan 2003, 13.

²⁵ The 'all affected principle' usually concerns the proper boundaries of the demos. See Goodin 2007; Young 2000.

²⁶ Warren 2014, 40.

²⁷ Warren 2014, 40.

²⁸ Warren 2014, 40.

understand part of the fundamental normative grounding of democratic accountability. Such accountability is morally significant because of the power that the representatives have over those who are affected by their political decisions. This relates to all of the views mentioned in the last section. Whether one accepts the principle-agent or the hybrid-view, representatives are – in one form or another – accountable to the public *over whom they have political power*. Different conceptions of the relationship between citizens and representatives may yield different conclusions about the *specific need* for and *amount* of public oversight – but they do maintain some basic element of public accountability of representatives to the public *for their exercise of collectively binding decisions*.

Let us take stock. So far, I have suggested that at least two factors are important when considering the link between the accountability and the publicity of representatives. First, the limited use of *secretive voting* in parliaments displays an understanding of representation as accountability.²⁹ Representatives vote publicly because it serves the value of democratic accountability.³⁰ The publicity of their vote enhances the opportunities for the public to observe, criticize, and hold accountable those who vote in ways disapproved of by the public at large or the constituents of the representatives.³¹ Second, what is central to the moral significance of the accountability of representatives lies in their significant *power* over citizens. It is, partly, because the interests of citizens can be affected that representatives stand in a relationship of accountability with citizens. Understood in this way, the exercise of collectively binding decisions marks out the normative grounding *for which* representatives are accountable, while their *role as representatives* indicates some of the obligations the public can hold them *accountable to*. Combining these two elements yields a basic description of representative accountability.

For my purposes, the crucial question now becomes: can citizens play a role that confers similar normative reasons for publicity? For the remainder of this paper, I answer in the affirmative.

²⁹ Gianetti 2015, 108.

³⁰ Elster 2013, 232.

³¹ One can also emphasize the possibility that *individuals* can hold representatives accountable, for example, investigative journalists, scholars, activists, etc.

IV. Extending Democratic Accountability

The suggestion that there are normatively similar reasons for publicity on behalf of representatives as well as on behalf of citizens faces an immediate difficulty: Representatives have more power than citizens in at least two relevant ways. First, they are individually more causally powerful since they are vastly fewer in number than citizens participating in elections. Second, representatives are also causally closely connected to the legislative outcome of their vote since they are directly engaged in the legislative process, while citizens are relegated to voting *for* representatives.³² This adds complexity to most conceptions of the causal and moral responsibility of the electorate. Further complications may arise due to the messy empirical situation of modern representational politics. Politicians broker deals with each other and they forge alliances in which political outcomes are the result of compromises that are unforeseeable by electors before the election. Influence on political outcomes may also come from more obscure sources: lobbyists, corporations, interest groups, etc. These circumstances can make it more difficult to trace responsibility back to identifiable political actors – including electors.

In the case of referendums, however, citizens are *directly engaged* in collectively binding decisions, and so are closer to the role that representatives undertake. This fact, I shall argue, yields *pro tanto* reasons for citizens' votes to be public.

First, let us consider some examples. California's Proposition 184 – labeled 'Three Strikes and You're Out' – was a ballot initiative which sought to give life imprisonment to those convicted of three crimes. It did not, therefore, discriminate between violent and non-violent crimes. Examples of punishment under this law include a fifty-year jail-sentence for stealing \$150 worth of video games.³³ Consider next the following example, given by Christopher Achen and Larry Bartels, in which they reference a 2009 study on the effects that a tax referendum had on fire protection services in Illinois. Because of reduced staffing and funding, it became increasingly difficult to combat firestorms in the areas affected by the referendum. One such

³² There are also other differences: they may have more time and resources, they have structured deliberative forums, they have (somewhat) clearly defined political obligations, etc.

³³ Beerbohm 2012, 255–56.

firestorm destroyed 3000 homes and killed 25 people.³⁴

Lastly, consider the Californian 2008 Referendum called Proposition Eight, in which a slight majority voted to amend state constitution to ban same-sex marriage. This differs from the tax referendum on fire protection since this does not, in the same way, materially or physically harm citizens. Instead, it did something else that is of significant moral importance: it removed a legal opportunity for couples to marry – an option that many consider to be of substantial importance to themselves and their life-plans.

One fact about such referendums is undeniable: they affect the lives of individuals, communities, and, sometimes, whole societies. Citizens are, most certainly, very vulnerable to the effects of these outcomes. By being bound by the collectively binding decisions enacted by citizens in referendums, they are in the same position as when representatives make such decisions. By being affected, they are in a position to “... demand and enforce answerability from those who hold and use delegated powers.”³⁵ If citizens, on the standard account, should be able to demand and enforce answerability from those who exercise such a collectively binding decision, then it seems that they should be able to enforce answerability from those citizens who do this through referendums.

I mentioned at the beginning of this paragraph that there is an important difference between the voting of representatives and electors voting in referendums. The difference is that individual electors have very little causal influence on the outcome of referendums and that their vote is almost always over-determined. That is, individual electors do not *decide* elections. Representatives are not in the same position. Typically, they have much more individual influence on the outcome because they are relatively few in number. The fact of over-determination is not, in itself, too problematic for the concept of publicity on behalf of citizens. The votes of representatives are often also overdetermined – that is, often *the individual* votes of representatives do not determine the outcome. Even if no individual representative determines the outcome, this does not mean that representatives should vote secretly. Their accountability does not hinge on

³⁴ Achen and Bartels 2017, 84.

³⁵ Warren 2014, 40.

them being the decisive vote. The fact of citizens' *insignificant individual* causal power when voting in referendums is, however, important for accountability. This is one reason why electors should not be subject to the same degree of accountability as representatives. Representatives do have more individual causal power and, partly at least, because of this they have to endure greater accountability. This, however, does not suggest that the low individual causal power of citizens voting in referendums *negates* the idea of voter accountability. If we hold that low individual causal power negates accountability, then problematic implications follow. First, it would mean that representatives with little causal power would have no accountability, and would, therefore, *prima facie*, be justified in voting secretly. Few, I believe, would accept this implication.³⁶ Secondly, it seems odd to suggest that limited causal influence negates accountability. For example, we would hardly accept that any individual participant in a large-scale firing squad is morally exempt from being held accountable for her participation.³⁷ This goes for several cases of collectively harmful actions. Each individual makes only a small causal contribution to climate change, yet this does not seem to cancel out individual accountability.

As suggested in the opening of this paragraph, one can object that representatives do not actually hold much political power, and as such, they should only to a limited extent be held accountable. This may be true in some circumstances. However, it does not pose an objection to my argument, since I argue the conditional: if representatives must vote publicly because they are accountable to the public *for their exercise of political power*, then the same rationale can be given for citizens voting in referendums. If the objection is that representatives *do not* hold political power, then it denies one of the conditions of the argument. Such an objection does therefore not show that the conditional does not hold, but suggests, rather, that we are wrong in believing one of the conditions of the argument. This might be so in some cases but is not of vital importance here.

Before ending this section with a brief summation, it is important to clarify something that might seem puzzling. The election of political representatives often has even more far-reaching

³⁶ One might reply to this by saying that it does not follow that because representatives are not accountable, that they should therefore vote secretly. One might hold that even if representatives are not accountable for the passing of some law, they should, due to their public role as representatives, still vote publicly. I discuss this type of reply in the last section of the paper.

³⁷ Beerbohm 2012, 68-69.

and substantial consequences than referendums, so why the focus on the latter? The reason for this focus is that electors deciding on a single issue captures the normatively salient circumstances that are important for my central argument. If one extends the primary argument to include elections, a move that is certainly possible, further difficulties arise. These difficulties consist in deciding which of the policies enacted by representatives electors are accountable for. Including elections would require an extension of the argument that is outside the scope of this paper.

Let me just repeat the central point here, namely: *if* publicity serves as a prerequisite of accountability for representatives when they engage in other-affecting, direct exercise of collectively binding decisions, then by virtue of citizens engaging in the same sort of behavior, the same normative principle of accountability applies. Notice, however, that one important element is missing in my account. As we have seen, the publicity of representatives is due both to their exercise of power *and* because they act within their formal capacity as representatives.³⁸ Citizens lack this latter feature. This absence pushes against the argument of having their vote be public on the grounds of accountability. It does so in two ways. First, since citizens do not act in the capacity of representatives, it is difficult to see *how* they are to be held accountable. Second, it is difficult to see *which* obligations citizens are accountable *for* upholding. For the remainder of this paper, I tackle these two problems as two distinct objections. Tackling these objections will also include further defense of the main claims.

VII. Objections

The Institutional Objection

The first objection is the following: publicity is tied to specific institutional procedures, and since citizens are not subject to those procedures, publicity on their behalf cannot secure accountability. Russell Hardin seems to ascribe to something closely related to this view. Commenting on publicity on behalf of citizens, he suggests that: “Some citizens might be held accountable for their racism, bellicose chauvinism, or other supposed moral failings. But these charges would come from some moral theory or principle *outside the democratic system*, a

³⁸ That is: the principle of ownership and the principle of affected rights.

principle that need not be democratic.”³⁹ I take this to mean that even though electors may be accountable, publicity functions within *democratic systems* of accountability and it is therefore not applicable to citizens.⁴⁰ One reason why it is not applicable is that public voting for citizens lacks the component of empowerment. That is, for the public to hold representatives accountable, the public must be empowered to do so by being able to punish, demand, or sanction decisions made by those who are accountable.⁴¹ Empowerment signifies the “... institutional arrangements that enable those (potentially) affected by decisions to require an account.”⁴² The ways of doing so are many, “... including voting, rights of speaking, pressure, petition, and association, standings to sue, and rights to information relevant to the power to question authorities.”⁴³ The worry is, then, that “... without the possibility of sanctions, accountability processes are empty.”⁴⁴ Voter-to-voter accountability does not include this form of empowerment. That is, electors do not have any institutional arrangements through which they can hold each other accountable. Voter group A cannot, and should not, be able to determine that voter group B should lose their voting rights, nor should group A be able to demand that group B stand trial the way representatives might have to.⁴⁵ There are also some important practical worries related to disclosure. Public voting means that actors can retaliate against those who they deem to vote wrongfully. For example, voting in unpopular ways might mean that electors will engage in harmful forms of social sanctions – such as social alienation, bullying or personal attacks. Perhaps even worse, powerful governments might intimidate or punish electors for voting for opposing political parties or candidates.

Let me start by discussing these practical worries. While the behavior of citizens and governments is certainly something to worry about when one considers the practical implementation of publicity on their behalf, it does not pose a direct objection to the central claim advanced in this paper. To see this, consider the distinction between normative and non-normative understandings of accountability. A non-normative usage would simply be a description of

³⁹ Hardin 1999, 221.

⁴⁰ This leaves us with only a general form of accountability: “... all moral agents to the moral community at large for acting in accordance with the moral law.” Goodin 2003, 363.

⁴¹ Bovens 2007; 447–68. Goodin 2003; Warren 2014.

⁴² Warren 2014, 41.

⁴³ Warren 2014, 41.

⁴⁴ Borowiak 2011, 7.

⁴⁵ Katz 1997, 100.

someone being in the *condition* of accountability by being interrogated, made to stand trial, forced to offer explanations etc.²⁵ Normative usage concerns whether accountability is justified. Accountability can be unjustifiably exercised if, for example, one is held accountable on spurious evidence or if one is held accountable in some highly improper or exaggerated way. A normative usage, then, conveys that it is *legitimate* to hold someone accountable, or that someone has *an obligation* to hold someone accountable.⁴⁶ My argument pertains to the normative use. I have said very little about how such *conditions* of accountability may play out. Even if conditions of citizen-to-citizen accountability play out only as social bullying and personal attacks, this does not mean that there is not a normative justification for why it is *legitimate* to be held accountable. Importantly, this point also applies to representatives. Even if it is normatively justified that representatives are accountable to electors, it might be that the *conditions* of accountability between citizens and representatives may turn out to be non-functional or improperly exercised. For example, some might hold representatives politically accountable for mistakes they have made in their personal lives.⁴⁷ Even though this is an improper *condition* of accountability, it does not tell us much about whether there is a *normative justification* for holding representatives accountable. Likewise, even if the conditions of citizen-to-citizen accountability take on an improper form, this does not imply that their normative conditions of accountability do not apply. Nonetheless, these kinds of practical worries are still highly relevant. Even if they do not directly pose an objection to the normative grounding of accountability, these worries might be overriding reasons for keeping the vote secret. So, let me say a couple of things in response.

The first thing to notice is that these are empirical issues. The degree to which they will manifest in society will depend upon a range of different empirical circumstances. While government retaliation is certainly possible (even probable) in some countries, it need not be everywhere. There is a wealth of information that some democratic governments already possess about their citizens. They have detailed financial and health-related information about citizens, for example. Sufficiently strong institutions and rule of law mean that (some) governments possess such information without widespread misuse against citizens. It is not clear why information about

⁴⁶ Katell & Moore 2016, 7.

⁴⁷ Some might not believe this to be an improper form of accountability. It can be replaced by any other example in which conditions of accountability are unduly imposed.

voting cannot also (to a sufficient degree) be kept from misuse. Consider also that elections potentially involve millions of electors. Retaliating against electors who vote against incumbents might be a low-reward, high-risk strategy.⁴⁸ Government officials risk not only their political careers but might also face legal action if such misdeeds come to the public's attention.

These brief comments do not, of course, offer any guarantees. If governments engage in misuse, then this will most likely provide an overriding reason against the practical implementation of public voting. These empirical matters cannot be settled here.

What if, as the first part of the objection suggests, conditions of voter-to-voter accountability *must* play out within institutional frameworks that simply do not exist for citizens? If such a framework for citizens does not exist, then it is difficult to see how conditions of accountability *could ever* fruitfully play out.

The reply to this is that we should not assume that voter-to-voter accountability must exist within an institutional framework. At least, the kind of accountability I appeal to is not very much different from the kind of accountability that is routinely endorsed on similar normative views concerning the behavior of electors. It is also no different from the kind of behavior that routinely plays out in political settings. If these fruitful conditions of accountability can exist without institutional arrangements, then so can the kind of accountability I appeal to. If someone has misbehaved or publicly stated some morally illicit proposition, others will question or criticize that person. This can take the form of deliberative accountability, in which individuals are called upon to give an account of their actions. This happens often in political discourse: we hold each other accountable for our public political statements or even our political affiliations. This does not, in itself, seem the least bit problematic. Is it improper to exercise the same form of accountability based on how someone votes? It seems to me that it is not. If someone publicly argues against gay marriage, then that person can be held accountable for expressing that view. If that person also uses political power in order to *legally enforce* that view, then this person's accountability is greater, certainly not less. It would be odd indeed to suggest that we *can* hold someone accountable

⁴⁸ Sturgis 2005, 27.

for espousing some political opinion publicly but that we *cannot* hold that same someone accountable *for voting on* such a belief. If someone votes a way that I disapprove of, I may question that person, or otherwise regulate my behavior towards that person. This might be important in some cases – for example, if I am deeply affected by the outcome of proposition 8, I might want to engage less with those who have voted to deprive me of something important. I would want to be able to moderate my behavior, feelings or friendships with those who have used political power to affect me.⁴⁹

Eric Beerbohm has argued that this form of interpersonal moral address is in itself a pro tanto reason to favor publicity. He holds that since citizens can be involved in the coercive powers of legislation, citizens who are impacted by democratic decision-making have a moral complaint towards those citizens who have been involved in creating those outcomes.⁵⁰ As such, those affected by the results of proposition 8, for example, have a legitimate moral complaint against those who voted for it, and secrecy in such an instance makes interpersonal moral complaint impossible. All of this is also compatible with electors behaving in illicit ways. As mentioned, it is possible that none, or very few, of these kinds of conditions of accountability will materialize. It might be that electors instead will engage in shaming, bullying or similarly toxic forms of behavior. These empirical issues need further investigation. The important point is that accountability for one's voting-choice is, essentially, not much different from the kind of accountability that citizens regularly engage in. If electors engage in improper forms of accountability, it does little to show that there is something misguided about this normative conception.⁵¹

As such, I offer no theory of what a desirable form of accountability looks like for electors. I have merely suggested that it shares characteristics with ordinary and often appealed to relations of accountability. Deliberative accountability is constantly at play in deliberative settings,

⁴⁹ Rehfeld suggests the following when speaking of non-representative accountability: "And each [kings and citizens] will be more or less responsive to sanction. A king might act to avoid revolution, a citizen in a direct democracy might act to avoid ostracism or simply ill reputation, or both might simply act gyroscopically on the basis of principle or policy without regard to sanction." (Rehfeld 2009, 229).

⁵⁰ Beerbohm 2012, 258.

⁵¹ Consider an analogy: individuals falling short of ideals of deliberation does not show deliberative ideals to be normatively misguided.

and it seems that accountability for voting-choices easily fits within this picture. This suggests that the lack of an empowerment component does not constitute a strong objection to the notion of voter accountability.

The Representative Objection

Another central objection to my argument, which I will call the representative objection, concerns the obligations of representation. As mentioned earlier, representatives have certain ethical duties and obligations. These obligations might be to act as trustees or delegates of their constituency or to advance the common good. Whichever obligations representatives have, they can be held accountable for failing to advance them or for putting other interests ahead of them. Citizens do not have the same kind of obligations. Since they do not have the same demands or obligations placed on them as representatives, they cannot fail in upholding such demands or obligations. Since they cannot fail in doing so, publicity on their behalf is misplaced.⁵² Annabelle Lever comes close to endorsing this view. She argues: “While democratic legislators may be more vulnerable to intimidation than citizens – as they are relatively few in number, and hold special power and authority *qua* legislators – it is the former, not the latter, who must vote openly, not secretly. Legislators have duties of accountability that citizens lack.”⁵³ Put differently, to propose publicity for citizens is to misunderstand the nature of the political role that citizens play, because the “... constraints of publicity and accountability on public officials are, on the contrary, inherent in their democratic positions.”⁵⁴ Since citizens do not take on a representational role in their voting but vote *qua* citizens, then they are not accountable in a way that justifies publicity. Since citizens lack the type of obligations that representatives have, their voting cannot be judged as failing in these obligations and therefore publicity can play no part in making sure they uphold such obligations.

I believe that at least two replies can be offered to the representative objection. First, it is certainly true, as Lever suggests, that representatives, *qua* being representatives, have duties of accountability, but that need not suggest that citizens do not have *similar* duties of accountability.

⁵² It is on the basis of this that Nadia Urbinati raises the questions: “How are the positions of representatives and electors similar? What is the purpose of a citizen’s vote? What does that vote represent if not individual interests?” Urbinati 2002, 110.

⁵³ Lever 2015, 175; Lever 2007

⁵⁴ Hardin 1999, 222.

For example, some argue that citizens are morally obligated to vote on behalf of the common good,⁵⁵ or to vote on epistemically and morally justified grounds.⁵⁶ On these views, then, citizens voting qua citizens do have obligations. As such, even on the assumption that there is a difference between the voting of representatives and citizens, it need not be the case that this difference should lead to different conclusions *about the public accountability* of either citizens or representatives.

There is an additional rebuttal available against the representative objection. The representative objection suggests that since electors have no, or very few, public duties *as* electors, they cannot fail in upholding such duties – as such, publicity on their behalf is misplaced. However, I believe that this is suggestive of a mistaken implication. Even if electors have none of the same duties as representatives, it does not follow that publicity on their behalf is misplaced. The representative objection overlooks the possibility that it might be proper to hold electors accountable simply by virtue of electors exercising political power. Recall Richard Mulgan’s two categories of accountability. The principle of ownership applies when an account-holder delegates power to an agent. The principle of affected rights applies when someone is accountable for adversely affecting the rights or welfare of others. While the first principle might not grant public accountability on behalf of electors, the latter principle straightforwardly applies. Assume, *arguendo*, that electors have no obligations and are required merely to register their individual political preferences when they vote. The political preference of voter A is that there ought to be no possibility of same-sex marriage in the state of California. Thousands of electors with the same political preference successfully ban same-sex marriage. In this scenario, the principle of affected rights apply, and as such, the accountability of electors is realized by having their vote be public. They take on the obligations of publicity and accountability by exercising such power, regardless of whether they do so in their capacity as citizens or representatives. For this reason, I remain unconvinced that the exercise of collectively binding decisions *cannot* be sufficient for establishing publicity – in some circumstances – for citizens, and thus, I remain unconvinced that citizens voting qua citizens cannot attain such obligations merely because they are not representatives. To further stress this point, consider the following example:

⁵⁵ Freeman 2000.

⁵⁶ Brennan, 2012; Brennan 2009.

The War Referendum:

A powerful country has decided by referendum to engage in warfare against an equally powerful neighboring country. There are massive humanitarian, political and social consequences of this war. Thousands are left dead, while millions are forced to flee the countries.

In the war referendum, electors are directly engaged in the exercise of a political action that has enormous social, economic and humanitarian consequences. This, I believe, gives us strong *prima facie* reasons that electors should endure publicity if they decide to partake in the war referendum. If, on the other hand, we hold that the role of representation is necessary for publicity, then we would have to say that publicity for citizens is improper *because they are citizens, who, qua citizens*, have participated in this referendum. I believe this to be wrong. While formal representation may be important when considering publicity, this need not suggest that citizens voting *qua citizens* can never be put in situations in which they have accountability similar to that of representatives. If representatives had voted in the war referendum, we would expect them to do so publicly, as we would expect to be able to hold them accountable. If citizens do so, they also exercise power that gravely affects others, and therefore, there are *prima facie* reasons that they should also do so publicly. To suggest that these reasons are negated because citizens do not act in the formal capacity of representation is to, peculiarly, locate the normative value within *the role* of representation, rather than in the exercise of power that *is typically entailed in that role*.⁵⁷ This seems to me misguided. In the case of the War Referendum, for example, the normative grounding of publicity is present, even if the formal role of representation is absent. If representatives had voted for the war, it might have been, in a different sense, even worse than if decided by referendum. This is because representatives may have failed in every moral obligation they have *as representatives*. Because of this their misdeed might exceed the misdeed of electors, since electors may fail in fewer obligations. This speaks to the point that formal roles of representation are *important* to the notion of publicity as accountability. However,

⁵⁷ Rehfeld has espoused a position similar to this: "... I believe it is proper to say that representatives take on different kinds of obligations and duties based not on account of their being a representative, but rather, based on the function to which their particular case of representation is used." (Rehfeld 2009, 228).

these reasons can and do apply to citizens.

Concluding Remarks

The asymmetry does not receive much discussion in contemporary political philosophy, even though, as I have argued in this paper, there are some good reasons for challenging it. If we take seriously the normative grounding for why it is incumbent upon representatives that their vote be public, then this is suggestive of similar reasons why citizens, under some circumstances, should also vote publicly. Citizens also engage in the process of deciding on collectively binding decisions, an action for which we hold representatives accountable. This consideration, by itself, does not justify public voting. It is, however, a strong normative starting-point for thinking seriously about how the asymmetry is understood theoretically and how it is expressed practically in our institutions. It is difficult to spell out the exact empirical circumstances in which the asymmetry ought to hold – what is clear, however, is that these questions are not set in stone and deserve much greater normative and practical consideration.

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Who Let The Votes Out?

- An Argument for Publicity in Voting

This paper presents an epistemic argument for public voting. This argument consists of two components – one normative and one epistemic. The normative component is an argument for why public voting is a normatively viable way of improving voter knowledge. The epistemic component involves showing how public voting can have epistemic benefits on the voting citizenry. This is an interesting approach to epistemic benefits that warrants further empirical and normative exploration.

I. Introduction

Solving political problems seems to require quite complex knowledge. For example, to combat the effects of climate change, we need to be knowledgeable about which policies will help us do so. We need knowledge about the (likely) empirical effects that such policy has on climate change, the economy, and society. We might also need moral knowledge if we are to implement such policies in a just way. If citizens are asked how to most effectively combat climate change, they would (most likely) happily defer to experts on the subject. This is not the case in democratic decision-making. Here, an egalitarian system of equal influence is deployed, and no (at least in the formal voting-process) special reverence is given to experts. From Plato onwards, this constitutes a long-standing problem for democratic theory: *How*, and *why*, are we to rely on citizens to solve such problems, given that the voting-process does not attend to any epistemic qualifiers such as competence, expertise or knowledge?

One way to alleviate such problems is to design the voting-system such that it reflects the epistemic properties of the electorate. Some have argued for suffrage based on competence or suggested the use of epistocratic veto (Brennan 2011, 2016; Bell 2015). López-Guerra has argued

for an enfranchisement lottery (Lopez-Guerra 2014). John Stuart Mill famously proposed giving the educated part of the populous extra votes, a suggestion that has received some attention in modern political philosophy (Latimer 2018; Mulligan 2018; Estlund 2008, 206-222; Waldron 1999, 114-116). In this paper, I call attention to another one of Mill's proposals, that of public voting.¹ I argue that the prospects of public voting make for a very appealing *epistemic* argument.

Unlike Mill's proposal of plural voting, public voting has received relatively little discussion in contemporary political philosophy,² and has, until now, not been articulated and expressed as a *distinctively* epistemic argument. The epistemic potential is discussed by Brennan and Pettit and Engelen and Nys; neither treatment, however, substantially *spells out* or *argues from the perspective of* epistemically improving the voting process.³ This is unfortunate, since public voting represents a promising way of improving voter knowledge – and, importantly, is less controversial from the viewpoint of procedural justice than comparable voting-schemes. Because of the limited discussion of these issues, one potentially fatal objection against the epistemic potential of publicity in voting has not been sufficiently discussed and refuted – namely, the concern about conformity.⁴ In short, this objection argues that if votes are public, electors will not inform themselves, but merely vote (and think) in ways that make them acceptable to their social surroundings. I call this the conformity objection. If an epistemic case for publicity is to be successful, it must deal with the conformity objection. Dealing with this worry is the second objective of this paper.

¹ Mill 1876, Ch. 10.

² Brennan and Pettit 1990; Sturgis 2003; Lever 2007; Urbinati 2012; Engelen and Nys 2013; and Vandamme 2017 are notable exceptions.

³ They both, however, include epistemic components in their arguments. Engelen and Nys hold that the increase in deliberation that follows from open voting will be conducive to electors informing themselves and being attentive to the reasons of others (Engelen and Nys 2013, 493). Their approach, however, is to argue that public voting is implied by a normatively desirable model of democracy in which electors are interpersonally accountable and can be held to give reasons for their voting-choices. Brennan and Pettit also suggest that public voting will motivate electors to inform themselves. Their fundamental argument, however, is that public voting is more likely to realize what they call the *judgement ideal* of voting (Brennan and Pettit 1990, 314-16).

⁴ The lack of discussion of conformity is puzzling. Engelen and Nys write that some will succumb to peer pressure and thus fail to form autonomous judgements. This, in their view, is a “democratic loss” (Engelen and Nys, 501). However, they do not offer any responses to this worry. Taking into account that their self-admitted objective is to argue that public voting better fits a deliberative conception of democracy, the fact that public voting will result in a democratic loss seems like a substantial issue.

This paper, then, aims to contribute in two ways. First, it compiles various paragraphs on the epistemic potential of public voting and constructs one sustained, detailed, theoretical, and empirical argument for the epistemic potential of public voting. Second, it brings the conformity problem to the forefront of the discussion and argues why it, while being a substantial problem, does not negate the promises of public voting.

I will start by giving some normative justification for the proposal being advocated. This normative task involves showing why (some form) of public voting should be considered normatively justified under the proper circumstances. The epistemic task involves showing how public voting can generate epistemic benefits. From here on, I will refer to the epistemic argument for public voting as *EAP*. In short, the EAP suggests introducing (some) publicity into the voting-process such that electors can potentially be confronted with their voting-choices. This will have the epistemic pay-off of creating basic incentives for electors to inform themselves on electoral issues.

The paper is structured as follows: in (I) I give a brief normative defense of public voting. In (II) and (III) I lay out the epistemic dimensions of public voting. I then discuss and reply to the conformity objection. In (IV) I discuss objections.

II. *Utopia*

Before going to the epistemic dimension of the EAP, it is instructive to say something preliminary about what kind of argument it is and why it is interesting. To see this, consider *Utopia*.

Utopia is a democracy that has succeeded in eliminating social and economic inequality. Utopia has very strong, well-functioning, and well-funded public and civic institutions. Utopia also uses a public form of voting. In Utopia, public voting does not result in any widespread form of coercion, vote-buying, or equivalent illicit activity.

Utopia is important because the justification for the secret ballot is typically instrumental: it prevents vote-buying, coercion of electors, and unequal distribution of political power (Reeve & Ware 1992; Manin 2015). This means that if these empirical outcomes do not materialize, then there are fewer strong *prima facie* reasons for having the secret ballot.⁵ Whether or not these outcomes occur and to which degree they occur relies on a host of different empirical circumstances such as social and economic stability and properly functioning public institutions.⁶ The specific *form* of public voting might also make a difference. More modest and restricted forms of publicity will likely have different outcomes than having an easily accessible, online register of everyone's vote.

In this paper, I bracket the issue of whether and to which degree these harmful effects occur. I do this because I am interested in the epistemic benefits of public voting. My objective is to show that there is a strong epistemic case for public voting that merits further empirical and normative investigation. This case consists of putting forth the conceptual clarifications and theoretical (and empirical) reasons to expect epistemic benefits of public voting. The normative grounding of this proposal concerns reasons why it is reasonable for the electorate to vote under some measure of publicity. I do not bracket *all* instrumental effects. Some instrumental effects concern the epistemic influence of public voting and since these interests are central to the paper, they obviously cannot be bracketed. The potential benefits of public voting will have to be weighed against the harmful outcomes in the specific empirical circumstances in which it takes place. The weighing of these concerns is a further normative issue I do not take a stand on here.

Why should we think that it is – at least *a priori*⁷ – reasonable to expect that citizens can know how others have voted? Consider the three following reasons. First, decisions of enormous

⁵ I am only aware of Annabelle Lever who does not justify the secret ballot on behalf of instrumental reasons. I am not suggesting that she is wrong to do so but merely that her view is not the consensus view. See Lever 2005; Lever 2007.

⁶ These circumstances do not only change from country to country but might also be significantly different within countries themselves. A public form of voting in one municipality in one area of a country will be different from other areas with different social and economic circumstances. It will also likely be different from public voting in general elections.

⁷ Since I have bracketed the issue of harmful empirical effects, 'a priori' here refers to a situation in which these empirical effects have not materialized.

importance are decided by how people vote (Brennan 2011, 1-3). The outcomes of how citizens decide to vote not only *affect* others but can also directly harm or set back the interests of others. If the act of voting was primarily a self-regarding action, it might be an improper suggestion that it should be exercised publicly. It might be right for citizens to react in the following way: “How we vote is something which does not affect anyone else, so it is no one’s business.” However, any such claim can hardly be made about voting. Second, consider that representatives must vote publicly. This serves as one way in which the public can hold them accountable. If representatives vote in secret, then the public has fewer means to hold their representatives accountable for their voting-choices. Transparency is an important aspect of accountable democratic governance.⁸ However, citizens are also sometimes put in a position to decide on political matters. They not only vote for candidates but also take part in referenda. Limited forms of publicity would make such electors accountable to their fellow citizens. The EAP suggests introducing something that we *already value* – public accountability for the exercise of political power – into the current process of the voting of electors.

We should also attend to some of the possible advantages over comparable voting-schemes. Consider proposals such as plural voting or epistocracy. Some of the central objections to these forms of enfranchisement are procedural in nature, as critics claim that these proposals are problematic by virtue of their formal inegalitarian procedures.⁹ Objecting to plural voting or epistocracy on these grounds means that one’s objection is not (substantially) reliant on which empirical outcomes occur. Plural voting is not (only) wrong because it might produce bad outcomes, but because it violates an important procedural principle of equality. Consider, for example, *Utopia-Two* in which plural voting rather than public voting is used. In *Utopia-Two*, there are no harmful empirical outcomes of the voting-system. Still, critics can maintain that *Utopia-Two* is unjust because it affords less respect or formal recognition to some by virtue of them having less (formal) political influence. Objections to public voting are not like this, as public voting does not violate any obvious procedural principles. The fact that it does not violate such an

⁸ Publicity here means something along the lines of *transparency*. Public voting is a subset of government or public transparency. The connection between accountability and transparency is expressed in: Waldron 2010, 72-3.

⁹ Charles Beitz objects to Mill’s proposal of plural voting because it disrespects those only afforded one vote (Beitz 1989, 39).

ingrained principle as one-person-one-vote is, I take it, a *prima facie* comparative advantage of a scheme such as public voting.¹⁰ In addition, public voting does not entail any temporary or permanent disenfranchisement of citizens. Public voting makes it up to the *citizens themselves* whether or not to endure some limited form of publicity.¹¹ It applies only to those who choose to vote in any given election. These circumstances of public voting are, *prima facie* at least, normatively attractive.¹²

In summation, public voting has the three following attractive characteristics: (i) it relies on public accountability, a value some are already committed to; (ii) it is not formally inequalitarian; (iii) it is imposed only on those who voluntarily choose to vote.

The Epistemic Argument for Publicity (EAP)

The Main Motivation:

The central notion underlying the EAP is the notion of actual or potential public scrutiny. Most of us have experienced that we modify our actions if we know that others will come to know of those actions or even if we just know there is a possibility that others will know of them. Such an effect can be harnessed for public benefits. For example, tax revenues are public in Norway, and so Norwegians are better at reporting their taxes due to the fear of others noticing discrepancies (Slemrod, Thoresen 2013). The EAP works in a similar way. By lessening some measures of secrecy in the voting process, electors are incentivized to examine their own political beliefs and vote in ways that can be justified publicly.¹³ Empirical data suggests that publicizing whether or

¹⁰ Some might find plural voting so objectionable that they are unimpressed by the fact that other voting schemes have relative advantages over it. I agree that this starting-point makes my argument unpersuasive. However, the relative advantages should at least, then, speak in favor of having public voting occupy a position in the literature, as there is plentiful discussion of plural voting.

¹¹ In this normative defense, I assume that public voting is not used in combination with compulsory voting.

¹² Again, these are normative circumstances attributable to this form of voting. These can certainly be overridden by harmful empirical outcomes.

¹³ Political ignorance on behalf of the citizenry is a very well-studied phenomenon. See Bartels & Achen 2017 ch 5, Somin 2016 ch. 2 and Caplan 2007. I do not take a strong stand on these issues in this paper. My objective is to argue that publicity produces epistemic benefits and that some measures of publicity are normatively justified. If one is

not people have voted results in substantially larger voter turnout (Gerber, Green, and Larimer 2008, 3-4). The EAP theorizes that publicizing *how* people vote will result in them taking more epistemic care in their voting.¹⁴ The central notion underlying this proposal is that public voting changes the value that electors attach to the voting-process. This is important because one much-discussed and enduring feature of mass democracies is that the ignorance of electors is due (in part) to the individual causal unimportance of individual votes. Because of this individual unimportance, individual electors have few incentives to engage in time-consuming activities to inform themselves politically (Brennan 2019). By having the vote be public, the act of voting attains interpersonal and social significance. In this way, public voting is a way of altering the kind of value citizens place on their individual votes (Brennan & Pettit 1990, 327).

It is important to mention that knowledge, by itself, does not necessarily promote social justice nor is it, *in itself*, necessarily desirable. For example, some individuals might favor unjust policies and equipping such individuals with knowledge will only increase their ability to effectively implement unjust policies (López-Guerra 2014, 35). Public voting is relevant here in one respect. Namely, if there is social consensus against some unjust political outcome (regardless of what one's metric of justice is), then public voting will, *prima facie*, incentivize voting that is consistent with the perceived view of social justice. It dis-incentivizes voting for candidates or policies which are deemed, by the public at large, to be inconsistent with social justice. For this to be a positive argument for public voting, however, it must be the case that the public is (consistently) able to identify which policies or candidates are most in line with social justice. This is a further issue that I do not deal with in this paper.¹⁵

convinced that public ignorance does not pose a problem for democratic procedures, then one will not care much for ways to counteract it.

¹⁴ Furthermore, publicizing attendance merely increases political participation. This is only valuable insofar as voting is valuable regardless of how people vote. The EAP, on the other hand, tries to increase *informed voting*.

¹⁵ The concern that knowledge is not sufficient for social justice is not only a concern for public voting. It therefore does not fare any worse (concerning this issue) than other arguments relating to the epistemic improvement of the electoral process.

III. Epistemic Improvement

Some of the proposals for public voting in the literature already mention possible epistemic benefits. I will discuss two separate contributions, one by Bart Engelen and Thomas Nys and one by Geoffrey Brennan and Phillip Pettit. I aim to extract and discuss the epistemic content from both of these contributions. To start with, let us consider some of the arguments made by Brennan and Pettit. They point to some of the epistemic benefits of the kind that the EAP proposes. The operative paragraph, which is worth quoting at length, is the following:

To vote in a discursively defensible manner is to vote in such a way that you are able to argue with others, at least to the extent that they're in a similar position, that they should follow the same path. It is to be able to represent your vote as a universalizable act: an act which is right, not just for you, but for anyone in the same sort of circumstances. If you are able to represent your act in this light then normally you must be able to show that it is supported by considerations that are as relevant for your audience as they are for you. Such considerations must subsume interests that are common to all, and not just your particular concerns. They must be considerations of the common good. They must bear, if not on matters of people's welfare, at least on matters that all can recognize as relevant and important. (Brennan and Pettit 1990, 324)

By lessening the secrecy of the ballot, citizens will be strongly motivated to vote in ways that can be discursively defended (Brennan and Pettit 1990, 326). Importantly, this discursive pressure will also disincentivize purely symbolic or ill-considered voting as such defenses will have little resonance in public conversation (Brennan and Pettit 1990, 327). Engelen and Nys make similar observations. Consider the following paragraph:

The deliberative case for open voting can thus be based on the simple observation that it makes citizens more accountable to each other, which is thought to motivate them to inform themselves and to take the general interest into account. Selfish or even malicious preferences may motivate citizens in the voting booth but cannot bear being exposed

publicly. Like public deliberation, open voting can be said to ‘launder’ or filter preferences, inducing people to become more public-spirited... (Engelen and Nys 2013, 495).

The external discursive pressure makes electors think about what they will say when they are met with demands for explanation from their social surroundings and their answer to this question will likely consist of giving some explanation or rationale that others can understand or acknowledge. The central theoretical underpinning of the epistemic proposal is, then, that by having to defend one’s position, individuals are made to think about their *own* voting-choice and which reasons they have to offer others.¹⁶ Anticipating adversarial attitudes or opinions prompts one to marshal counter-arguments and explanations of one’s opinion (Mutz 2006, 63).

This central theoretical claim gives rise to two distinct epistemic claims. The first claim is that publicity gives electors reasons to inform themselves while the second is that it gives electors reasons to vote in ways that can be publicly defended. Let us call the combination of these two the *knowledge procurement incentive*. Consider the first part of the knowledge procurement incentive: the claim here is that if electors know that their voting-choice will have to be defended at some point, they will take some basic measures to inform themselves about that choice. They will want to avoid having nothing to say when asked about it. This, presumably, also occurs when electors make an effort to identify the correct candidate. That is, if A cares about free trade policy, then the fact that others will know of her voting choice will give her an extra incentive to correctly identify the candidate which matches her attitude towards free trade. It is potentially embarrassing for A to publicly support free trade, but to have misidentified the free trade candidate, ending up voting for someone who is not in line with her political beliefs.

The basic incentive to avoid appearing uninformed in front of others will, I suspect, appear quite familiar to most. If A knows that a specific topic will come up in conversation, A has some *prima facie* reason to inform herself about that topic if she is to partake in that conversation.¹⁷

¹⁶ This has been referred to as having an ‘argument repertoire’ (Capella, Price, Nir 2002).

¹⁷ This effect shows itself in empirical observation of political discussions. Conover, Searing and Crewe write in their study of focus groups: “Why do people avoid political discussion? Certainly, as political theorists worry, inequalities in resources or capacities discourage some citizens from even attempting discussion. In every focus group, some participants mentioned that lack of information, of the ‘facts’, kept them quiet. As an American woman explained, ‘I’m not going to bring it up because I have not studied it; I’ve not read about it. And I don’t want to be made to look dumb.’ Similarly, others cited a lack of political competence. Thus a British man explained, ‘a lot of people feel

Imagine that A knows that she will have to *defend* a position during this conversation; this gives her an even stronger incentive to be informed about the topic. Something analogous happens in comparable situations. For example, students are motivated to inform themselves and to think about topics if they have to defend themselves in oral conversation.¹⁸ This basic form of incentive is similar to the one that EAP proposes to utilize. While the EAP does not perform any sort of test, it uses the same form of motivational factor that leads people to inform themselves. The EAP ‘test’ is merely the motivational factor of having one’s vote be scrutinized. One issue with traditional forms of voter competence tests is that they are prone to misuse and it is difficult to design them such that they approximate political and moral neutrality.¹⁹ The EAP stimulates the effects of undergoing a test on electoral politics while avoiding the contentious and problem-ridden prospects of having to design the tests themselves.

There is some encouraging empirical data to draw on here. Consider, for example, voting by mail, where electors mark their ballot in the presence of others. The special opportunity provided by voting by mail is “... for all voters, including those less politically engaged, to discuss ideas, candidates, and ballot measure with interpersonal contacts while making their voting choices.” (Reedy et al., 2016, 41). This form of voting increases the amount of political discussion electors engage in during the week of the election and there are “... positive benefits from the increased deliberative environment of vote by mail.” (Richey 2005, 441). In one survey, data suggests that more than one-third of vote-by-mail respondents discussed their choices with others as they filled out their ballots (Reedy et al., 2016). Researchers also conclude that those willing to engage in discussion bear a strong resemblance to the electorate as a whole, while those with a “... stronger sense of partisanship are somewhat more likely to discuss their ballots with others, those who are less politically knowledgeable are also more likely to engage in those discussions.” (Reedy et al., 2016, 52).

uncomfortable, unsure about it ... they don’t feel confident to talk about politics.’ And when pushed by her friends to explain why she did not discuss politics publicly, one British woman insisted, ‘I’m not that brave’.” (Conover, Searing and Crewe 2004, 53).

¹⁸ They are also sometimes given a grade to incentivize them. This, however, is not unlike the kind of social status or feeling of confidence that electors can experience when they are acknowledged by others as informed or capable of giving (good) reasons.

¹⁹ For discussions of such tests, see: Arneson 2004, 50-55; Brennan 2016.

The second leg of the knowledge procurement incentive concerns the motivation to vote in ways that can be publicly defended. The value of this, for Brennan and Pettit, is that motivating electors to vote in ways that can be publicly justified is one way of making it less likely that the electoral outcome will turn out to be contrary to the public interests of citizens (Brennan and Pettit 1990, 326). The notion of ‘public’ here is not merely a justification that is given *in* public, it is also a justification that involves the use of public *reasons*. Offering public reasons concerns offering reasons that are understandable by others in different contexts. Brennan and Pettit suggest that purely selfish reasons will be less prevalent in public systems (Brennan and Pettit 1990, 324). The potential epistemic upshot of this process is that electors are motivated to inform themselves from the perspective of citizens in other circumstances. Public audiences are likely to represent a plurality of different characteristics – social, cultural, and political. If electors are driven to think about what they are to say for themselves, then they are actively seeking to inform themselves about how their vote relates to issues of the common good.²⁰

Some will most likely not think differently about their voting-choices due to publicity. Perhaps some will care more about tailoring their justification so that they merely give that impression. For this reason, the offering of public justification does not *necessarily* suggest an epistemically satisfactory process of deliberation. As Simone Chambers has pointed out, people can have well-thought-out, informed private reasons and have superficial, uninformed public reasons (Chambers 2004, 2005). While this is certainly true, publicity at least *increases* the incentive to think about electoral choices in terms of considerations of the common good.

This line of reasoning faces an important objection. This is, as mentioned, the conformity objection. The objection is that electors will be incentivized to adopt the political preferences of the group they want to please the most. Inclusion, the objection goes, into groups does not necessarily motivate citizens to inform themselves, but may rather just incentivize them to vote the way they are expected to. This is a well-known political phenomenon. Politics can foster tribalism and partisanship, giving the impression that political views are about social and cultural belonging rather than argumentative engagements with others. A public rather than a secret ballot

²⁰ Notice that I am using the common good here in a deflationary sense. It is merely a shorthand for issues that different people in different social circumstances understand as important.

will exacerbate such problems. Citizens voting in a neighborhood with strong liberal values, for example, will be expected to vote Democrat or independent. They are expected to do so because in that neighborhood the Democrats are considered the home team. Shame and ridicule might follow if citizens change (political) teams. For my purposes, the conformity problem is especially important because it has direct epistemic implications. If public voting does not incentivize discursive self-justification but rather mere social conformity, then this is potentially a decisive objection to the EAP. I now turn to this issue.

The Conformity Objection

Any serious epistemic argument for public voting must face the dangers of conformist social influence on electors. John Stuart Mill, a proponent of public voting in his day, was very aware that public opinion could overwhelm individuals, making their behavior and thoughts the results of imposed social norms rather than something resulting from their unique individuality. He eloquently expressed this worry in the following passage from *On Liberty*:

Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. (Mill 1859, 13)

Public voting reinforces this Millian worry because it opens up the voting process to additional influence by external social factors.²¹ In one sense, the EAP suggests that it is *desirable* that the vote is exposed to the right *amount* and the right *kind* of social influence. However, the wrong kind or an excessive amount can hurt the epistemic possibilities of public voting. Bernard Manin has forcefully pushed the conformity objection. Before attending to his criticism, it is

²¹ Interestingly, Mill on the one hand explicitly referenced the dangerous encroachment on individuality by public opinion while also advocating for public voting.

important to introduce the notion of *observer group*, as its introduction necessary for discussing Manin's criticism. Observer group refers to the collection of individuals who know of someone's vote. Thus, A's observer group includes all those individuals who know how A has voted. Manin argues that the interaction between electors and their observer group is not likely to be a fair and epistemically satisfying process. He argues that if the voting records of millions of citizens are made available people cannot and will have no interest in surveying how everyone has voted. They also have no interest in looking up how strangers have voted. Instead, they will be inclined to look up how people in their social environment have voted – that is, friends, family, colleagues, etc. (Manin 2015, 211). Having one's vote evaluated by such groups rather than by the general public is problematic, since there is "... no reason to expect this limited group to be vastly less particularistic, selfish, or narrow-minded than the person whose vote they control." (Manin 2015, 211). Furthermore, importantly, if citizens primarily check up on those in whom they are interested, "... such checking is likely to be driven by private and personal concerns, whether of a benevolent or a malevolent character." (Manin 2015, 212). It is worth making explicit here that the issue that Manin is (also) pointing to, is, I take it, that if electors are incentivized to vote in ways that will satisfy their observer groups, then their vote will not be cast in terms of the common good. They will be cast in ways that reflect the equally selfish and particular political views of the observer groups.

Observer groups, then, can be epistemically bad. They are epistemically bad if they are highly partisan or one-sided, caring mostly about strict adherence to some policy or political party, without caring *why* that policy or party should be adhered to. The picture that Manin paints is akin to that of a criminal trial. Having a jury consisting of acquaintances of the defendant will not yield the right kind of (non-personal) evaluation of evidence. Similarly, having an observer group of acquaintances when voting raises similar concerns. What needs to be encouraged is deliberation with divergent views in order not to facilitate echo chambers in which electors are only confronted with views they already hold. If electors are placed in such political echo chambers, they are not encouraged to think through their stance by considering conflicting points of view (Reedy et al., 2016, 53).

I want to confront this objection in several ways. I will start by offering some theoretical points that are worth considering. Afterwards, I will argue on behalf of empirical data that Manin's worry here is not decisive.

First, it does not follow that, simply because observer groups are not appropriate judges of the common good, that those they judge will not be motivated to vote (more) on behalf of the common good. It might be that even epistemically bad observer groups will induce more voting on behalf of the common good than *no* observer groups. Imagine, for example, that there is general social pressure against voting for a candidate or policy because it is perceived to be against the common good. This might make A choose to not vote for that candidate, even though highly partisan outsiders incentivize A to do so.

Furthermore, even if electors do not (due to these observer groups) vote in a more public-spirited way, this does not imply that electors are not incentivized to *inform* themselves. Imagine that A utilizes public voting in circumstances in which an epistemically partisan control-group (her family) are interested in evaluating A's vote. Because they are highly partisan, they are not engaged in evaluating A's vote by parameters of the public good, but are merely interested in making clear that A should believe what they believe. However, even though A is not incentivized to consider her vote in terms of the common good, it does not follow that A is not incentivized to inform herself. She might well be. These can be separate undertakings.

Second, there is an important issue concerning the degree to which these phenomena take hold. For example, imagine that public voting incentivizes half the electorate to inform themselves and vote in a way that reflects their best judgment of the common good. In that case, even if publicity has no (epistemic) effect on half the population, there is still epistemic improvement concerning the other half. Even if publicity incentivizes a minority of electors to inform themselves, there is, all things being equal, an uptake in epistemic improvement. This obviously need not be the case. Imagine, for example, that 80% of observer groups are epistemically bad. Electors in such groups are not incentivized to inform themselves or to consider the common good at all. Under such circumstances, public voting will have no positive epistemic effects and it might

even have a negative effect. For this to be the case, however, there would not only have to be a substantial number of bad observer groups, but these negative effects would also have to override other beneficial epistemic effects of public voting. These theoretical possibilities illustrate that it is not obvious that simply because some will be motivated by particularistic motives, that this necessarily spells epistemic trouble for public voting. It depends on the different degrees to which these effects take hold, and whether the problematic tendencies override the potential positive ones.

The second rejoinder to Manin is that the EAP does not only rely on the epistemic circumstances of observer groups. To see this, consider the following distinction.

1) The internal dimension:

Electors are (internally) motivated because of the *possibility* that they may be confronted by others. It may turn out that they are never confronted, although this is not known by the voter at the time of the vote. It does not need to be the case that I need to *actually be confronted* in order for me to be incentivized to become more knowledgeable; the *possibility* that I *may* be confronted does the work.

2) The external dimension:

The external dimension concerns those external circumstances that must function in some specific way for the desired effect to take place. For example, imagine that A is held accountable by friends who are irrational about politics. They refuse to draw rational conclusions from the available political information. A's political ignorance is not remedied, or even embarrassing for A, if these friends hold him accountable. For A to actually be held accountable in an epistemically satisfying way, someone else has to do so besides A's irrational friends.

The internal dimension signifies the incentive that holds *independently* of some specific configuration of one's social circumstances while the external dimensions track the desired changes that only occur *due to the right external circumstances*. The internal dimension has some

overlap with what Robert Goodin calls deliberation within. Deliberation within is the *internal* process of evaluating reasons and considering other points of view. This dialectical process is one in which individuals imagine that other people are present, and therefore imagine the kind of back-and-forth exchange which would transpire between them (Goodin 2000). Similarly, one important epistemic aspect of public voting is that it heavily increases the motivation for voters to engage in such an internal process. It need not be the case that the voter is engaged in actual, external deliberation for this process to take hold. It just needs to be the case that they have some good reasons to engage in this process. Manin's criticism does not take this part of the EAP seriously enough. He is right to point to the problem of epistemically skewed observer groups, but the internal dimension still does valuable epistemic work regardless of the existence of such groups. It might be objected here that the separation between internal and external circumstances is too staunch. If a voter knows that she will be questioned only by her (epistemically skewed, partisan) family, she will lack reasons to take an impartial, internal deliberative stance. The two dimensions cannot be entirely separated. While this is true, this again raises the question of to which degree such observer groups counteract internal deliberation. The fact that A has this observer group does not mean that she does not have sufficient reason to undertake (some) internal deliberation.

The third rejoinder to Manin is that his argument fails to take into account the different ways in which public voting can be instituted. Recall that Manin's criticism relies on thinking of public voting as entailing a massive database of voting-choices. This system is what generates the incentive for people to check up on the votes of those they know, which is what creates epistemically skewed observer groups in the first place. However, public voting need not function like this. It is premature to indict public voting in general because this *specific form* of public voting will have harmful consequences. One way, then, to combat the conformity problem is by way of institutional design. Before going into this issue, however, I will, as mentioned, also consider some of the empirical issues that relate to the conformity problem.

Manin raises the conformity problem without reference to empirical data, so it is tempting to engage solely in theoretical refutation against that which is solely theoretically asserted. Manin's point is, however, highly intuitive and these issues (obviously) relate to empirical concerns. As a

result, taking empirical data into account is important here. So, consider a recent review paper on some of the empirical findings on how agents behave under conditions of accountability. This review paper summarizes the results of 211 articles, all published from 1970 to 2016 (Aleksovska, Schillemans, Grimmelikhuijsen 2019). The studies when summarized understand accountability as a relationship between an actor and a forum in which the actor has an obligation to justify her conduct. This is an understanding of accountability characterized by "... an expectation of evaluating and need for justification ..." (Aleksovska, Schillemans, Grimmelikhuijsen 2019, 5). The studies rely on experimental data, and the majority of the studies are laboratory studies (83%) with students as experimental subjects (73%) (Aleksovska, Schillemans, Grimmelikhuijsen 2019, 5). The most "... frequently observed settings are audit evaluations (9%) and negations (9%), followed by performance evaluations (5%), and attitude expression (3%)" (Aleksovska, Schillemans, Grimmelikhuijsen 2019, 6).

The authors summarize the results as follows: decision-makers facing accountability searched for more information, engaged in deeper information processing, used more analytical decision-making strategies, and showed higher integrative complexity in their thinking. They also invested more time and effort into their decision (Aleksovska, Schillemans, Grimmelikhuijsen 2019, 8). The general conclusion is "... that accountability has an overwhelmingly positive effect on decision-making. Specifically, accountability improves the collection and treatment of information and stimulates more effortful decision-making." (Aleksovska, Schillemans, Grimmelikhuijsen 2019, 8).

Consider also a slightly older review paper by Jennifer Lerner and Philip Tetlock (1999). In this paper, the authors limit accountability to studies that look into the effects of the "... implicit or explicit expectation that one may be called on to justify one's beliefs, feelings, and actions to others." (Lerner & Tetlock 1999, 255). They offer some empirical support for Manin's argument, writing: "... experimental work has repeatedly shown that expecting to discuss one's view with an audience whose views are known led participants to strategically shift their attitudes toward that of the audience." (Lerner & Tetlock 1999, 256). However, they add an important caveat: these results were obtained when those being held accountable knew the views of their audience in

advance. When the views of the audience are unknown, people “... think in more self-critical, integratively complex ways in which they consider multiple perspectives on the issue and try to anticipate the objections that reasonable others might raise to positions that they might take.” (Lerner & Tetlock 1999, 257).

These empirical results do not settle the specific empirical matter at hand. These are findings from controlled experiments and cannot, therefore, easily be applied to the complex world of interpersonal political deliberation of electors. However, that is not the ambition here. The ambition is to show that the conformity objection (advanced by Manin) is not decisive, and that there are empirical data suggesting that accountability has a range of beneficial effects on decision-makers. The rational conclusion here seems to be that this warrants further empirical and normative consideration. This is particularly so when we consider the different ways in which public voting can function. As mentioned earlier, Manin objects to one specific form (an online database of everyone’s vote). There are, however, several distinct ways of implementing public voting. One is the model advocated by Brennan and Pettit,²² which I call *Local Exposure*. Brennan and Pettit describe their proposal in the following way:

We believe that voting should be organized in a manner which means simply that no one can be sure that how he votes will be hidden from his friends and associates. This could be ensured by an arrangement under which a number of electors are allowed at the time into the polling station and each votes by an act which indicates his intention: if he votes A he may have to go to one booth, for example, if for B he may have to go to another. (Brennan and Pettit 1990, 327)

Engelen and Nys raise some issues with Local Exposure. They suggest that this form of public voting does not solve the conformity problem. Specifically, they argue that if voting is observed by ‘friends and associates’ rather than unknown fellow citizens, this prompts voting in

²² Lack of theoretical discussion of different models of public voting might give the impression that voting is either fully public (similar to the public voting of representatives) or fully secretive. Discussing specific models of publicity illustrates that there are several intermediate steps between these two poles.

favor of social allegiances rather than what is best for all (Engelen and Nys 2013, 504). In other words, Brennan and Pettit's proposal incorporates the wrong observer group. It seems, however, that part of the criticism by Engelen and Nys is overstated. Brennan and Pettit are not suggesting that 'friends and associates' ought to be present when someone votes but rather that electors *cannot be sure* that they will not be present. Still, Engelen and Nys are likely right in suggesting that those interested in observation are the acquaintances of the electors.

This is not, however, an insurmountable problem for the Local Exposure model. One could modify the model such that it better accommodates the conformity problem. For example, one could randomly distribute timeslots to people in which they have to cast their votes. In order not to burden citizens too much, a timeslot could be three hours – from 1 pm to 4 pm, for example. Electors allotted this timeslot will have to vote during that time. Imagine now that only electors allotted that timeslot are allowed in the specific location at which the voting takes place. This would reduce the conformity worry since observer groups would be selected at random. It also does not seem too burdensome to allot a timeslot for electors. Electors are already made to vote on a specific day and in a specific place. Deciding that they must also cast their vote in a three-hour timeslot does not seem far outside the bounds of what is being done already. Alternatively, the time of voting could be voluntary, but there could be a small monetary compensation for voting within the allotted timeslot. This will motivate electors to act as randomly sampled observer groups for each other.

Engelen and Nys propose a different model that they label Justification Day. On their scheme, a small percentage of voters (they suggest 1%) will have their votes revealed some time after the election. Those citizens who have had their votes revealed will have to attend small assemblies and discuss their voting-choices. Engelen and Nys speculate that by revealing a random one-percent of citizens' votes, everyone will be incentivized to think through their voting-choice. The mere probability of being exposed will trigger '... more deliberative and public-spirited responses' (Engelen and Nys 2013, 504).

Notice that in both the Local Exposure (modified version) and Justification Day electors do not know in advance who their audience is. Both therefore fulfill the empirical criterion described by Lerner and Tetlock, that not knowing the views of the audience was instrumental for decision-makers thinking in more self-critical, complex, and perspectival ways (Lerner & Tetlock 1999, 257). Likewise, as mentioned, these models are not public in the way that Manin imagines. There is no online register from which people will check to see how others (presumably their acquaintances) have voted. Manin's worry about the crippling epistemic effects of conformity can, therefore, also be mitigated by adopting the proper kind of system. That is not to say that the conformity objection has been soundly refuted. It simply means there are good reasons that count against it and, because of this, these issues remain open.

Before ending with a few concluding remarks, it is important to discuss one instrumental objection that can also have epistemic consequences. This is a worry concerning citizens abstaining from electoral participation due to publicity.

An Epistemic Worry about Abstention

Any form of public voting is more demanding than fully secretive voting. This might cause some to abstain rather than to vote.²³ As well as being more demanding, public voting might potentially also increase the likelihood of social conflict. When engaging in political participation, people feel socially accountable to a range of different groups – workplace, family, and friends. Because these groups can be diverse, it becomes impossible to please them all (Mutz 2006, 106-8). Some would likely choose to abstain from voting rather than risk compromising any of these social relationships.²⁴ The evaluation of this problem depends on which value one places on political participation.²⁵ I will focus on the epistemic dimension of this worry. Hélène Landemore has argued that a diversity of viewpoints is of high epistemic value (Landemore 2012). I assume,

²³ The worry about abstention is discussed in Engelen and Nys 2013, 501-2.

²⁴ There is an important difference here concerning different kinds of political participation. For example, if someone places low value on her ability to participate in a political demonstration, then it is easier for her to abstain from such activity. If she, on the other hand, cares deeply about casting a vote, then abstaining requires more substantial countervailing reasons.

²⁵ See Saunders 2010 for a discussion of some of these views.

arguendo, that she is right in this. If public voting causes abstention, then it might also cause a drop-off in the diversity of viewpoints that decide the outcome, potentially hurting the epistemic circumstances of voting.

There are some possible replies to this worry. First, there are good reasons why it is far from obvious that public voting has a purely negative effect on voter participation.²⁶ As mentioned earlier, publicizing whether or not citizens have voted has been shown to increase voter turnout. Public voting, is, in effect, also a way of making public *if* electors vote. So even if publicity will make some abstain, others will actually be incentivized to vote because of the social pressure of going to the polls. Secondly, some might be emboldened to vote *because* it is public. Voting in front of others might re-invest the process of voting with renewed significance and importance for electors. Such significance might consist of being better able to visually display one's political affiliation to others at the voting place. These are empirical issues, but there are at least some reasons to think that the consequences of publicity concerning participation will not be wholly negative.²⁷

Second, if the abstention worry is to be an epistemic defeater to the EAP, it must be the case that the epistemic deficit of abstention cancels out the epistemic benefit caused by those who, due to the pressure of publicity, inform themselves. Imagine, for example, that Local Exposure causes a ten percent drop in voter turnout. Even if that ten-percent includes those diverse viewpoints that would epistemically increase the quality of the electoral outcome, it is not evident that there has been an epistemic deficit. It might be that Local Exposure has caused twenty-five

²⁶ There is some empirical data suggesting that secrecy leads to abstention rather than participation. Jac C. Heckelman after surveying the literature, writes: "Empirical evidence has consistently shown that secret (or Australian) ballots, introduced in many states prior to the turn of the century, were responsible for a marked reduction in voter turnout rates." (Heckelman 2000, 195). James Gardner has suggested: "It is possible that turnout declined because anonymity freed many voters to express their true preferences, which for many voters was that they preferred not to participate in electoral politics." (Gardner 2011, 943). None of this is in any way conclusive. There are difficult empirical questions here about to which degree abstention in contemporary societies will increase or decrease. I reference this merely to illustrate why we should be skeptical of the a priori assumption that public voting will be purely harmful to political participation.

²⁷ There is some data to this effect concerning non-voting conditions. Lerner and Tetlock write: "Research on attitude change reveals that people who sense that an audience wants to control their beliefs will often respond to the threat to their autonomy by asserting their own views all the more vigorously." (Lerner & Tetlock 1999, 258).

percent to inform themselves.²⁸ This is not to say that abstention *cannot* cause an epistemic deficit, but that much more is needed *to show* that abstention is an epistemic defeater to the EAP. Notice also that the amount of abstention will likely depend on which model of public voting is used. The worry of low turnout, then, can also be mitigated by paying attention to the specific model of publicity.

Let me offer some brief concluding remarks. The opportunities provided by (different forms) of public voting are under-theorized both normatively and epistemically. This topic has interesting epistemic potential for democratic theory and for issues of institutional design. I hope to have remedied some of this absence in this paper. My primary objective has been to provide some of the theoretical and empirical reasons concerning the epistemic properties of publicity in voting – while little of this merits any definitive conclusions, it is, I hope, useful and instructive for further discussion on these important issues.

²⁸ Additionally, viewpoints have to reach some minimum of epistemic competence in order for diversity to be epistemically beneficial. See Maskivker 2016, 233.

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Voting, Privacy, and Electoral Autonomy –

A Critique of the Democratic Value of Privacy

Two traditional views hold that there is an important relation between privacy and democratic decision-making. The first view suggests that privacy furthers the kind of autonomy that is required on some conceptions of democracy. The second view links this value with the institution of private voting. I argue that both of these views face serious problems. The first view suggests a notion of autonomy that is ill fitting for democratic decision-making and the second view fails to justify the use of the private ballot.

Keywords: Privacy, Voting, Secret Ballot, Autonomy, Democratic Theory.

Issues such as electoral malpractice and pernicious influence on voter behavior are, it seems, more pertinent than ever. The ability to micro-target specific electors (or would-be electors) based on massive data-sets and alternate ways of casting one's ballot, such as mail-in voting or electronic voting, will challenge the ways in which democratic politics function. Problems are sure to emerge from this and dealing with such problems will likely involve developing better and more secure technologies while also potentially changing the legal system. These issues, however, also reacquaint us with the *philosophical task* of understanding what is potentially problematic about these practices, and what kind of threat they pose to the normative standards that we often apply to democratic participation. I offer no technological or legal solution to these issues. Instead, I analyze the philosophical underpinnings of these issues by examining the value of the autonomy of voters and the role that privacy plays in securing such autonomy. The traditional views on these issues are, surprisingly, problematic in several ways – and, because of this, call for renewed attention and consideration.

Several theorists have claimed that privacy is important for democratic decision-making.¹ Privacy is important because it fosters and sustains the kind of autonomy needed for citizens to

¹ Brett Schneider 2007; Lever 2015; Boone 1983, 8; Reiman 1995; Cohen 2000; Cohen 2013, 1912-1918; Nissenbaum 2010, 177-8; Susser, Roessler, Nissenbaum 2018, 3.

vote on behalf of their own political preferences. Let us call this the *democratic value of privacy*.² Some claim further that the institution of private voting is justified because of, or valuable for, this kind of autonomy.³ Call this the *institutional value of privacy*. This gives us the following outlines of the two views:

(I) Democratic Value of Privacy:

Privacy is important for democracy because it is beneficial for the kind of autonomy that democracy presupposes or requires.

(II) Institutional Value of Privacy:

The private ballot is valuable for, or justified due to, how it enables citizens to express their autonomous political preferences in the voting-booth.⁴

Let me briefly clarify how these two views are related. The first view describes the (general) value that privacy has for democracy while the second view suggests that this value justifies the specific institution of private voting. An appropriate analogy here is the one-person-one-vote voting scheme. The basis for this scheme, according to some, is that persons are moral equals and deserving of equal respect. This equality justifies an egalitarian voting-scheme because such a scheme affords each person equal influence and is, therefore, a way of treating them as moral equals.⁵ (I) and above (II) work in the same way. There is a general principle that explains why privacy is important and this importance justifies or is reflected in the way in which voting is private.⁶

² Dorota Mokrosinska summarizes the democratic value view as follows: "A number of scholars have argued that the exercise of privacy creates conditions for the enhancement of independent political judgement and in this way contributes to the formation of citizens' political preferences and reasoned political discourse." (Mokrosinska 2018, 125).

³ Reiman 1995, 42; Brettschneider 2007, 75-6; Nissenbaum 2010, 176-7; Birch and Watt 2004, 65; Paulo and Bublitz 2019, 61. Note that private voting refers to the way in which electors are able to vote in the privacy of the voting booth. I use this description throughout the paper. It is important to note that this feature of voting is not identical with the institution of secretive voting. I explore this difference in the latter part of the paper.

⁴ There is a difference depending on whether private voting is valuable for or justified because of autonomy. I attend to this difference on page 9.

⁵ Dahl 2006, 4.

⁶ This analogy is imperfect since the moral equality of persons is different from (I) the democratic value of privacy. Moral equality is an axiom while (I) is an instrumental claim about why privacy is valuable.

I argue that both (I) and (II) are faulty in various ways. The first view makes an illicit move from privacy being valuable for the private lives of citizens to it being valuable for ideals for democratic participation. The second view is insufficient because it does not justify why voting in private should express the value of autonomy rather than a host of other possible arrangements.

The Democratic Value of Privacy

Let me start by describing both views in detail. I will start with the democratic value of privacy. Ruth Gavison has given the standard formulation of this view:

Privacy is also essential to democratic government because it fosters and encourages the moral autonomy of the citizen, a central requirement of a democracy. Part of the justification for majority rule and the right to vote is the assumption that individuals should participate in political decisions by forming judgments and expressing preferences. (Gavison 1980, 455)

As Gavison suggests, democratic rule presumes that citizens can express and act on behalf of their own political preferences. Privacy is, according to this view, a way of fostering and maintaining the political preferences of citizens. Different scholars have expressed this view in different ways.⁷ I will therefore focus on a few select descriptions in what follows.

There seems to be some common ground concerning what is (democratically) worrisome about a lack of privacy. For example, Julie Cohen suggests that if behavior is being tracked or observed, people will be prone to think and behave in more conformist ways. This is because the experience of "... being watched will constrain, ex-ante, the acceptable spectrum of belief and behavior." (Cohen 2000, 1426). The condition of non-privacy will not only "... chill the expression of eccentric individuality, but also, gradually, [...] dampen the force of our aspirations to it." (Cohen 2000, 1426).

I understand Cohen's view here to be that if A knows that both her behavior and her beliefs will be publicly known, then A will be (strongly) incentivized to behave and think in ways that

⁷ Brett Schneider 2007; Reiman 1995; Cohen 2013, 1912-1918; Cohen 2000; Susser, Roessler, & Nissenbaum 2018, 3; Nissenbaum 2010, 177.

align with what is deemed publicly acceptable and appropriate. Not only will this lead A to behave and think differently in certain situations; it also means that A will (potentially) not even develop the habits and state of mind needed to pursue her autonomous beliefs and desires.

Cohen's point does not only apply to individual behavior and thought. It applies, importantly for my purposes, to political participation as well. Much like conditions of non-privacy will incentivize behavior that falls within the spectrum of acceptability, so will conditions of non-privacy negatively affect political deliberation and participation. Informed and reasoned political deliberation and participation require a wide variety of views, but such views are unlikely to develop or be brought up, since "... examination chills experimentation with the unorthodox, the unpopular, and the merely unfinished." (Cohen 2000, 1426).

Cohen's worry about political participation here concerns (mainly) epistemic worries. What is troublesome are the effects on *reasoned* and *informed* debate. Let us call this the *epistemic value of privacy for political participation*.

Jeffrey Reiman expresses the same kind of concern as Cohen does. He appeals to the same kind of conditions of non-privacy and suggests that being subject to public review will lead people "... to act in safe ways, to hold and express and manifest the most widely-accepted views, indeed, the lowest-common denominator of conventionality." (Reiman 1995, 41). On this view, being subject to public observation will lead people to act and think in ways that are demanded by social conventions rather than their own autonomous agency.⁸ I take Reiman's position to be, then, that if more of A's behavior is open to public observation, then A will begin to behave and think in ways that the public finds acceptable. This will induce A to be less able to distance herself from her surroundings, as she is pressured to think about herself from the vantage point of 'the public'.⁹

These worries are very similar to the concerns that Cohen raises. And, like Cohen, Reiman also suggests that this has implications for democratic participation. The value of democracy, Reiman notes, is premised on the idea that citizens can form their *own* autonomous political views

⁸ Reiman 1995, 41-42.

⁹ Thomas Nagel makes a similar point: "We also have to learn, especially in adolescence, not to be overwhelmed by a consciousness of other people's awareness of and reaction to ourselves – so that our inner lives can be carried on under the protection of an exposed public self over which we have enough control to be able to identify with it, at least in part." (Nagel 1998, 4).

and express these in the democratic process. If conditions are not such that citizens can develop these autonomous views, then democratic voting “... becomes mere voluntary conformity.” (Reiman 1995, 42). Reiman’s worry here is not that voting becomes formally unfree or unequal, rather, it is a worry about the value of voting. Voting, in Reiman’s view, becomes worthless if it merely expresses conformist preferences that electors uncritically accept. Privacy is important in this context because it shields citizens from extensive outside social pressure and helps citizens think independently about their political beliefs.¹⁰

Unlike Cohen, Reiman does not refer to epistemic benefits. Rather, he seems to suggest that expressing autonomous political views is intrinsically valuable, regardless of their epistemic outcomes. Call this the *intrinsic value of political participation*.

Reiman’s account leaves some important issues untouched. Most importantly, it is difficult to ascertain when preferences are autonomous according to this view and when they are not. Reiman does suggest that autonomy is related to accepting principles based on ‘critical review’ rather than absorbing principles without questioning them. While plausible, this answer only tells us something about how *the agent* should *process* information coming from outside influences.¹¹ This is, *prima facie*, unrelated to issues of privacy and non-privacy. One can accept principles carefully and critically or in an unquestioned manner in conditions of both privacy and non-privacy. Reiman’s position must be, then, that conditions of privacy are *more conducive* to the kind of critical reflection needed if individuals are to avoid uncritically conforming to public opinion. This answer, however, raises an additional issue. It seems Reiman is particularly worried about how social conventions will make emotions “... simpler, safer and more predictable, less nuanced and more interchangeable.” (Reiman 2000, 41) He is also worried about the effects this will have on the “... personal core that is the source of criticism of convention, of creativity, rebellion, and renewal.” (Reiman 2000, 42). However, these outcomes might also follow from careful and critical acceptance of social conventions. It is perfectly imaginable that someone after careful reflection comes to accept social conventions, and, because of this, lives and thinks as

¹⁰ Reiman 1995, 41-42.

¹¹ Put differently: it tells us something about the *internal* perspective that agents must have. It says little about the *external* ways by which electors can be influenced.

mandated by these conventions. It is unclear on this account whether such an outcome is problematic or not. I will set these difficulties to one side for the remainder of this paper.¹²

Lastly, consider Corey Brettschneider's view. Brettschneider's view concerns decisional privacy rather than informational privacy, but his view is similar to that of Cohen and Reiman.¹³ Autonomous decisions and judgments are, on Brettschneider's view, part of the democratic ideal.¹⁴ This means that a "... presumption of a right to privacy is defensible in part because privacy is necessary for individuals to develop the capacity to reason autonomously as citizens." (Brettschneider 2010, 75). Privacy is important for forming independent judgments since "... in order to judge, one must have some critical distance from public discussion and a conceptual space within which to make up one's mind." (Brettschneider 2010, 76).

Much like Reiman and Cohen, then, Brettschneider suggests that privacy is valuable, in part, because it facilitates autonomy by creating some distance between those who render their judgments and their social surroundings. The value of privacy is, then, according to all three views, tied to the value of expressing autonomous political judgments. A further issue arises here of spelling out why autonomous judgments are especially important in the context of political participation. While Cohen hints at the epistemic benefits of having properly formed autonomous views, there are some additional reasons to take into consideration. Think of the following example, provided by Loren King. He asks us to imagine Marty – a 30-year old who lives with his parents and follows their advice in every significant decision in his life, including what he should believe politically and how he should vote.¹⁵ King argues that when Marty proclaims his support for a candidate or policy, he is not "... the author of the laws we together legislate and obey; at best, he is a faithful delegate on behalf of his parents, thus over-representing their positions on political matters." (King 2011, 35).

¹² I regard Reiman's account as a large-scale picture of what he believes to be problematic about the lack of privacy and the relevance thereof for democratic participation. He is not trying to spell out exactly when lack of privacy results in non-autonomous decisions nor what kind of external influence renders decisions non-autonomous.

¹³ Brettschneider understands decisional privacy as "... the individual's right to a sphere of intimate decision making free from state coercion and public scrutiny." (Brettschneider 2007, 71).

¹⁴ Brettschneider 2007, 74-5.

¹⁵ King 2011, 35.

King is here pointing to two different issues with the non-autonomous voter. First, because Marty is merely parroting the views of his parents, *his* preferences are not influencing political outcomes.¹⁶ Second, the views of his parents are being over-represented because he votes on their behalf.

The Institutional Value View

The institutional value view simply adds institutional design to the democratic value view.¹⁷ It holds that the value of autonomy expressed in the democratic value view *justifies*, or *is reflected in* the way in which voting is private. Several scholars express this view.¹⁸

Brettschneider holds the institutional value view. He writes:

A presumption of a right to privacy is defensible in part because privacy is necessary for individuals to develop the capacity to reason autonomously as citizens. In deciding how to vote, citizens are *entitled* to freedom from coercion and to a “private space” in which to make up their own minds through the exercise of political judgment. The privacy of the voting booth serves to enhance the sense that we are free to make our own decisions without external coercion. (Brettschneider 2007, 75)¹⁹

Brettschneider advocates the institutional value view by suggesting that citizens are *entitled* to a ‘private space’ because this is a way of treating citizens as autonomous rulers and decision-makers. The value of independent (political) judgment, at least in part, justifies the institution of private voting.

Before moving on, it is important to clarify a possible ambiguity in Brettschneider’s view. In the quoted passage, he refers to freedom from external *coercion* and he also, in other places,

¹⁶ Although if Marty’s preference *is* to parrot his parents, then his preferences are registered. This view, then, must assume that Marty has a set of ‘true’ or ‘real’ preferences that is distinct from those he affirms from his parents.

¹⁷ Issues of privacy seem closely tied to issues of institutional design. If citizens are to develop and maintain autonomy, they need physical spaces in which they can think and reflect without the interference of others (Koops 2018, 29; Richards 2008, 412-3).

¹⁸ Reiman 1995, 42; Brettschneider 2007, 75; Nissenbaum 2010, 176-7; Birch and Watt 2004, 65; Richards 2015, 100.

¹⁹ Cursive added.

refers to the practice of vote buying.²⁰ If all he means by autonomy, in this context, is the absence of coercion of voters and the avoidance of vote buying, then he is plainly not concerned with the kind of autonomy that privacy is important for – and, therefore, he is not advocating the institutional value view after all.

While it is true that Brettschneider is concerned with coercion and vote buying because they would violate electors' autonomy, autonomy is not the mere lack of these forms of external coercion.²¹ He says as much when he suggests the "... privacy of the voting booth serves to enhance *the sense* that we are free..." (Brettschneider 2007, 75) and that privacy is "... necessary for individuals to develop the capacity to reason autonomously as citizens." (Brettschneider 2010, 75). He also suggests that "... in order to judge, one must have some critical distance from public discussion and a conceptual space within which to make up one's mind." (Brettschneider 2010, 76). It is, I think, quite clear here that he does not equate autonomous judgment with lack of external coercion. He is explicitly concerned with the kind of independence of mind that requires 'critical distance' from public discussion and the institutions that treat electors as autonomous self-rulers in this way.

There are additional reasons not to equate autonomy with the lack of coercion. If autonomous judgment merely meant the absence of coercion, then Brettschneider's overall normative framework becomes less clear. Surely, the avoidance of electoral coercion is important for reasons unrelated to the values of privacy. Practices such as coercion that subvert the autonomy of electors should be avoided on purely procedural grounds without having to appeal to the democratic *ideals* of the autonomous political judgments of citizens.²² In addition, Brettschneider is explicitly concerned with privacy having an intrinsic value.²³ If its value consists in the reduction of coercion and vote buying then it would be instrumentally valuable and not intrinsically valuable.

Reiman also holds a view close to the institutional value view, although without explicitly referring to the voting-booth. Autonomy, in his view, "... requires a kind of space in which to

²⁰ Brettschneider 2007, 24.

²¹ There is a potential issue of categorizing 'vote buying' as coercion, as this is (under certain circumstances) an act of coercion. It is done merely for the sake of convenience.

²² There are also, *prima facie*, wrongs related to vote-buying which do not concern the inability to express autonomous political preferences. For example, it can skew the political power of electors.

²³ Brettschneider 2007, 73.

reflect on and entertain beliefs, and to experiment with them – *a private space*.” Without such autonomy, “... democratic voting becomes mere ratification of conventionality, and individual freedom mere voluntary conformity.” (Reiman 1995, 42). Helen Nissenbaum also expresses the institutional value view. She writes:

Specifically, the drama of enforced privacy – the curtained voting booth – signals to voters that they are alone and free to make their selections.” (Nissenbaum 2010, 176)

Notice that Nissenbaum does not say that voting in private is justified because of the value of autonomy, but that voting in private reflects the value of autonomy.²⁴ These are different views. I can hold that B reflects the value of A and also hold that A does not justify B. I can also hold that A justifies B while also holding that the value of A is not reflected in B. While there is a discernable difference between these views, this difference does not matter for the arguments of this paper. The objections I raise concern both views.

Objections to the Democratic Value View

I will argue that both the democratic value view and the institutional value view suffer some substantial problems. I will start with the democratic value view. There are two issues with this view. The first issue I want to raise is that some advocates of this view assume that the value of autonomy in private life is translatable into a similar (or equal) value when considering democratic decision-making. This kind of move is problematic. If autonomy has an important function or is an important value in the *lives of citizens*, it does not follow that it has the same function or the same value when assessing *the democratic decision-making of citizens*.

This problematic inference occurs in Cohen’s epistemic defense of the value of privacy for political participation. As described earlier, she argues that public exposure will incentivize behavior and thought that gravitates towards the mainstream and the popular. The chilling effects

²⁴ This is clear from her suggestion that the voting-booth *signals* that they are alone and free to make their choices. Autonomy is, on this view, of *particular significance* in the context of democratic elections (Nissenbaum 2010, 176-177).

of exposure will mean that citizens act and think in narrower spectrums of public acceptability. This, according to Cohen, is also harmful to political participation and discourse. She writes:

The formation and reformation of political preferences – essential both for reasoned public debate and informed exercise of the franchise – follows the pattern already discussed: Examination chills experimentation with the unorthodox, the unpopular and the unfinished. A robust and varied debate on matters of public concern requires the opportunity to experiment with self-definition in private ... (Cohen 2000, 1426)

While we might agree with Cohen that too much public exposure will set limits on what is seen as acceptable behavior and thinking, it is much more ambiguous whether such public exposure is hostile to ‘political preferences’ and ‘reasoned public debate’. Think of, for example, how the political discussions and decision-making of politicians are public.²⁵ Their political dealings (voting and deliberation) are often made available to the public such that the public can hold them accountable. If discussion and decision-making are done in private, politicians are freer to disregard and remain uninfluenced by the interests and views of the public. Deliberating in public means that one is less able to offer self-interested views.²⁶ It can also be that political debates, by being public, incorporate *more* points of view and more *experimental* and *unorthodox* points of view than if held in private. A public audience means that a broader pool of ideas has the potential of influencing the debate, which might yield an *increase* in the kinds of experimental and unorthodox viewpoints that Cohen attributes to the practices of privacy. Furthermore, consider also that unorthodox and experimental viewpoints are not, *by themselves*, valuable as political statements or for public debate. While unorthodox and experimental political viewpoints can be important for enlarging the pool of ideas or for critically assessing mainstream opinions, they might also be unorthodox or experimental in ways that are not obviously valuable, or even harmful. For example, an opinion might be unorthodox in the sense of holding to highly contentious views about sexual or racial equality.

One might object that this misunderstands Cohen’s view. What I mention are specific instances of publicity while Cohen is concerned with the *capacity* for autonomous choice. What

²⁵ For a discussion of the epistemic merits of publicity, see Chambers 2004.

²⁶ Conover, Searing, & Crewe 2002, 26-27.

Cohen is arguing, according to this objection, is that those who participate in political debate and participation must be able to develop their (political) views in conditions of privacy and then bring these views to bear in the political arena. She is not claiming that specific instances of publicity will hurt deliberation or participation.

I do not find this objection convincing. Although Cohen is most certainly concerned with how privacy is important for developing autonomy, she is also, explicitly, concerned with how the “... experience of being watched will constrain, ex-ante, the acceptable spectrum of belief and behavior.” The examples I have brought up are specific examples of when it is (epistemically) valuable that officials and politicians experience ‘being watched’, and so these examples seem to be legitimate counter-examples.

There seems, then, to be a mixture of potential benefits and drawbacks to conditions of publicity and non-publicity as they relate to public debate and political participation. What about the non-epistemic, intrinsic value of autonomous political participation? Here, again, there seems to be a problematic inference from the value of autonomy in private life to it being valuable for democratic participation.

To see this, think of voters that are, in Reiman’s sense, autonomous. They have developed their own views through stringent examination and they are highly independent in their (political) thinking. It is possible that these autonomous voters can vote on behalf of morally arbitrary preferences. Imagine, for example, that the autonomous preference of these electors is to vote on behalf of the physical appearance of candidates.²⁷ Alternatively, imagine electors who have the autonomous preference to vote only for candidates of certain races. Similarly, there might be autonomous, *ignorant* political participation. Think of an autonomous elector who also happens to be ignorant of the issues on which she is voting. Instead of informing herself, the voter reflects upon her ignorance and concludes that she will toss a coin to decide how to vote. She comes to this conclusion without much (if any) outside interference. The decision to toss a coin is an autonomous decision that she herself comes to.

²⁷ Voting with an emphasis on physical appearance is a well-known electoral phenomenon (White, Kenrick, & Neuberg, 2013; Lenz 2011).

If autonomous political decisions are intrinsically valuable, then there is *something* valuable about voting in the ways just outlined. Reiman and others can maintain that while ignorant or arbitrary voting is not desirable, it is at least desirable that these are autonomous preferences. If this is the case, however, there has to be some normative difference between someone who votes on behalf of their autonomous racist views and someone who votes on behalf of racist views in a non-autonomous way. If the intrinsic view is right, the former is valuable in a way the second is not.

One potentially relevant difference concerns legitimacy.²⁸ If legitimacy requires that policies are based on the autonomous preferences of electors, then outcomes produced by non-autonomous views would lack legitimacy. Such outcomes would not reflect the (real) preferences of the electorate.²⁹ On this view, then, autonomous ignorant voting confers legitimacy on the outcome while non-autonomous ignorant voting does not. This is what makes autonomous ignorant voting valuable in a way that non-autonomous ignorant voting is not.

This answer only seems to push the problem back one further. Even though an elector autonomously decides at random how to vote, the fact that *she herself* has made this decision confers legitimacy on the outcome. It is, *prima facie*, unclear why the autonomous preference to toss a coin confers legitimacy on the outcome while the non-autonomous preference to vote for candidate X does not.³⁰ Defenders of the democratic value view who are concerned about legitimacy might agree that not *all* autonomous preferences are legitimacy conferring. This suggestion, however, implies that autonomous preferences are not, on this view, intrinsically important for legitimacy, which makes it more unclear what kind of value autonomy has on their view to begin with.

Another possible reply from defenders of the democratic value view is that non-autonomous voting presents a problem of over-representation that does not occur when electors vote for arbitrary reasons. If A is excessively influenced by B and A votes because of this influence, then A's (real) preferences are not registered while B has her preferences registered

²⁸ Defenders of the democratic value view *need not* worry about legitimacy at all. This is a possible further position they might affirm.

²⁹ For a defense of this view, see Paulo & Bublitz 2019.

³⁰ The example of coin tossing comes from David Estlund. See Estlund 2008.

twice.³¹ With both morally arbitrary and ignorant, autonomous voting, A's preferences *are* counted and no other elector has, qua their influence, had their preferences counted twice.

While this replay points to something correct, the worry that B has her preferences counted twice is only circumstantially related to non-autonomous voting. It might be that B's influence on A causes A to abstain from voting, for example. More importantly, if the worry is that some electors have their preferences counted more than once, then the concern is about unequal influence on political outcomes, not that some electors vote non-autonomously – and, if so, then the democratic value view has misidentified the normative core of the worry.

Lastly, consider a related issue. External pressure can dissuade individuals from doing something they ought not to do. Consider Billy:

The Autonomous Climate Change Denier

Billy is a political activist. He spends large amounts of time and money on political issues. Billy is also a climate change denier. He believes that climate science is a conspiracy concocted by evil globalists. Billy wants to donate to political forces to politically and legally enforce climate denial. Billy has fostered his climate change activism through long hours of careful, reflective activity in which he has not been excessively influenced by any outside force. His denial is a product of his own autonomous agency. He wants to donate ten thousand dollars to this political goal. However, because such donations are public, Billy is compelled by the potential of social stigma and ridicule to not donate the money. His politically autonomous action has been thwarted by public opinion.

If someone is of the view that it is morally problematic to enforce the political platform of climate change denial, then it is not clear that the influence of outside forces on Billy's decision here is normatively troubling. Quite the contrary, external interference compels Billy to abstain from doing something that he ought not to do. If Billy is afforded an opportunity to donate the money without outside interference (e.g. donate anonymously), then Billy can act on his autonomous decision but he might do so towards improper ends. This is a clear instance of

³¹ This issue of overrepresentation is described on page 6.

someone who foregoes acting on his own (autonomous) wants because of the pressure of public opinion and social convention. Billy is forced to consider his actions from the vantage point of ‘the public’ and ‘being watched’ clearly constrains his behavior. While the democratic value view is right in suggesting that external pressure will constrain Billy’s autonomous decisions, such constraints, under circumstances of collective decisions, need to be problematic. At best, in the case of the influenced climate change denier, it is morally ambiguous whether this is so. This judgment changes if Billy is (somehow) forced to reveal his *opinions* or *thoughts* on climate change. It would be, *prima facie*, an encroachment on Billy’s autonomy if he cannot even form his own opinions without being sanctioned by external forces. However, this cannot easily be translated into an equal or similar value when we consider Billy’s participation in collective decisions. If he acts towards improper ends, it is not obvious that external forces compelling him not to do so are always troubling. This, again, speaks to a rather limited conclusion. Being able to act politically on autonomous decisions is not *necessarily* desirable, and being dissuaded, because of external forces, from acting on autonomous decisions is not *necessarily* troublesome.

The inference that I am problematizing is the move from suggesting that privacy is important for the autonomy (or development thereof) of individuals to it being valuable for democratic participation. When we move to collective political decisions, several further criteria are important for deciding whether participation is valuable. As mentioned, there are standards of being well informed, voting for good reasons, or working towards morally desirable ends. The point here is merely that the value of autonomy cannot (without problems) be extended to political participation because there are additional criteria of valuable participation that make it unclear what the value of autonomy is when these criteria are made apparent.

Objections to the Institutional Value View

So far, I have criticized the democratic value view on two grounds. I have argued that the epistemic and normative dimensions of the view suffer problems. I now move on to the institutional value view. As described earlier, this is the view that the democratic value justifies or is reflected in the practice of private voting. I argue that this view has serious problems. The central issue with the institutional value view is that it does not justify *the contemporary* use of the private ballot at all. I offer three arguments for this conclusion. (i) There is an arbitrary connection between

autonomy and private voting. (ii) Autonomy is compatible with public voting. (iii) Autonomy is compatible with (or even favorable of) *optional* privacy. Before moving on to (i), (ii), and (iii) it is important to mention that I assume that those who advocate the institutional value view think of ‘private voting’ as referring to the secret ballot. However, the central idea that underlies (i), (ii) and (iii) is that the use of private ballots (ballots that afford electors privacy) is not identical with the secret ballot. There are several circumstances related to the secret ballot that are not justified by appealing to privacy. I explore these circumstances in (i), (ii), and (iii) below.

(i) *The arbitrary connection between Autonomy and Private Voting*

The first problem with the institutional value view is that there is only an arbitrary connection between the value of autonomy and the practice of private voting. If the autonomous expression of electoral preferences is valuable it does not follow that this value should be expressed through the use of private voting. The question that faces this view is the following: why is autonomous judgment best expressed by this specific institution of voting, rather than a host of other circumstances that might be equally or more important for creating and maintaining autonomous judgment? For example, does the institutional value also provide support for the banning of certain political ads or campaigns? Does it prohibit political endorsements from influential individuals or organizations? Does it give certain rights to citizens that their political judgments remain un-influenced in other ways?

Consider, for example:

Electors’ Independence Day

In the country of *Democracia*, two days before each general election media outlets are legally prohibited from airing political messages of any kind. People are also allowed to take one of these two days off from work. They are encouraged during their day off to think about their voting-choice. They can do so without the outside influence of mass media.

If the institutional value view is concerned with having citizens express autonomous judgment, it is, *prima facie*, unclear why it does not justify *Electors Independence Day* instead of, or alongside measures such as voting in private. It might be that *Electors’ Independence Day* is a much more efficient way of achieving the goal of autonomous expression of political preferences.

Electors Independence Day allows electors to have considerable time for reflection before the election while the institutional value view highlights only the moment of casting the ballot. It is equally unclear why the institutional value view does not justify the host of other potential states of affairs that might be equally or more conducive to the expression of the autonomous judgments of electors.

There are several reasons for not implementing all these different measures that would be conducive to the autonomy of electors. Perhaps it is too costly to have every elector take a day off. Perhaps some of the activities or prohibitions have very little effect on the formation of the political preferences of citizens. Perhaps it might be (practically) difficult to protect citizens from the influence of political pundits, campaigns, and organizations. It might also be that the privacy of the voting booth *is* the most effective and practically feasible option for maintaining autonomous judgment.³² This might be so. However, it is not obvious that it is so. And, even if it were obvious, why does the institutional value view not *also* justify these other ways of enabling the autonomous judgments of citizens? Even if private voting is the most effective, it would still be valuable to enhance the autonomy of citizens even further. Those who affirm the institutional value view might suggest that this is not a *problematic* implication of their view. They might agree that the view does imply that we should institute all these measures to protect autonomous political judgment, while also suggesting that there are overriding reasons not to do so. As such, they hold that Electors' Independence Day is *prima facie* normatively warranted on their view.

I do not think that this solves the issue that I raise. The examples I have brought up do not function as a *reductio* of the principle of autonomous judgment itself, but, rather, highlight that the institutional value view, *prima facie*, justifies all kinds of different empirical arrangements that will further autonomous judgment. The institutional value view tells us very little about why it should justify the *specific institution* of secret voting rather than other comparable initiatives.³³ It

³² Some may favor a prohibition of political advertisements or favor an increase in the regulation of social space such that electors are not as (perniciously) influenced as they are now.

³³ Some might additionally be worried about the way in which the institutional value view's justification of the secret ballot is contextual and empirical. If it turns out, for example, that the banning of certain types of political campaigns' ads is more conducive to autonomy than citizens voting in private, then the institutional value view will, *prima facie*, suggest the banning of such ads to be more important than voting in private. If it turns out that voting in private does little to secure the autonomous judgments of voters, then the institutional value view does little to justify it. See Lever 2015 for an expression of this worry.

is a theoretical weakness of the view that it justifies a huge array of different options while leaving little opportunity to distinguish between which (if any or all) should be adopted.

It might be that the institutional value view does not think of privacy as an *empirically* necessary condition for autonomy. This is, for example, Brettschneider's view.³⁴ Rather than being an empirical proposition, a presumption of privacy is a sign of respect for the ability of citizens to exercise their autonomous judgment. Citizens are *treated* as autonomous when they are afforded the privacy of the voting booth.³⁵ While this is a reason for Brettschneider (and anyone else who endorses the institutional value view on non-empirical grounds) to object to the idea that the institutional value can end up justifying a wide range of empirical circumstances, it only pushes the problem back further. Why not show this precondition or sign of respect by having some other configuration of circumstances? The institutional value view could just as well advocate *Electors' Independence Day* as a way of treating citizens as autonomous self-rulers.

One might raise an epistemic objection to the above argument. Just because we do not *know* where to draw the line does not mean that *there is no* line to be drawn. This reply seems fair enough. However, it misunderstands the purpose of this initial challenge. By posing these questions, I do not assume that there is no line to be drawn. Instead, I am critical of those who do draw the line, namely those who propose that the justification for private voting lies in autonomous judgment. If we cannot know where the line is, then that equally goes for the institutional value view.

(ii) Autonomy is compatible with public voting

The second deficiency with the institutional value view is that it is compatible with *public voting*. What is important on the institutional value view is that privacy protects and secures autonomy in decision-making. This is, however, compatible with different forms of public voting. This is so because electors can vote *in private* but have their voting-choice become public post-

³⁴ He writes: "Nothing in my claim relies on the suggestion that privacy is an empirically necessary condition for these capacities. Slave narratives, for instance, provide evidence of persons' ability to develop such capacities despite their utter lack of freedom" (Brettschneider 2012, 76).

³⁵ Brettschneider 2012, 76.

election.³⁶ Consider the kind of voting-system that Geoffrey Brennan and Phillip Pettit have suggested. They imagine a system in which each candidate or political party has a marked voting booth and electors have to go to these voting-booths to cast their ballots for that specific candidate or party.³⁷ Under such a voting-scheme, voting takes place in private, but the voting-choices of electors are publicly observable. The issue here is that the institutional value view highlights the *privacy* dimension of the current voting-scheme rather than anonymity. However, these are distinct concepts. James Gardner has suggested that the difference is that “... privacy generally conceals that a thing has been done. Anonymity, in contrast, generally conceals only who has done a thing, not that it has been done.” (Gardner 2011, 939). To understand this distinction, imagine that A must make an important decision. She retreats to an uninhabited island to live uninterrupted for several days to ponder which decision she will make. This form of privacy is compatible with non-anonymity. While A can make her decision in private, it might still, at some point, become known that *it was A* who made the decision. A’s claim to privacy in this regard is not necessarily a claim to anonymity. Conversely, A’s claim to anonymity need not entail a claim to privacy. For example, if A takes part in a demonstration wearing a disguise, A remains anonymous but she is not acting in private. Her action (taking part in the demonstration) is fully public, it is only her identity that is concealed. Relevantly, suggesting that it is the privacy-dimension of voting that is important for the autonomous expression of preferences does not therefore also entail that voting must be anonymous. The institutional value view is therefore compatible with public voting. Since it is compatible with public voting, the institutional value view does little to justify the current set-up of private, anonymous voting. It equally justifies any voting-scheme that incorporates the kind of privacy valuable for autonomy, including public ones.

Some will object to this by saying that public voting (in the way mentioned) is still a threat to the autonomy of electors. Revealing voting-choices *at any point* will give way to attempts of illicit influences of different kinds, improperly influencing the autonomous voting-choices of citizens.³⁸ So, the objection goes, if protecting autonomy – which is what the democratic value

³⁶ Dan Sturgis also makes this point in a different context. See Sturgis 2005.

³⁷ Brennan and Pettit 1990.

³⁸ Birch and Watt raise this objection. They are careful not to equate voting in private with voting anonymously. See Birch and Watt 2004, 65.

view is concerned with – is important, then that should speak both for the privacy of the vote *and* it should speak against public voting.

While this objection might be right, the institutional value view would now endorse a different kind of view that is reliant on several more assumptions. It would now have to be the case that the ex-post reveal of voting-choices would undermine the autonomy of citizens. This requires additional evidence and argument on behalf of those who advance the institutional view. It is easy to imagine public forms of voting where the expression of autonomous preferences would, *prima facie*, not be a worry. It might be that voting-choices are made public so long after the election that they would have no (or very little) effect on the preferences of electors. Further, consider a system in which it costs money to see the register of voting-choices. If only a very few are able (or willing) to pay for access, it would have no (or very little) effect on the autonomous choices of electors. So, even if the institutional value view adapts in this way, it does not preclude the use of public forms of voting.

(iii) *Autonomy is compatible with (or even favorable of) optional privacy*

Thirdly, the institutional value also does not justify *mandatory* privacy.³⁹ If what is valuable is the ability to make up one's own mind, then this would equally justify a system of *optional* privacy where citizens themselves decide whether or not to verifiably communicate to others how they've voted. There can be both veiled private booths like there are now and public forms of voting such that electors themselves can decide whether they want their voting-choices to be known publicly. Such an option would certainly be appealing for one *prima facie* reason, namely that it would offer electors themselves the choice of whether to signal their political preference (by voting) in public. Since *optional privacy* preserves the autonomy-enhancing circumstances of private voting while allowing those who wish to vote in public the opportunity to do so, it seems that the institutional value view is as compatible with optional privacy as it is with mandatory privacy. If this is so, the institutional value view does not justify the contemporary set-up of mandatory privacy *rather* than optional privacy. In fact, there are reasons why the institutional value view should *favor* optional privacy. If the institutional value view suggests that the autonomous preferences of citizens are important, it seems it should respect the autonomous

³⁹ Nissenbaum explicitly references the mandatory dimension of privacy. See Nissenbaum 2010, 176.

preference to vote in public. It seems odd to suggest that citizens should be able to express their own preferences while legally denying them the possibility to do so. Consider, further, that the expressive nature of voting is much stronger in public rather than private voting. If the expression of preferences is important, then allowing such preferences to be expressed *in public* should be deemed highly important on the institutional value view. It seems, then, that the institutional value view is, on balance, at least compatible with and (perhaps) even supportive of optional privacy rather than mandatory privacy.

One might object here that under optional privacy, citizens will have ways, and perhaps incentives, to intervene in the autonomous judgments of others. For example, A has an incentive to manipulate B to vote for A's preference, since A is now able to verify whether B has voted the way A wants her to.⁴⁰ All A has to do is to somehow make B take the option of voting in public. Because of this, optional privacy might prove to be a bad way of maintaining the autonomous judgments of citizens.

It is certainly possible that such outcomes are possible. However, if the view relies on the likelihood of this happening, the circumstances of the institutional value view would change substantially. For the view to work, it would now have to rely on the assumption that optional privacy is a worse system of maintaining the ability of citizens to vote based on their own autonomous judgments. It is not obvious that this is the case. At least some features of an optional system would enhance autonomy in ways that mandatory privacy does not. Voting in public might be appealing to some as it can function as a form of defiance or signal a form of opposition towards social trends or the current political climate. It can be a strong sign of autonomy as it would be a public way of showing one's un-influenced political stance. It would also be an expressive act – signaling that one is not afraid to express one's own political commitment in the face of conformist forces. This can be an effective and visually strong way of communicating to others the value of political autonomy – and, perhaps, inspire them to do the same. While the institutional value view might, on the balance of reasons, be suggestive of mandatory rather than optional privacy, the expressive advantages of publicity make it at least unclear whether this is the case.

⁴⁰ The incentive is that A, due to optional privacy, can verify whether his manipulative efforts towards B have been successful.

It is important to notice that all of this applies regardless of whether the institutional value view suggests that autonomy *justifies* or is *reflected in* private voting. Even if one holds the latter view, these three points of criticism still apply. It is still the case that (i) judgment autonomy can be reflected by a host of other arrangements; (ii) that it is reflected in public ways of voting that are still private; (iii) that it is reflected (equally or better) in optional privacy. Therefore, the institutional value view is deficient regardless of whether it understands autonomy as justifying or being reflected in private voting.

One might reformulate the institutional value view and think of it as a scale-view instead. At one end of the scale is the *ideal voter*. Let us call her Eve. Eve has acquired her political opinions after a critical examination of arguments and substantial amounts of self-reflection. She expresses her autonomous political judgments in her voting. At the other end of the scale is the citizen that has not developed any autonomous political opinions but merely relies, uncritically, on the political opinions of her surroundings. Let us call her Sandra. All the institutional value view has to do is to suggest that, on this scale, voting in private gets us *closer* to Eve than to Sandra.

The response to the scale-view consists of the same responses given throughout this paper. It is simply not clear, at least a priori, that the current form of mandatory, private voting always gets us closer to Eve than to Sandra. I have throughout the paper argued why this is the case. Second, it is not clear that Eve is even the appropriate kind of ideal for political arrangements.⁴¹ And, third, if the scale-view is the best option, then all the preliminary questions are asked once again: if other kinds of institutional arrangements were more conducive to getting us closer to Eve, would they be justified according to the institutional value view? If private voting were, in fact, a worse way of getting to the ideal of Eve, would the institutional value view recommend abandoning or replacing it?

Concluding Remarks

I will end with some brief concluding remarks. The objective of this paper has been, almost entirely, negative. I have argued why some of the traditional views on the value of privacy in relation to democratic politics and the practice of private voting have some substantial flaws. Such

⁴¹ At least, we would want her to display other virtues than being autonomous in her political participation.

criticism is important because these views are part of the intellectual resources that we draw on when we articulate the importance of the autonomy of electors and the protection of this autonomy. If these accounts have issues or flaws, then our thinking about these important issues will likely have issues and flaws. Understanding the limitations of our contemporary accounts is an important part of building stronger accounts. Little in this critique suggests that the autonomy of electors is not important or that institutions such as private voting are not an appropriate way of securing such autonomy. Rather, the point is that important parts of contemporary understandings of such privacy and its relation to voting do not justify *why* it is important or *how* its importance justifies the use of private voting. It is a reasonable expectation of our accounts that they should accomplish such tasks.

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COMPULSION, SECRECY, AND PAPER: A BAD COMBINATION WHEN IT COMES TO VOTING

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In this article, we argue that anyone who accepts that (1) voting should be compulsory, (2) voting should be secret, and (3) voting should be done by paper ballot ends up with a morally problematic position. In electoral systems where compulsory voting is implemented and the secret paper ballot is in place, it is impossible for officials to check if an elector has cast a valid vote. Therefore, only those who fail to show up at the polls are penalized under the law of compulsory voting. Those electors who show up at the polls but do not vote are not penalized. We argue that this practice amounts to officially sanctioned unequal enforcement of a law, and that such a practice is morally problematic. We then argue that this problem should be solved by rejecting compulsory voting in favor of true mandatory attendance, that is, a regime where the law on the books requires only showing up at the polls on election day as opposed to formally requiring that electors actually cast a valid vote. This is so since only mandatory attendance can be enforced without infringing on the secret ballot, and the law on the books ought to reflect what is actually enforced in practice.

I. INTRODUCTION

Consider these three propositions:

- (1) Voting should be compulsory.
- (2) Voting should be secret.
- (3) Voting should be done by paper ballot.

In this article, we argue that anyone who accepts (1), (2), and (3) ends up with a morally problematic position. This is our main conclusion. The problem we

have identified is that a political system that incorporates this set of propositions is committed to unequal enforcement of one of its laws. A brief summary of our argument is as follows: In electoral systems where compulsory voting is implemented and the secret paper ballot is in place, it is impossible for officials to check if an elector has cast a valid vote. This means that only those who fail to show up at the polls are penalized under the law of compulsory voting. This practice of penalizing only those electors who fail to show up at the polls, and not those electors who *do* show up but do *not* cast a vote, amounts to officially sanctioned unequal enforcement of a law. Such a practice is morally problematic.

The next section gives an account of compulsory voting and the secret ballot. Section 3 makes the case that the combination of compulsory voting and the secret paper ballot is morally problematic. The last section contains a discussion of three solutions to the problem that arises from an acceptance of (1), (2), and (3). We argue that two of these solutions are implausible and provide reasons as to why the third should be endorsed.

2. COMPULSORY VOTING AND THE SECRET BALLOT

For the purposes of this article, voting is compulsory if and only if:

- (i) Electors are legally required to vote at each election.
- (ii) Electors who fail to show up at the polling station on election day are penalized unless they can produce a valid excuse for not voting.

Australia is the most prominent example of a democracy where voting is compulsory in this sense,¹ but several Latin American countries also meet this definition.² Note that (i) excludes *mandatory attendance* regimes, such as Belgium,³ where the law on the books only requires electors to show up at the polling station, whereas (ii) excludes regimes where compulsory voting is on the books but not enforced. Mandatory attendance regimes are often classified as instances of compulsory voting, since voting secrecy means that only electors who fail to show up at the polling station are penalized for failing to vote even where the law on the books requires electors to vote.⁴

However, there is a mismatch between what the law requires and what is enforced where the law on the books requires electors to *vote*. There is no such mismatch where the law on the books only requires electors to *show up at the polls*. Since this mismatch between the law on the books and what is enforced is important to this article, and our arguments apply only to regimes where the law on the books requires electors to vote, it is desirable to adopt a definition of compulsory voting that excludes *mandatory attendance* for the purposes of this paper. For the same reason, it is desirable that the definition of compulsory voting exclude regimes where compulsory voting is on the books but not enforced.⁵

Where compulsory voting is enforced, the penalty for failing to vote is typically a small fine (e.g., AUD\$20 in Australia).⁶ Proponents of compulsory voting see it as an effective solution to a problem of low and declining turnout,⁷ and indeed compulsory voting has been found to raise electoral turnout around 13 percent.⁸ The onus is on defenders of compulsory voting to explain why high electoral turnout is desirable.⁹ Many do so by pointing out that it is mainly the socially and economically worst-off electors who fail to vote when turnout is low, and that low turnout thus threatens the political equality at the heart of democracy, since disadvantaged groups come to wield less electoral influence under low turnout.¹⁰ Proponents of compulsory voting tend to stress that they only endorse compulsory voting in “properly functioning and authentic democracies,”¹¹ which can reasonably be supposed to include voting secrecy.

SECRET VOTING

The secret ballot allows for citizens to vote anonymously in elections. This form of voting was introduced in Australia in 1856 and was passed into legislation in Britain in 1872.¹² The secret ballot, now a practice upheld in every Western democracy, is widely considered a staple of free and fair elections. The purpose of this type of voting is to insulate electors from a range of external influences—for example, bribery, intimidation, and vote-buying.¹³

The secret ballot accomplishes this by making it impossible for third parties to verify how a particular elector has voted. Since it cannot be verified *how* electors have voted, electors can more easily disregard such illegitimate external influence.¹⁴ For our purposes in this article, it is important to note that secrecy entails that no one other than the elector is allowed into the voting booth (or comparable physical enclosure) when the vote is taking place, and it is therefore not possible for officials to check whether a valid vote has been cast.¹⁵

There is relatively little discussion of the justifiability of the secret ballot, and few have argued for the use of public voting as an alternative to it. This is not to say there has been no criticism of the secret ballot.¹⁶ However, it seems safe to say, as Jon Elster does, that the question of whether the secret ballot should be implemented is a settled one in political theory.¹⁷

3. VOTING: COMPULSORY, SECRET, AND BY PAPER

Let us try to illustrate the problem of affirming that voting should be compulsory, secret, and by paper in more detail by considering three hypothetical scenarios. Consider first:

Election Day I. Voting is compulsory in state S. The electors A and B both fail to vote in a general election in S. Neither has an officially recognized excuse or justification for abstaining.¹⁸ While A is penalized, no attempt is made to penalize B for failing to vote.

It is obviously unjust that only A is penalized for failing to vote in *Election Day 1*. Since there is no difference between the conduct of A and B, who have both failed to vote, it is unjust that only A is penalized under the compulsory voting law. However, whereas A and B act the same in *Election Day 1*, there is *some* difference between the conduct of non-voters who, like A, are penalized for failing to vote and non-voters who, like B, are not penalized in actual compulsory voting systems. To see whether this difference matters, consider:

Election Day 2. Same as Election Day 1, except that A never leaves her home, while B shows up at the polling station, receives a ballot from the clerk, and then returns home without voting.

While there is some difference in the behavior of A and B in *Election Day 2*, this difference is morally irrelevant. A and B remain identical with respect to complying with the legal obligation to vote since they both fail to cast a valid vote. Therefore, we contend that *if* it is unjust that only A is penalized for failing to vote in *Election Day 1*, then it is also unjust that only A is penalized in *Election Day 2* for exactly the same reason. However, whereas *Election Day 2* does not tell us *why* only A is penalized, there is a particular reason that only non-voters who, like A, do not show up at the polls are penalized in actual compulsory voting systems. In order to see whether this makes a morally relevant difference, consider:

Election Day 3. Same as Election Day 2, except that the reason only A is penalized for failing to vote is that the secret paper ballot leaves no permissible way to determine whether B, who shows up at the polling station and receives a ballot from the clerk, has cast a valid vote.

Note that the reason why only A is penalized in *Election Day 3* is identical to the reason why only those non-voters who fail to show up at the polls are penalized for failing to vote where voting is actually compulsory and secret.¹⁹ Thus, *Election Day 3* captures the key features of the actual situation under compulsory, secret voting. Is it morally relevant that only A is penalized for the reason stated in *Election Day 3* rather than for arbitrary reasons? Not in the way that matters here. The basic moral situation remains the same as in *Election Day 2*: A and B are under the same legal obligation to vote, an obligation that neither of them complies with. Though A and B are thus identical with respect to failing to vote, only A is penalized. This is unjust.

That only A is penalized for the particular reason provided in *Election Day 3* might appear relevant to the question of whether it is unjust that only A is penalized because it is relevant to the question of who is to blame for this injustice. Unlike *Election Day 1* and *Election Day 2*, it is clear that the voting officials²⁰ are not to blame in *Election Day 3*. *Election Day 3* makes clear that the secret paper ballot leaves no permissible way to discover that B did not vote, but the voting officials are not permitted to penalize B unless they have sufficient evidence that B did not vote. However, this is not a reason to consider *Election Day 3* any less

unjust than *Election Day 2*. The fact that it would have been impermissible for the voting officials to act otherwise means only that the source of the problem is the legislation itself.²¹ When voting is secret and by paper, only those who fail to comply with a legal obligation to vote *in a particular way*, namely, by not going to a polling station, can be penalized for failing to vote. Meanwhile, others who are equally guilty of failing to vote, namely, those who go to a polling station but do not cast a valid vote, cannot be penalized due to the lack of a permissible way to discover their failure to vote. While it would have been impermissible for the voting officials to penalize B, the legislators need not have made (and kept) a law that there is a *particular, clearly identifiable way* to break, which cannot even in principle be detected through permissible means.²²

Thus, it is no less unjust that only A is penalized in *Election Day 3* than in *Election Day 2*. Elector A has a legitimate complaint against the political entity that issues the penalty. She can legitimately complain that it is unfair that she is being penalized whereas B is not penalized given that they are identical in all morally relevant respects when it comes to either complying, or not complying, with the activity that the compulsory voting law compels.

Let us now take a step back and sum up how consideration of *Election Day 1*, *Election Day 2*, and *Election Day 3* supports the assertion that accepting (1), (2), and (3) is morally problematic. They do this in the following way. The scenario described in *Election Day 1* is obviously unjust. The situation described in *Election Day 2* is unjust if the situation described in *Election Day 1* is unjust. The situation described in *Election Day 3* is unjust if the situation described in *Election Day 2* is unjust. Thus, the situation described in *Election Day 3* is unjust. Since the situation described in *Election Day 3* is also identical in all morally relevant respects to real-world situations in which voting is compulsory, secret, and done by paper, it can be concluded that the state of affairs in such situations is unjust. Moreover, the reason why the state of affairs in such situations is unjust is identical to the reason why the situation described in *Election Day 1* is unjust: namely, that unequal enforcement of the compulsory voting law is officially sanctioned.

Election Day 1, 2, and 3 describe a situation that violates the following plausible principle in the philosophy of law:

PI: A state that legally requires citizens to X on pain of penalty Y should seek to impose Y on all, and only, those citizens who fail to X.²³

PI does not require the state to successfully identify everyone who fails to X and bring them to justice, but it does require the state to make a reasonable effort to do so. Suppose, for instance, that in order to X (e.g., cast a vote), one must first perform X₁ (e.g., show up at the polls), such that those who fail to X₁ form a subset of those who fail to X.²⁴ In that case, the state would violate *PI* if it legally required citizens to X but sought to impose Y only on citizens who failed to X₁. There are at least three reasons to accept *PI*. First, it is a matter of telling the truth.²⁵ The

law should mean what it says. If the state seeks to impose the prescribed penalty for failing to X only on citizens who fail to X₁, the legal requirement to X on pain of penalty Y does mean what it says, but states should not mislead their citizens about what conduct it intends to penalize. Second, and related, the law should be such that citizens can rely on it to guide their conduct, but the law can serve this function only if it means what it says.²⁶ Third, the state should treat its citizens equally.²⁷ A state that seeks to impose the penalty for failing to X only on those who fail to X₁ does not treat citizens who fail to X₁ and citizens who fail to X for reasons *other* than failing to X₁ equally. Rather, it treats citizens who fail to X₁ unjustly worse than citizens who fail to X for reasons *other* than failing to X₁.

The situation described in *Election Day 3* also violates another principle that we should accept for many of the same reasons as *P1*, namely:

P2: Laws should not be such that they are destined to be under-enforced.²⁸

The potential for unequal enforcement is a problem of any under-enforced law,²⁹ but when a law is destined to be under-enforced for the reason that a *particular, clearly identifiable way* of breaking it cannot, even in principle, be detected through permissible means,³⁰ unequal enforcement is guaranteed. This is true of compulsory voting when combined with the secret paper ballot. Since the secret paper ballot leaves no permissible way to enforce a legal obligation to vote against those who show up at the polls but do not cast a valid vote but does leave a permissible way to enforce that obligation against those who do *not* show up at the polls, compulsory voting is guaranteed to be unequally enforced, if it is to be enforced at all.³¹ Therefore, compulsory voting laws simply *cannot* mean what they say while the secret paper ballot is in place. In Australia, Sec. 245(1) of The Commonwealth Electoral Act states that "it shall be the duty of every elector to vote at each election,"³² but this is clearly not what the law means in practice.

One might object that it is equally true of many other laws that many offenders predictably escape detection because making a reasonable effort to detect all violations is too costly for authorities. Yet these laws are widely considered more or less unproblematic. For instance, many motorists who exceed the speed limit while driving avoid detection. This is perfectly predictable, since more effective enforcement would be very costly. Yet this does not make the speed limits problematic. Why then consider compulsory voting problematic because some offenders cannot be detected? First, one might reply that compulsory voting cannot even *in principle* be equally enforced. Something similar is not true of traffic offenders who are not detected because of a lack of resources. Second, even when states do not commit the resources necessary to make a reasonable effort to catch all traffic offenders, it is not the case that no attempt is made to detect those who exceed the speed limits in a particular, clearly identifiable way (e.g., in region X or at time T), such that it is perfectly predictable—and common knowledge—that one can exceed the speed limits in that way with impunity. By

contrast, the unequal enforcement of compulsory voting is such that there is a particular, clearly identifiable way of failing to vote that everyone knows will not, indeed cannot, be penalized. Accepting that no attempt is made, or can be made, to penalize those who attend the polls, but do not vote, under compulsory voting is therefore not like accepting that some traffic offenders remain undetected because the state commits less resources than necessary to detect them all. Rather it is similar to a situation, where (e.g.) speed limits are not enforced on Tuesdays, and this is common knowledge. We take it that such a situation would indeed be problematic.

4. THREE SOLUTIONS TO THE PROBLEM

Our argument is interesting from a theoretical perspective. It is also of practical relevance to policy makers because there are examples of political systems that accept (1), (2), and (3). For example, the Australian political system is one in which (1),³³ (2),³⁴ and (3) are endorsed.³⁵ Furthermore, a report of the Australian Electoral Commission on whether Australia should adopt electronic voting—that is, abandon (3)—draws the following conclusion:

This paper does not suggest that Australian electoral authorities should at this stage embark on a program to fully replace the easily understood, publicly and politically accepted efficient, transparent paper ballot system that currently exists.³⁶

This conclusion recommends that the Australian political system that accepts (1) and (2) keep accepting (3) as well, at least for now. We contend that accepting (1), (2), and (3) is morally problematic. The reason for this is that it leads to officially sanctioned unequal enforcement of the compulsory voting law.

There are at least three solutions to the moral problem that arises from an acceptance of (1), (2), and (3). Consider first the option of rejecting (2) by abandoning or loosening the secrecy of the ballot. By doing so, it becomes possible to verify whether an elector has cast a valid vote. Our discussion of this solution is relatively brief, as we expect that very few will endorse this as a solution to the problem identified in this article. As mentioned earlier, few have criticized the secrecy of the ballot, and, with the exception of Engelen and Nys, none of these critics includes defenders of mandatory voting. Also, none of these critics criticizes the secret ballot for the reasons stated in this article. If one does reject (2) *because* of our argument, then one risks introducing bribery, vote-buying, and intimidation into the voting process, which introduces more, and, arguably, bigger problems than the rejection of (2) intends to solve. We predict that few will be willing to do so, and nothing expressed in published writings suggests otherwise.

Consider next the option of rejecting (3) and endorsing some sort of electronic voting system that respects the secrecy of the ballot but is compatible with

verifying that an elector has cast a valid vote. Electronic voting comes in many different shapes and forms today.³⁷ We will focus our attention on what we take to be the two most advanced electronic voting technologies currently in use (in August 2019).

First, the Voatz voting application is an application that enables voting via a mobile phone.³⁸ The application utilizes blockchain technology, and it has been used in 2018 and 2019 elections for political office in West Virginia, Utah, and Denver. The technology allows particular groups of electors, for whom it would otherwise be very difficult to cast a vote, to cast a vote. Such groups are mainly made up by electors who cannot be physically present at the poll, for example, military personnel stationed overseas.³⁹ Two features of this specific type of electronic voting stand out as severely compromising to the secret ballot. First, there are no restrictions on where the registered elector can cast her vote. She can cast it in a public setting with other individuals reviewing her entire voting process. Secondly, the software sends a receipt of the vote cast to the elector for her to be able to verify that her vote has been registered and counted. This receipt includes information about what party/individual she has voted for. This means that the elector has a verified proof of her vote and that individuals/organizations that are interested in coercing/bribing/rewarding her on the basis of her voting record can now demand access to this receipt to verify that the elector has voted in a particular way.⁴⁰

Second, Estonia is arguably the global leader when it comes to the implementation of electronic voting. In the Estonian parliamentary election in 2019, there were 887,420 eligible electors, and 247,041 valid votes were cast by mobile phone.⁴¹ Estonia uses a different technology from the one provided by Voatz, but given that electors in Estonia can also cast their vote from whatever (public) location they choose, the secrecy of the ballot in Estonia is severely compromised for a reason similar to the one described above.

A general takeaway from these considerations consists in appreciating that anyone who wishes to preserve the secret ballot can accept various forms of electronic voting only on the conditions that (a) the voting process takes place in privacy, and (b) no proof exists with respect to how a given individual has voted (that is, no information exists that links an elector to a particular vote). It is difficult to see how (a) can be met without keeping the standard voting infrastructure intact that consists in having polling stations that are staffed with voting officials and where each elector must cast her vote in privacy within a voting booth. In other words: electronic voting from a mobile phone/tablet/desktop computer is incompatible with preserving the secrecy of the vote if the elector can cast her vote anywhere and anytime (during the election window).

Keeping the standard voting infrastructure in place is, however, not something that is desirable to advocates of electronic voting involving mobile phones/tablets/desktop computers. The primary motivation for moving the voting process

away from the paper ballot and onto mobile phones/tablets/desktop computers is to make it easier (and cheaper) for electors, especially those belonging to minority groups, to vote. By reducing the opportunity costs of voting, the hope is to drive up electoral turnout.⁴² In addition to this, the voting software provided by Voatz does not meet condition (b). Neither does the software used in Estonia.⁴³ It would be possible to design an electronic voting system without such a verifying mechanism, but this risks creating a worry among electors about whether their vote has been recorded correctly, and as an empirical fact, many electors have this worry in the sense that they distrust that electronic systems count their vote.⁴⁴

It is worth noting that in virtue of not meeting requirement (b), both the Voatz election software and the software used for elections in Estonia facilitate a market in votes. To see this, consider this illuminating passage: "For a functional vote market to exist, with prospective buyers being readily able to trade with prospective sellers, the voting system must be designed either to enable votes to be transferred between persons or for the way in which a vote is cast to be accessible to third parties."⁴⁵

Considering all this, we suggest that a plausible way of avoiding the moral problem that arises from an acceptance of (1), (2), and (3) does not consist in rejecting (3) and endorsing either of the two electronic voting systems discussed above. However, we recognize that the moral problem would be solved by migrating to an electronic voting system that keeps in place the standard voting infrastructure involving polling stations and private polling booths and that uses an electronic voting device that meets two criteria. First, it makes it possible for officials to verify that each elector has cast a valid vote. Second, it does not generate a link between a particular voter and a particular vote that can be accessed ex-post by officials or the voter. To the best of our knowledge, no such electronic voting system currently exists, but designing such an electronic voting system is in principle possible.

The last option is to reject (1). This can mean rejecting (1) in favor of fully voluntary voting. Critics of compulsory voting such as Jason Brennan,⁴⁶ Annabelle Lever,⁴⁷ and Ben Saunders⁴⁸ will presumably be happy to endorse this option. However, such critics already reject compulsory voting for reasons other than the problem we discuss in this article, whereas defenders of compulsory voting will presumably want to explore solutions other than a total abandonment of compulsory voting.

Thus, rejecting (1) in favor of fully voluntary voting is not a very interesting response to the problem we explore in this article. However, one can also reject (1) in favor of *true* mandatory attendance, that is, a regime where the law on the books requires only showing up at the polls on Election Day. Unlike the fairly narrow definition adopted by this article,⁴⁹ defenders of compulsory voting rarely distinguish between legally requiring citizens to vote and legally requiring

citizens to show up at the polls. Ironically, such defenders are exceedingly fond of claiming that compulsory voting is *really* “just” compulsory attendance,⁵⁰ *precisely* because the secret ballot means that only those who fail to show up at the polls can be penalized for failing to vote anyway.⁵¹ Thus, many proponents of compulsory voting might barely even consider a rejection of (1) in favor of *true* mandatory attendance a revision of their position. But they should. Indeed, those claiming that compulsory voting is really compulsory attendance appear strangely unconcerned about the difference between a *law that means what it says* and a *law that says one thing but must inevitably mean something else in practice*. To be fair, Hill, for one, has critically noted the mismatch between what Australian law says and what is enforced and has suggested “clarifying” that only showing up at the polls is required by Australian law,⁵² though this would be changing rather than clarifying the law.⁵³ But evidently, she considers this problem to be too insignificant to prevent Australia from being a model example of compulsory voting.⁵⁴ However, as we have argued above, it is neither a matter of indifference nor of relative insignificance whether citizens can trust that the law on the books reflects what is actually enforced. If compulsory *attendance* is all that can be permissibly enforced, then showing up at the polls is all the law on the books should formally demand. Thus, rejecting (1) in favor of mandatory attendance is a good solution to the problem that arises by accepting (1), (2), and (3). However, those proponents of compulsory voting who have claimed that compulsory voting is really just mandatory attendance even when the law formally requires citizens to vote should not pretend that this is not a revision of their view. Moreover, it is a revision which has the implication that the law on the books should be revised wherever it requires that citizens *vote*, as it does in Australia, as well as in Argentina,⁵⁵ Brazil,⁵⁶ Ecuador,⁵⁷ and Peru,⁵⁸ to name a few other examples.

One could also reject (1) in favor of an entirely unenforced law that formally states that it is the duty of every elector to vote. Such a law would retain element (i) from the definition of compulsory voting, but it would leave out element (ii) of that definition. If the law stipulates some penalty for failing to vote, then this is no improvement over compulsory voting. “Dead letter laws” stating that a particular type of conduct will be penalized, but which are not enforced, are problematic for many of the same reasons unequally enforced laws are problematic. However, we could imagine a law stating that electors are required to vote, but without having any penalty for failing to vote. This *would* be a law that can mean what it says even when the ballot is secret. However, it is difficult to see the point of having it, since the empirical literature suggests that the existence of a legal requirement to vote is effective at raising turnout only if it is enforced.

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NOTES

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1. Commonwealth Electoral Act 1918, Sec. 245.
2. Including Argentina, Brazil, Ecuador, and Peru. See International Institute for Democracy and Electoral Assistance (“What Is Compulsory Voting?”).
3. See Electoral Code of Belgium, Articles 207–210, https://www.legislationline.org/download/id/5841/file/Belgium_ELECTORAL%20CODE%20as%20of%202014_en.pdf (accessed August 26, 2019). Though Articles 207 and 209 do actually employ the words “voting” and “abstention,” Article 210 is explicit that only failure to show up at the polls is penalized, as it states that “a first arbitrary *absence* is penalized with a reproof or fine of five to ten euros depending on the circumstances” (emphasis added).
4. See Brennan and Hill (“Part II—Compulsory Voting Defended,” 115–16).
5. Such as Bolivia, Bulgaria, Egypt, Costa Rica, Dominican Republic, Mexico, Paraguay, and Thailand. International Institute for Democracy and Electoral Assistance, “What Is Compulsory Voting?”
6. Commonwealth Electoral Act 1918, Sec. 245 (5b).
7. Engelen, Bart, “Why Compulsory Voting”; Brennan and Hill, “Part II—Compulsory Voting Defended”; Saunders, “Democratic Turnout ‘Problem.’”
8. Birch, *Full Participation*, 94.
9. Cf. Brennan (“Part I. Medicine Worse,” 5–6).
10. Engelen, “Why Compulsory Voting, 25; Brennan and Hill, “Part II—Compulsory Voting Defended,” 133ff.; Lijphart, “Unequal Participation.”
11. Brennan and Hill, “Part II—Compulsory Voting Defended,” 114.
12. Reeve and Ware, *Electoral Systems*, 106.
13. Buchstein, “Public Voting,” 15–51; Dahl, *On Democracy*; Reeve and Ware, *Electoral Systems*.
14. Engelen and Nys, “Against the Secret Ballot,” 490–507.
15. There are exemptions to this rule. Electors with physical or mental challenges can, if requested, be assisted in the voting-booth; cf. Commonwealth Electoral Act 1918, Sec. 202AB(1) for Australian law on this area.
16. Barber, *Strong Democracy*, 187–88; Brennan and Pettit, “Unveiling the Vote”; Engelen and Nys, “Against the Secret Ballot”; Mill, *Considerations on Representative Government*; Sturgis, “Is Voting a Private Matter?”
17. Elster, “Introduction,” 11.
18. That is, what Australian law, Commonwealth Electoral Act 1918, 245 (5b), calls “a valid and sufficient reason for the failure [to vote].”

19. Birch, *Full Participation*, 2; Engelen, "Why Compulsory Voting," 30; "Why Liberals Can Favour," 219; Brennan and Hill, "Part II—Compulsory Voting Defended," 115–16; Lacroix, "Liberal Defence," 193; Lijphart, "Unequal Participation," 2.

20. Or whoever is responsible for the enforcement of compulsory voting.

21. And, thus, the legislators who make (and keep) the law are the ones to blame.

22. This particular and clearly identifiable way to break the law in question consists in showing up at the polls on election day but not casting a valid vote. If only a law like that could serve the ends of compulsory voting, and those ends were sufficiently important, then perhaps penalizing only those who fail to attend the polls would be the lesser of two evils. However, section 4 will show that the law need not be like that to serve the ends of compulsory voting.

23. Cf. Simester and Von Hirsch, *Crimes, Harms*, 9–10.

24. That is, all who fail to X_1 fail to X , but not all who fail to X fail to X_1 .

25. Simester and Von Hirsch, *Crimes, Harms*, 10.

26. Simester and Von Hirsch, *Crimes, Harms*, 10.

27. Simester and Von Hirsch, *Crimes, Harms*, 10.

28. Cf. Moore ("Liberty's Constraints," 203).

29. Moore, "Liberty's Constraints," 203.

30. As opposed to laws that are destined to be under-enforced for the reason that *all* violations are difficult to detect.

31. Note that entirely unenforced "dead letter" laws are problematic in their own right; Moore, "Liberty's Constraints," 203; Simester and Von Hirsch, *Crimes, Harms*, 9–10.

32. Commonwealth Electoral Act 1918, Sec. 245(1).

33. Commonwealth Electoral Act 1918, Sec. 245.

34. Commonwealth Electoral Act 1918, Sec. 200DE; Sec. 233; Sec. 271; Sec. 323.

35. Commonwealth Electoral Act 1918, Sec. 209, is most relevant here, but note also that whenever the word "ballot" appears in the headline of a section of the Commonwealth Electoral Act (thirty-eight times), the headline either says *ballot paper(s)* or *ballot-box(es)*, clearly indicating a presumption that voting is by paper. Moreover, the fact that Sec. 202AB (1) explicitly says that *sight-impaired electors* may vote using electronically assisted voting methods seems to indicate that the norm is voting by paper.

36. Barry et al., *Electronic Voting*.

37. For an overview of these forms, see Peralta, "Electronic Voting."

38. <https://voatz.com>.

39. <https://voatz.com>.

40. "In addition, Voatz generates a voter-verified audit trail with each vote cast. Upon casting a vote, voters also receive an automatic, digitally-signed receipt with their selections in order to review that their vote was recorded properly. The election organizer also receives an anonymized copy of the digital receipt, ensuring that a post-election audit

may be conducted between the paper trail, the anonymized receipt, and the blockchain” (<https://voatz.com>).

41. “Statistics about Internet Voting in Estonia,” <https://www.valimised.ee/en/archive/statistics-about-internet-voting-estonia> (accessed August 22, 2019).

42. Susskind, “Decrypting Democracy.”

43. “With the help of a verifying application that can be downloaded to a smart device, each voter can check if the vote that reflects their will has reached the i-vote collector correctly” (Elections in Estonia, “Questions about the Reliability of i-Voting”).

44. Pieters, “Verifiability of Electronic Voting.”

45. Taylor, “Ethics of Voting,” 9. It should be mentioned that Estonia has taken steps to increase the opportunity costs for anyone interested in buying votes or coercing/bribing electors into voting in a particular manner. In the Estonian system, electronic voting (“i-voting,” as it is called) is possible around the clock during the days of advance voting, from the tenth until the fourth day before Election Day. It is possible for each elector to cast numerous i-votes, but only the last one will count. Moreover, a standard paper ballot can be cast at a polling place until 8 p.m. of the last day of advance voting. An i-vote cannot be changed on Election Day. In cases where both an i-vote and a paper ballot have been cast, it is the latter that counts. See Elections in Estonia (“Stages of i-Voting”). With these measures in place, illegitimate influencing of individual electors (including vote buying) will be costly because the influencer would need to be able to control at least three things: that a (correct) i-vote has been cast, that no additional i-vote has been cast, and that no paper ballot has been cast on the last day of advance voting. Exercising such control is possible, over both a single elector and a multitude of electors, but it would be costly in both scenarios (dramatically so in the latter one). What these considerations show is that Estonia is not an example of a political unit that has replaced the paper ballot with electronic voting. In Estonia, electronic voting is merely an alternative to paper ballot voting, and in terms of judicial/political legitimacy, a vote by paper ballot trumps one by i-vote. Moreover, the possibility of casting a paper ballot in Estonia is the final, and arguably most effective, defense against a dilution of the secret ballot. Without the possibility of casting a paper ballot, the secrecy of the vote in Estonia would be compromised. Someone who endorses (2) could therefore endorse the Estonian system of voting, but this would not be an automatic endorsement of electronic voting but instead an endorsement of voting by paper ballot to which there exists an electronic alternative, which does not equal the non-electronic one in judicial/political legitimacy.

46. Brennan, “Part I. Medicine Worse Than the Disease?”

47. Lever, “Liberal Defence”; “Liberalism, Democracy”; “Compulsory Voting”; “Democracy and Voting.”

48. Saunders, “Increasing Turnout”; “Democratic Turnout ‘Problem.’”

49. For reasons explained in section 2.

50. Note that this is actually true when we speak of compulsory voting in countries such as Belgium where the law on the books merely requires citizens to show up, but the authors seems to think that this is generally true of compulsory voting.

51. Birch, *Full Participation*, 2; Engelen, "Why Compulsory Voting, 30; "Why Liberals Can Favour," 219; Brennan and Hill, "Part II—Compulsory Voting Defended," 115–16; Lacroix, "Liberal Defence," 193; Lijphart, "Unequal Participation," 2.

52. Hill, "Compulsory Voting in Australia," 448–49.

53. We struggle to see how Sec. 245(5b) of the Commonwealth Electoral Act is in any way unclear that citizens are required to do more than show up at the polls, when it states that "it is an offence to fail to vote at an election without a valid and sufficient reason for the failure" (Commonwealth Electoral Act 1918). Indeed, Hill's evidence for this "uncertainty" is the existence of some debate about whether Australian law requires citizens to cast a valid vote (as opposed to depositing a spoiled, blank, or otherwise invalid ballot in the ballot box) (Hill, "Compulsory Voting: Residual Problems," 448–49). It is indeed unclear whether Australian law requires citizens to cast a valid vote, but this is obviously not equivalent to uncertainty about whether citizens are required to vote.

54. Hill, "Compulsory Voting in Australia"; Brennan and Hill, "Part II—Compulsory Voting Defended," 121–24.

55. Argentina: Código Electoral Nacional (2012–11–02), Articles 12 and 125, <http://aceproject.org/ero-en/regions/americas/AR/argentina-national-electoral-code-19.945-as/view> (accessed August 26, 2019).

56. Brazil: Electoral Code/"Código Eleitoral—Lei N° 4.737," Articles 6–8, <http://aceproject.org/ero-en/regions/americas/BR/brazil-lei-4.737-2018/view> (accessed August 26, 2019).

57. Ecuador: Ley organica electoral, código de la democracia, 2018, Articles 11(1) and 292, <http://aceproject.org/ero-en/regions/americas/EC/ecudaor-ley-organica-electoral-codigo-de-la/view> (accessed August 26, 2019).

58. Perú: Ley orgánica de elecciones (2011–05–20)—Desactualizada, Articles 9, 17, 21, 26 Article 9; see also Articles 17, 21, and 26, <http://aceproject.org/ero-en/regions/americas/PE/leyes-electorales/peru-ley-26859-organica-de-elecciones-2011-desactualizada/view> (accessed August 26, 2019). See also Article 31 of the Peruvian constitution, which establishes that "voting is personal, equal, free, secret, and compulsory" (Democratic Constituent Congress, *Political Constitution of Peru*, Article 31).

59. Simester and Von Hirsch, *Crimes, Harms*, 9–10.

60. Birch, *Full Participation*, 93–95.

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Not So Secret After All: How Big Data Threatens the Secret Ballot and What (not) To Do About It

Abstract

The amount of data about electors being collected and analyzed by political campaigns and private companies makes it possible to infer, with a rather high probability, how individual electors have voted in previous elections and referendums. In this paper, we show that this practice threatens the secret ballot. This is so even though the voting-choices of electors are not unveiled directly, but rather statistically inferred through Big Data Analytics. We discuss three possible ways to counter this threat and argue that there are good reasons to be hesitant to implement any of these solutions and any combination of them. We thus conclude that the threat posed by Big Data Analytics to the secret ballot remains.

Introduction

In the aftermath of the 2016 US presidential election and the Brexit referendum in the UK, it came into public awareness that a company called Cambridge Analytica had cooperated with the Trump campaign and the Leave campaign, respectively, in order to individually target so-called ‘persuadable’ electors through political marketing on social media. Huge amounts of data about millions of people were collected through Facebook, and Big Data Analytics¹ (BDA) was employed on this data, to find correlations that could be used to create political profiles on electors. These profiles were then used to determine which political advertisement was most likely to persuade each elector to vote in a certain way (Susser et al. 2018). There are several potential problems with how Cambridge Analytica and the political campaigns used personal data and BDA to influence the outcomes of these elections. One potential problem is that the Facebook users did not consent to their data being used for this purpose. Another potential problem is that the practice of targeting electors with tailored political advertisements while making sure they did not see advertisements from opponents, may have amounted to wrongful manipulation. However, there is also a third, largely unnoticed² potential problem, namely that estimating with a rather high degree of probability how electors voted in previous elections and referendums³ threatens the secret ballot.

¹ We explain in section II what we mean by BDA.

² Rubenstein 2014, Moore 2019 and others have, however, paid some attention to this problem.

³ Throughout the paper, we write about elections. All our points also apply to referendums, unless explicitly noted otherwise.

In this paper, we defend the view that BDA in fact threatens the secret ballot by estimating, with a rather high degree of probability, how electors have voted in previous elections. One plausible reason why this problem remains largely unnoticed in the literature is that BDA does not *directly* reveal electors' voting-choices, but merely draws *probabilistic inferences* about them. On the face of it, it seems to make a relevant difference whether votes are revealed directly or through probabilistic inferences. To obtain an intuitive grasp of the difference, imagine that Billy looks into Smith's private medical records and discovers that Smith has diabetes. Billy has now come to know of Smith's diagnosis. Now, imagine instead that Billy has hundreds of data-points about Smith and, based on these data-points, Billy *infers* that Smith has diabetes. The way in which BDA poses a threat to the secret ballot is like this second case.

One central difference between direct observation and probabilistic inference is that in the latter case electors have what we term *plausible deniability*. Even if there is a ninety percent probability that Billy voted for the Republicans in the previous election, it is still possible for him to plausibly deny doing so. The condition of plausible deniability is not present if electors' votes are revealed directly. For example, marked ballots would leave electors with no reasonable opportunity to deny their voting-choice.

We try to show that pointing to plausible deniability is not sufficient to refute the view that BDA threatens the secret ballot. The shortage of literature on this threat means that there are few explicitly defended normative positions concerning the relation between voter secrecy and BDA. This also means that there are few suggestions as to how voter secrecy can be maintained in the era of BDA. At the end of this paper, we discuss several suggestions but argue that there are good reasons to be hesitant to implement any of them.

The paper is structured as follows: In section I, we describe the most common worries about public voting. In section II, we explain what BDA is. In section III, we clarify how, and to what extent, BDA threatens the secret ballot. In section IV, we discuss solutions to the threat posed to the secret ballot by BDA. Finally, in section V we make a few concluding remarks.

I The Secret Ballot

Before we move on to our central task of showing how BDA threatens the secret ballot, we will briefly sketch out what we mean by 'secret ballot', and what the standard justification for the secret ballot is. By saying that the ballot is secret, we mean that it is impossible, or at least extremely difficult, for person X to know what person Y has voted without person Y

communicating how person Y voted to person X. We use the word ‘secret’ in a descriptive way as opposed to a normative way. When we say that BDA threatens the secret ballot, this does not imply that anyone is behaving wrongfully. When voting is not secret according to the above definition, we say that voting is public. Several distinct normative worries are associated with public voting. For example:

A: Public voting makes it possible to coerce voters to vote in specific ways, or buy their votes (Justesen et al. 2017; Mares 2015, 3-4).

B: Public voting makes it easier to manipulate voters through microtargeting or similar means (Susser et al. 2018)⁴.

C: Public voting violates citizens' right to privacy (Lever 2007; 2015).

The standard justification for the secret ballot is that it avoids some or all of the worries listed in A through C. Due to these worries regarding public voting, secrecy is often taken to be an integral part of the fairness and legitimacy of democratic elections. This view has been expressed by democratic theorist Robert Dahl, who has suggested that countries without secret ballot cannot be judged to have fair and free elections (Dahl 1998, 96). A similar verdict is reached by Dennis Thompson, who attributes the reduction of illicit voter influences to the success of the secret ballot (Thompson 2002, 66). The secrecy of the vote is also encoded in the Universal Declaration of Human Rights. Article 21, (3)⁵ states:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by *secret vote* or by equivalent free voting procedures.⁶

As far as we know, among the countries which utilize voting as part of the political decision-making process, only one country does not do so in secret – namely Nigeria (Azinge 1994). Upholding the secrecy of the ballot is thus almost universally viewed as a very important part of securing the procedural fairness and legitimacy of the democratic system. Although the standard view is that the ballot ought to be secret, a few scholars have expressed criticism of this way of voting (see Brennan & Pettit 1990; Sturgis 2005; Engelen & Nys 2013). Given that

⁴ Susser et al. do not discuss open voting explicitly, but they describe how microtargeting based on Facebook data about e.g. people's political views might affect the outcomes of elections. Microtargeting is the practice of collecting data about individuals, and then using these data to show individuals ads that are tailored – based on the individual's preferences – to make each individual more likely to buy the product, vote for the party, or whatever the ad is about (see Borgesius et al. 2018).

⁵ See <https://www.un.org/en/universal-declaration-human-rights/> (Accessed March 5, 2020).

⁶ Italics added.

the secrecy of the ballot is almost universally celebrated in the literature, that it is written into the Universal Declaration of Human Rights, and that almost all contemporary democracies allow or mandate electors to cast their votes in secrecy, it is very important to discuss any threat to de facto secret voting, like the one posed by the use of BDA.

If BDA threatens the secret ballot, as we argue it does, then it is relevant to investigate whether the normative worries about public voting are also relevant here. Surprisingly, almost all of the worries are relevant (although not equally). We will discuss this in more detail in section III, but first, we will explain what BDA is, and how accurately it can predict how electors vote.

II Big Data Analytics

Political campaigns are interested in knowing individual electors' political preferences⁷ so that they can either better persuade them to vote in accordance with the campaign's agenda (or at least not in accordance with opponents' agenda), or better change their political platforms so they better reflect the preferences of electors. In order to obtain knowledge about individual electors' political preferences, it is necessary to collect data about them. Although political campaigns may have collected data about electors for a very long time, two new features of electoral data collection can be identified: First, the data is often collected and processed digitally. Second, the amounts of data being collected and processed are substantial. Some of the data processing is done using advanced algorithms, which can be trained to find correlations in the datasets, which would be extremely cumbersome or impossible for humans to find manually. We count any such algorithm under the rubric of 'BDA'. For present purposes, it is not necessary to dive into the technical details of how BDA works. It is sufficient to note that the algorithms can find statistical correlations in the datasets and perform accurate probabilistic inferences based on these correlations (Nickerson & Rogers 2014). Political campaigns use BDA to determine whom to target with political content leading up to elections. This is often done through so-called microtargeting, where individual electors are targeted with advertisements, often on social media, specifically tailored to their personal political preferences and the likelihood of persuasion (Papakyriakopoulos et al. 2018).

⁷ Political preferences can be preferences about concrete policy proposals, preferences about certain ideological positions, preferences about certain party political alliances etc.; anything that political campaigns can use to better determine how electors will vote, and how they might be persuaded to vote according to the campaign's agenda.

Due to the secret ballot, it is close to impossible for political campaigns to know with *certainty* how any individual elector – let us call him Smith – voted in the previous election. Instead, political campaigns rely on inferences based, *inter alia*, on data that is not necessarily itself political in nature. For example, the car Smith drives reveals a relatively accurate picture of Smith’s political preferences. If Smith drives a sedan, he is much more likely to have voted for the Democrats in the previous election, while he is much more likely to have voted Republican if he drives a pickup truck (see Gebru et al. 2017). Combinations of other types of easily available data points about Smith, such as ethnicity, religion, gender, sexuality, age, job, income, address, marital status, family size, language skills, and education level can reveal, with a very high degree of accuracy, how Smith voted in the previous election⁸. This is the case because certain demographic characteristics are highly correlated with certain voting behaviors. According to *The Economist* and YouGov, there is a 97 percent chance that an American voter has voted for the Democrats, if the voter in question fits the following criteria: Is a black male, who does not believe in reincarnation, is an atheist, is straight, is between 45 and 64 years old, is not a regular churchgoer, is married, has children, has a college degree, earns \$30,000-\$64,000 a year, lives in a city in the Midwest and speaks Spanish⁹. *The Economist* has a tool on their website, where anyone with internet access can plot in certain data points about electors, and the tool will then give the probability of an elector with that description voting for, say, the Democrats (ibid.).¹⁰

Note that the probability of 97 percent is reached by having access to a relatively small number of data points about an individual elector. Imagine how accurate the inferences can be if one has access to huge numbers of data points about individual electors like political campaigns do. The Republican National Committee and the Democratic National Committee each have more than 900 data points on every single American elector (Moore 2019). There is no reason to think that BDA will not become even more sophisticated and accurate as more data is collected and technology evolves and expands.

⁸ Attributes like age and gender are also easily predictable based on e.g. web browsing logs (Hu et al. 2007), and attributes like gender, sexual orientation, religious beliefs, and ethnicity are highly predictable based on people’s Facebook ‘likes’ (Kosinski et al. 2012). Thus, with access to web browsing logs alone, it is easy to predict many of the attributes which again can be used to predict electors’ voting choices with high accuracy.

⁹ See <https://www.economist.com/graphic-detail/2018/11/03/how-to-forecast-an-americans-vote> (Accessed March 9, 2020). This particular algorithm calculates the probability that American voters will vote in a particular way in the *next* election. This does not make a substantial difference, since, all else equal, it is harder to predict how people will behave in the future, than it is to determine how they behaved in the past.

¹⁰ A similar tool has been developed by the New York Times. See <https://www.nytimes.com/interactive/2019/08/08/opinion/sunday/party-polarization-quiz.html> (Accessed March 5, 2020).

III The Threat to the Secret Ballot

This section is devoted to the task of showing exactly how BDA threatens the secret ballot. When we say that BDA ‘threatens’ the secret ballot, we mean it in a descriptive way. The secret ballot is threatened if someone forms a sufficiently strong epistemic relation to the fact of what another elector has voted. If the epistemic relation in question is, for instance, *certainty* or something close to it, then we say that the ballot is not just threatened, but *revealed*. We do not say exactly how accurate the inference must be to count as a threat or a revelation, respectively. Nothing in our argument hangs on this. But if an inference is as accurate as the ones that can be found on *The Economist*’s website, then we think it is fair to say that it amounts to at least a threat. As mentioned, the threat to the secret ballot posed by BDA concerns *probabilistic inference* rather than direct observation, as we saw in the earlier example with Billy and Smith. The idea is that if the accuracy of the inference is sufficiently high, then there is a threat to the secret ballot. The question that confronts us is the following: Does it make a relevant difference that BDA estimates people’s voting-choices qua probabilistic inference rather than directly revealing them?

One *prima facie* relevant difference is that of plausible deniability. Imagine observing the votes of electors directly by the use of video cameras in the voting-booth, compared to inferring, through the use of BDA, what electors voted based on their demographic data. In the first case, electors have no room for plausible deniability. They cannot plausibly deny that they voted according to what the video cameras revealed. In the second case, voters can still plausibly deny their voting-choice, at least if the inference is not extremely accurate. In the case of observing how electors vote using video cameras, it seems that the ballot is straightforwardly revealed and not only threatened. The difference seems to be explained by the fact that video cameras *directly observe* how electors voted, which introduces a degree of *certainty* that is not present in the case of probabilistic inferences¹¹.

We contend, however, that BDA threatens the secret ballot, even if the electors in question *do* have plausible deniability. Imagine that someone puts one video camera in each voting booth. Imagine further that there is a 70 percent probability that the video cameras are

¹¹ What does the work here is the ability to link individual voters to their individual votes with a high degree of certainty. Directly *observing* the vote (as is the case with video cameras for example) is not the deciding factor. For example, if someone is in the possession of the DNA of voters they could analyze each ballot and find out who cast each vote. This process would, with a degree of certainty, link each voter to their specific vote. This is a clear revelation of the ballot, even though no one is directly observing how citizens voted. Interestingly, revelations of this sort have occurred in the past (Mares 2015, 2-4).

truthfully showing electors' votes and a 30 percent probability that they are showing a fake video recording. Under such a scenario, plausible deniability is still upheld for all electors. They can plausibly deny that the recording is telling the truth about how they voted. Regardless of this, the secret ballot has clearly been threatened. One objection to this view is that electors *do not* have plausible deniability since there is only a thirty percent chance that the video cameras showed a fake recording. However, BDA can reach the same degree of probability. There is a difference between the case of installing video cameras in voting-booths, and the case of making probabilistic inferences about electors' voting-choices. The difference is that in 70 percent of cases, the video recordings *directly* show electors' true voting-choices, while probabilistic inferences, qua probabilistic, never directly show any elector's true voting choice. However, in the case of the video cameras, each elector still has plausible deniability, because it is very difficult to know when the video recording is real and when it is fake. This shows that the secret ballot can be threatened, even if *all* voters have plausible deniability. Note, however, that even if we are mistaken, and the secret ballot is not threatened when electors have plausible deniability, it only shows that the secrecy of fewer electors' votes is threatened. Many voters *do not* have plausible deniability, because the inferences like the ones that can be found on *The Economist's* website are very accurate. If the accuracy approaches 100 percent, it is strange to say that that denial is *plausible*.

The threat to a particular elector remains, even if BDA does not reveal *whether or not* that elector has voted. It is not necessary to reveal whether or not someone has voted. If by using BDA, it is estimated that there is, say, 90 percent probability that an elector voted *for the Republicans*, then there must also be at least 90 percent probability that the same elector voted *simpliciter*, since it is impossible to vote for the Republicans without voting *simpliciter*¹². Even if this were not the case, in some countries it is easy to find out whether an elector has cast a vote or not (or at least whether or not the elector registered at the polling station). In the United States and the United Kingdom, it is a matter of public record whether or not citizens have voted in specific elections, and it is relatively easy to get access to these voter registration lists¹³.

¹² This is called the conjunction rule in probability theory (see Tversky & Kahneman 1983). According to this law, the probability of the conjunction of two events occurring cannot exceed the probability of one of the conjuncts occurring. Written formally: $\Pr(A \& B) \leq \Pr(A)$. This means that the probability of an elector voting for the Republicans must be smaller or equal to the probability of the same elector voting *simpliciter*.

¹³ See https://www.coventry.gov.uk/info/8/elections_and_voting/765/registering_to_vote/7 (Accessed Feb 10, 2020). In the United States there are even mobile apps which collect public information about whether electors have voted in previous elections or not. See <https://www.nytimes.com/2018/11/04/us/politics/apps-public-voting-record.html> (Accessed Feb 10, 2020).

Does it matter *who* has access to BDA models capable of making accurate inferences? In a traditional public voting system used by political representatives, people can check how individual representatives have voted on different legislative proposals. Even with the arrival of sophisticated BDA, this has not become the norm for citizens. Unlike the voting of representatives, the estimated voting-choices of citizens are only available to whoever runs the algorithms. Recall, however, that some estimated voting-choices are in fact publicly available, such as the ones that can be found on *The Economist's* website. Nonetheless, the fact that some estimations of voting-choices are only available to a limited number of people should not invite any complacency about the threat to the secret ballot. Voter secrecy is not preserved just because information about the votes of the citizenry is only available to a small group of people. If a government tracks the voting-choices of its citizens, but keeps the information concealed, unavailable to the public or other non-state actors, this would still be a way of revealing the ballot. Likewise, even if the inferences drawn through the use of BDA are kept concealed in the top echelons of tech companies, this ought still to be considered a threat to the secret ballot. We see no reason to suppose that the threat to the secret ballot depends on how many, or who has access to the information. However, some of the worries about public voting might be worse if certain people rather than others have access to the information. For example, vote-buying might, *ceteris paribus*, be worse if a rich person has access to the information than if a poor person does.

Not all the worries about public voting that we outlined in Section I (in A through C) should concern us in the context of inferring voting-choices, due to how BDA threatens the secret ballot. Take, for example, all the worries in A. One of these worries is vote-buying. For someone to engage in vote-buying, she will need some way to ex-post verify that the vote she has bought has been cast in the way that was agreed to¹⁴. BDA inferences do not reveal votes in a way that makes it possible for vote-buyers to check if their investment has been successful. BDA can be used to predict who is likely to vote X, which makes it reasonable for a vote-buyer in favor of Y to pay the elector to vote Y. But there is no way to check whether the elector actually voted Y, and if BDA is used to predict this, then the same BDA model will still predict that the elector voted X. As such, the normative worry concerning the buying of votes might not be prevalent because of the way in which BDA ‘reveals’ votes¹⁵.

¹⁴ Plausible deniability can also be applied in this case. Due to the inferential nature of BDA, it is possible for electors to plausibly deny their voting-choice. This means that there is less incentive for would-be bribers, vote-buyers and coercers to engage in such acts.

¹⁵ The same reasoning applies to worries like voter coercion.

There is, however, a related worry that *does* apply in the context of estimating votes using BDA, namely the worry that there will be an increase in cases where electors are coerced or bribed to *abstain* from voting. The practice of bribing people to abstain from voting is often called ‘negative vote-buying’ (Morgan & Vardy 2010). Imagine that the Democrats estimate that there is 90 percent probability that a particular elector will vote for the Republicans. It is now possible for the Democrats to coerce or bribe the Republican elector to abstain from voting, since the Democrats can check, either by stalking her or by getting access to voter registration lists, whether the Republican elector votes or not. In many states, individuals, non-profit organizations and political parties can pay to get access to voter registration lists. It costs \$136,671 for a political party to get access to *all* the available data¹⁶. It would thus be relatively cheap for vote-buying Democrats to verify whether their investment was successful.

Instead of engaging in negative vote-buying, the Democrats can also attempt to make it more difficult for the Republican elector to cast her vote, by e.g. providing inadequate voting facilities in neighborhoods with a high density of Republican electors. Of course, all of this would also be possible without BDA, but BDA does, all else equal, make it easier for the Democrats to know who the Republican electors are. In addition, concerning negative vote-buying, BDA can also be used to predict at which price each voter is likely to agree to abstain from voting.

All the worries in B and C still apply (to varying degrees) in the context of estimating voting-choices using BDA. For example, consider the worry in B that individual electors will be targeted based on probabilistic inferences about their participation in previous elections. Inferring how electors have previously voted makes it easier to know whom to target with political advertisements that are specifically designed to persuade electors to vote differently. This worry is not only present but *amplified* in the context of using BDA. This is so because BDA can not only be used to estimate how electors have voted in the past, but also which electors are likely *to vote differently* if shown the right political advertisements. If we are worried about issues of manipulation and political targeting as a result of public voting, then we should probably worry even more about the way in which BDA can estimate the voting-choices of electors.

The worry in C – that public voting violates electors’ privacy since voting is a legitimate private concern – is also relevant in the context of predicting voting-choices using BDA. If BDA inferences can reach a high degree of accuracy about something that is a legitimate

¹⁶ See <http://voterlist.electproject.org/full-list-purchase-facts-and-info> (Accessed March 5, 2020).

private concern, then it seems that the use of BDA inferences is at least a threat to privacy. We, therefore, take it that anyone who objects to public voting on privacy-related grounds will also object to BDA inferences about voting-choices for the same reasons.

We have now seen what the threat posed by BDA to the secret ballot consists in, and how some of the worries related to open voting are also relevant for this threat. We will now consider three possible solutions to the problem at hand. Despite their intuitive appeal, however, we will argue that there are good reasons to be hesitant to implement them.

IV Possible Solutions

In the previous section, we saw that the use of BDA to infer how people have voted poses a threat to the secret ballot. In order to avoid – or at least limit – this threat, several solutions might be considered¹⁷. We will go through three solutions in turn, and for each of them explain why we should be very hesitant to implement the solution in question. Some of the objections we will raise to the solutions are *efficiency objections*, which means that they explain why it is likely that the solution in question will not be effective. Other objections are *moral objections*, which means that they explain why implementing the solution in question would be morally objectionable, even if the solution were efficient.

Solution 1: Prohibition of Data-Sharing

One possible solution is to prohibit the sharing of certain types of data about oneself that make it possible to draw inferences about voting preference. This solution can be expressed as follows:

Solution 1: *Prohibit by law the sharing of certain types of data/information about oneself that make accurate inferences of voting-choices possible*¹⁸.

¹⁷ Many additional solutions could be considered. For example, as Martin Moore has discussed, perhaps political campaigns should be forced to reveal which data they collect, and for what purposes (Moore 2019, 103). However, as Moore points out, this might in itself jeopardize the secrecy of voting. In addition, unless this solution is combined with limitations on data collection or the use of algorithms, it cannot block the threat to the secret ballot. Simply revealing which data is collected and for what purposes does not in itself prevent inferences about electors' voting-choices, especially if they are made based on publicly available data.

¹⁸ Andrea Sangiovanni has recently hinted at something along these lines, although his suggestion seems to be to prohibit only the selling of personal data by private companies in order to 'bias elections and other political outcomes' (Sangiovanni 2019, 215).

The idea is that by prohibiting the sharing of the types of data/information that make accurate inferences about voting-choices possible, it would be much harder to threaten the secret ballot. If it is harder to threaten the secret ballot, then presumably it is also less likely that the worries about open voting would become real. Thus, it appears that we have at least a *pro tanto* reason to implement the solution.

Objection 1: A powerful *moral objection* to Solution 1 is that it significantly limits the freedom of expression. If you are not allowed to share certain data/information about yourself with others, then your freedom of expression has been limited. This is not just a trivial limitation. If one is not allowed to share data/information about oneself that makes accurate inferences of voting-choices possible, then there are a great many data/information that one is not allowed to share. For example, to draw accurate inferences about voting-choices, one can use data/information about electors' political preferences, such as support of certain policies on social media, participation in certain demonstrations, etc. An implication of Solution 1 is that you would be prohibited from expressing your political views, sharing with others that you have participated in a political demonstration, and so on. In fact, you would be prohibited from campaigning for the party or candidate that you support, since doing so involves sharing data about your support of that party or candidate.

Even if we allow the sharing of 'political data/information' for the reasons pointed out above, the sharing of many other types of data/information would also be prohibited under Solution 1. Data about age, income, gender, race, religion, etc. highly correlate – at least in combination – with certain political views, so you would also be prohibited from sharing these types of data/information. This would be absurd since some of the data/information are shared with others whenever we walk down the street, or casually talk to others.

Note that one of the worries about open voting is that it makes it easier to problematically manipulate electors. If this is a serious worry, it seems that implementing Solution 1 to avoid the worry is counterproductive. The use of BDA indeed makes it easier to manipulate electors by profiling them and creating echo chambers on social media, so that Republican electors, for instance, are not exposed to the views of Democratic electors. Presumably, one of the problems with this practice is that electors will not make sufficiently informed and elaborated decisions about who they vote for since they might have voted differently if they had been exposed to opposing political views. However, if this is a problem, then it seems that implementing Solution 1 would only make the problem worse. Think of John Stuart Mill's defense of freedom of expression. Mill's idea was that being informed about

opposing views plays an important role in people's ability to form true beliefs and opinions (Mill 1985, 83-84). But under Solution 1, electors would have a hard time being informed about opposing political views, since the opponents would be prohibited from sharing their political views. Thus, if better informed and elaborated voting-decisions is what we want, then we should be very hesitant to implement Solution 1.

Solution 2: Prohibition of Certain Algorithms

Perhaps the objection raised to the previous solution can be avoided if instead of prohibiting the sharing of certain data/information, we prohibit the use of certain BDA algorithms. The solution can be expressed as follows:

Solution 2: Prohibit by law the use of BDA with electors' voting-choices as target attributes.

By having voting-choices as a target attribute, we simply mean that the BDA model is trained on a specific dataset to find correlations between voting-choices and other attributes, like income or age¹⁹. The idea is that by prohibiting the use of BDA specifically in the context of drawing inferences about electors' voting-choices, it will become much harder to threaten the secret ballot. While Solution 1 is extremely drastic and goes directly against the right to freedom of expression, Solution 2 seems at least *prima facie* more plausible.

Objection 1: We take the main objection to Solution 2 to be the following. Prohibiting voting-choices as target attributes still makes it possible to use BDA to draw accurate inferences concerning certain attributes that correlate highly with voting-choice, for example the political *affiliation* of citizens. Political information is not limited to how citizens vote. For example, citizens often reveal themselves what their political affiliations are. BDA uses such information to create the same kinds of voter profiles as are created when BDA uses voting-choices as their target attribute. Information about the political preferences of citizens is therefore still attainable regardless of whether voting-choices themselves are incorporated. This is important, in part, because political profiles can give information about one's likely voting-choices. Even though Solution 2 suggests that BDA may not be used to infer individuals' voting-choices,

¹⁹ This solution would prohibit a large part of what political scientists do. However, we could easily imagine a system where scientists could apply for exemptions for specific scientific projects or something similar.

political profiles can still give strong indications of how individuals have voted. A self-described long-time Democrat is, all else equal, more likely to vote for the Democrats than for the Republicans in the upcoming election. As political information about electors is already out there and readily available, it is difficult to see how Solution 2 would do much to combat it. One might revise the solution such that it prohibits BDA from using *any kind* of political affiliation as the target attribute. However, data about political affiliation has *already* been collected and systematized. It would probably at this stage be difficult to even decide which kind of data one might categorize as political affiliation. As correlations can be found between political preferences and age, internet habits, choice of car, etc., one would have to prohibit the use of such seemingly trivial data if one wants to prohibit using information which can be indicative of political preferences.

Notice that political profiles (based on something other than voting-choices) can also give rise to some of the central worries about open voting discussed throughout this paper, such as manipulation and negative vote-buying. Consider manipulation as an example. The worry is that BDA can, by using vast amounts of complex data, infer what the political preferences of citizens are. This makes it possible for individuals or companies to know which electors to target with particular political ads, *when* to do so, and *how* to do so. Solution 2 does not prohibit such practices as it only prohibits using voting-choices as a target attribute, which does not – by itself – alleviate this kind of worry.

Solution 3: Not For Profit

We have seen that there are reasons to be skeptical of implementing Solution 2. But perhaps a less radical version of Solution 2 is more acceptable. One solution could be to limit the incentives to engage in the production of inferences, by prohibiting *for-profit* use of BDA with electors' voting-choices as target attributes. The solution can be expressed like this:

Solution 3: Prohibit by law for-profit use of BDA with electors' voting-choices as target attributes.

Solution 3 is a less drastic version of Solution 2 since it only prohibits doing what Solution 2 prohibits, *for profit*. Since the BDA inferences about voting-choices are often carried out by for-profit organizations like Cambridge Analytica, perhaps we can block the threat to the secret ballot by taking money out of the equation. *Prima facie*, this allows us to not overregulate BDA, while still avoiding at least a big part of the threat to the secret ballot.

Objection 1: Solution 3 would prohibit companies like Cambridge Analytica from engaging in the practice of drawing inferences about electors' voting-choices using BDA. However, if Solution 3 is implemented, there is no reason why political campaigns would not just collect their own data, and use BDA to draw their own inferences about electors' voting-choices. The reason why political campaigns hire for-profit companies like Cambridge Analytica to do the job for them is that such companies have products that are ready to be implemented. It is presumably cheaper, and perhaps more efficient, for the political campaigns to hire Cambridge Analytica to do the job than it is for the political campaigns to do it themselves. But that does not imply that the campaigns *cannot* or *will not* draw the inferences themselves if for-profit companies will no longer do it because of a prohibition against it. The incentives involved are so strong that the effects of implementing Solution 3 seem likely to be relatively small, and would only last for a relatively limited period.

In addition, even if Solution 3 is implemented, it seems likely that many for-profit organizations would simply violate the prohibition. The incentives for violating the prohibition are strong, both for the for-profit organizations and for the political parties, especially considering that gaining political power is one way of credibly reducing the risk of being punished for violating the prohibition. So, Solution 3 would likely have very little effect since either 1) the for-profit organizations would comply with the prohibition, while the political campaigns would start engaging in inferring voting-choices themselves, or 2) the for-profit organizations would *not* comply with the prohibition since the incentives for violating the prohibition are so strong. Either way, the effects of the prohibition would likely be very limited.

Objection 2: Let us consider another objection to Solution 3. Presumably, Solution 3 would only be implemented in a situation where Solution 1 or Solution 2 is not already in place. Otherwise, Solution 3 would be redundant, since the conduct it seeks to prohibit would already be prohibited. So, a proponent of Solution 3 would need to argue why a prohibition of that conduct *for profit* should be implemented, while a prohibition of the same conduct *simpliciter* should not be implemented²⁰. However, this violates the following principle: *If you may do X*

²⁰ A proponent of Solution 3 might also be a proponent of Solution 1 or Solution 2, so she need not argue that Solution 1 or Solution 2 should not be implemented. However, for now we bracket the possibility of combining solutions, but return to it in section V.

for free, then you may do X for money (see Brennan & Jaworski 2015).²¹ While this principle is not universally accepted, it can at least function as a guideline for evaluating whether or not it is permissible to sell something on a market. Using it as a guideline is a way of establishing a burden of proof. For example, if it is morally permissible to do something for free, then it gives us a *prima facie* reason to think it is permissible to do it while also making a profit. If it is permissible to do it only when *not* attempting to make a profit, then we need reasons as to why the for-profit element introduces badness into the transaction. This seems to us to be a reasonable starting point, since it is plausible that if a particular transaction is impermissible, then the impermissibility relates to circumstances which are independent of the for-profit element of the transaction. So, let us apply this to the case of the BDA.

Imagine a scenario in which it is permissible to make inferences about voting-choices. If – contrary to what actually happened – electors willingly, and fully informed, give a company like Cambridge Analytica access to their data with the sole purpose of making inferences about voting-choices, then, provided others are not harmed in the process, it is hard to see why they should *not* be allowed to so in a setting where the company attempts to turn a profit. Regardless of whether or not the company attempts to make a profit or not, some of the worries about public voting are still relevant. Think, for example, of negative vote-buying and manipulation. These practices are possible regardless of whether the company attempts to make a profit or not. If manipulation and negative vote-buying are the main worries, then it seems that prohibition of certain types of manipulation and negative vote-buying is the way to go, rather than implementing Solution 3.

One might also offer another, closely-related reason as to why only for-profit use of BDA to make the inferences should be prohibited: the biggest threats come from for-profit companies and by prohibiting for-profit use of BDA to make the inferences one would effectively reduce the potential for harmful outcomes. Such an argument does not suggest that any kind of badness is introduced into the transaction *because money is involved*; rather, it suggests that by keeping money out of the equation, problematic outcomes do not materialize²². One problem with this – assuming that the empirical assumption is true – is that there is a risk that the law becomes over- or underinclusive. It might be overinclusive in the sense that *some*

²¹ Note that this principle does not imply that things like child pornography may be bought and sold. The principle only says that *if* you may do X for free, then you may do X for money. The reason why you may not buy and sell child pornography is that you should not have it in your possession in the first place.

²² This argument does not show that there is anything *intrinsically bad* about the for-profit element of the transaction, it merely suggests that there is an empirical correlation between worrisome practices and companies which attempt to turn a profit by engaging in such practices.

for-profit use of BDA to make the inferences would be morally permissible, for example, if it is used to increase minorities' ability to engage in strategic voting. On the other hand, it might be under-inclusive in the sense that *some* non-profit use of BDA to make the inferences would be morally impermissible, for example, if the political campaigns begin to make the inferences themselves and use them to manipulate electors (as described in the previous objection).

V Combining Solutions

While we should be hesitant to implement any of the solutions *separately*, perhaps we should consider implementing some of the solutions *in combination*. However, combining the solutions would have no significant additional effect. To see why consider first what would happen if Solution 1 were implemented in combination with any of the other solutions. Solution 1 says that certain types or amounts of data should not be allowed to be shared. In this case, it is hard to see what it would add if Solution 2 or Solution 3 were also implemented. If Solution 1 is implemented, it would have no significant additional effect to also prohibit the use of algorithms that are supposed to be trained on those data. And, if it would have no significant additional effect to prohibit the use of such algorithms, it would also not have a significant additional effect to prohibit the use of such algorithms *for profit*.

Likewise, if Solution 2 were implemented first, it would have no additional effect to also implement Solution 1 or Solution 3. If the algorithms are not used, simply having the datasets would pose no threat to the secret ballot. And, if the algorithms are not used, then it follows that they cannot be used *for profit* either. It thus appears that combining the solutions would not make them any more effective than they would be if they were implemented separately.

One might object that if we implemented Solution 3 first, then adding Solution 1 or Solution 2 would have an additional effect. This is of course true. If conduct X is first prohibited for profit, and then conduct X is prohibited simpliciter, then, of course, the prohibition of X simpliciter has an additional effect. But if we want to implement Solution 1 or Solution 2 in addition to Solution 3, then there is no reason to implement Solution 3 in the first place. Adding Solution 1 or Solution 2 to Solution 3 has no significant effect that simply implementing Solution 1 or Solution 2 separately, to begin with, would not have.

We have now seen why combining the solutions would not make them more efficient than they are individually. However, the fact that a solution is inefficient does not show that the solution in question should not be implemented. The fact that a law does not completely

solve the problem it is supposed to solve is normally not sufficient to make that law unjustified. Think for example of laws against drunk driving. Such laws are specifically designed to prevent dangerous driving, but many types of dangerous driving are not covered by laws against drunk driving. But this does not in itself make laws against drunk driving unjustified. However, Solution 1 and Solution 3 are also questionable on purely moral grounds and not just because they are unlikely to solve the problem they are supposed to solve.

VI Concluding Remarks

In this paper we have tried to show how the practice of making probabilistic inferences about electors' voting-choices using BDA threatens the secret ballot. When the secret ballot is threatened, some of the worries about open voting become relevant, such as worries about voter coercion, manipulation and violations of privacy. We have argued that the threat remains, even if all electors have plausible deniability. To avoid this threat, several solutions might be implemented. We have discussed three such solutions, and we found that we should be very hesitant to implement any of them. Even if our objections to each of the solutions are correct, it does not follow that none of the solutions should be implemented. It could be, for example, that the combination of two or more of them would be justified. We have tried to show why this is not the case. Solutions that we have not considered may, of course, be justified, but until such solutions are put forward, it seems that the threat to the secret ballot remains.

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