

Chapter 1

DEMOCRATIC POLITICAL INSTITUTIONS IN EUROPE

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1. INTRODUCTION

This chapter provides a descriptive overview of the most significant, ethically relevant features of democratic political systems and electoral institutions in Europe rather than a comprehensive empirical overview of these systems and institutions. It pursues two objectives:

1. To systematically present the most important variables of institutional design within the diversity of European democratic political systems and institutions;
2. To identify those features of European democratic political systems and institutions that are relevant to the ethics of voting from a voter-centred perspective.

This paves the way for the evaluation of political and electoral systems in terms of the ethical burdens they impose on the voter¹, summarising relevant descriptive findings in political science in ways that are helpful in themselves, but relevant also to the civic educational aspects of REDEM project. Albeit indirectly, then, the chapter aims to empower young voters and future voters in Europe to navigate the ethical complexity of the choices they may face as voters.²

The chapter is structured as follows. Section 2 lays out the methodological assumptions. In Section 3, democratic political systems are placed in the context of their relevant alternatives. While there are (and have been) several different non-democratic political systems, only the salient European alternatives are discussed here. Section 4 zooms in on democratic political systems and offers a comparative overview of democratic electoral systems. This section focuses on the ethically relevant core features of the latter systems: the scope of enfranchisement, voting systems narrowly understood as mechanisms

¹ For the purposes of this chapter, 'ethical' and 'moral' are used interchangeably.

² The factual knowledge about and understanding of democratic political systems and electoral institutions is necessary, in turn, "to empower them [young voters] to exercise and defend their democratic rights and responsibilities in society, to value diversity and to play an active part in democratic life" (Kerr 2013, p. 13).

translating votes into elected positions, and the temporal dimensions of electoral design as well as the question of voluntary or compulsory voting. In Section 5, party systems and regulations are reviewed as core elements of the institutional environment of modern European democracies which contribute to voters' ethical challenges in specific ways, as party systems interact with electoral systems. Section 6 takes a broader perspective on the electoral institutional context which culminates in voting, and reviews issues in regulating electoral campaigns as relevant to voters' ethical challenges. In Section 7, institutional aspects of the tension between privacy and publicity are discussed regarding how far candidates' privacy should be protected, how voters' privacy is threatened in the electoral procedure, what respective roles public and private funding play in electoral campaigns, and how these roles relate to the transparency of campaign and party funding. Section 8 summarises the conclusions of the chapter.

2. APPROACH

The political systems, democratic electoral systems and institutions as presented in this chapter are *ideal types*. All political systems and electoral system exist in potentially limitless varieties. Hence, the aim of this chapter can never be to provide a fully comprehensive picture, but rather to offer a sufficiently detailed roadmap that is informative for the purposes of institutional evaluation and understanding.

The relevant ideal types of political systems and electoral institutions may be identified with reference to some institutional features, although with limited precision. Political systems are especially frequently categorized in terms of the extent to which they comply with "checklists" that attempt to identify the external, institutional manifestations of various political systems and regime types. For example, Freedom House uses such a checklist (Csaky, 2021), as does the V-Dem Institute (V-Dem Institute, 2021) - both using very complex and highly refined methodologies - to identify democracies in the world. While these checklists serve as valuable proxies, one difficulty they inevitably face is that the same institutional feature may have very different effects and may contribute to the realization of rather different values in different contexts (see esp. Scheppele, 2013). For example, elections exist in democracies as well as in elective autocracies or hybrid regimes (Diamond, 2002; Levitsky and Way, 2002, Levitsky and Way, 2010; V-Dem Institute, 2021), but they need not even partially realize democratic values if not implemented within the context of other institutions such as freedom of speech and association. Analogously, electoral institutions have features that may have very different effects and realize different values in different contexts given variation in other factors. For example, systems of proportional representation (see Section 4.2.1.1 below) may allow for a lower number of wasted voters, with coalition governments as a frequent phenomenon (Reynolds et al., 2005: 59). Yet this may not be the case if they are accompanied by high parliamentary thresholds and a very fragmented party system (ibid.: 83). The availability or unavailability of the mail-in ballot may have very different effects in a democracy with a large and enfranchised diaspora living abroad as compared to another democracy with disenfranchised or sporadic non-residential citizenry (cf. Section 4.1.1.2 below).

The present chapter characterizes political systems and electoral institutions in such a way as to provide a meaningful, relevant descriptive springboard for their evaluation from the voter's perspective. Thus, proponents of several (even if clearly not all) conceptions and

models of democracy may rely on the insights of this chapter so long as they consider the voter's perspective to be relevant to the normative evaluation of electoral institutions. However, this chapter relies on ideal typical characterizations of political and electoral institutions that political theorists with various normative commitments can accept as relevant to their work. Further, it relies on non-controversial or minimally controversial characterizations of political and electoral systems that empirical scholars of democracy can take as their point of departure no matter what their methodological and implicit or explicit normative convictions are.

This chapter relies on the following methodological assumptions:

- a) *Democratic Institutional Diversity*: On the one hand, democratic ideals do not uniquely identify a single set of institutions as democratic. Instead, a number of different political systems and institutional arrangements may comply with democratic requirements (cf. Held, 2006; but also Warren, 2017; Tilly, 2007: 9ff). It is with this understanding in mind that the past decades saw a flourishing of literature in democratic theory specifically on institutional design and innovation (see, e.g., Macedo and Shapiro 2000; Warren, 2007; Smith, 2009; Fung and Wright, 2011; Landmore, 2020). While most of this body of literature assumes that some democratic institutional arrangements are better than others (in the specific manner of being "more democratic"), it is consensually assumed that less than ideal institutional arrangements may also be democratic. On the other hand, the term "democratic" cannot be stretched without limits. Generally speaking, normatively oriented democratic theory conceives of institutions as democratic insofar as they aim to and, imperfect as they may be, actually do realize certain value commitments. While there are many potential ways to identify the relevant value commitments, the REDEM Project focuses on the voter's perspective, emphasizing values of inclusion, equality, and participation.
- b) *The Voter-Centred Perspective and the Significance of (Differential) Effect on Voters*: Although several different electoral design choices may be morally permissible and coherent with democratic ideals, such choices should also be guided, in part, by assessing the effects of alternative institutional arrangements on the voter's situation. Such assessment should take account of the ethical challenges and dilemmas voters face and the burdens they shoulder in order to participate in elections in a way they consider meaningful. Special scrutiny is due when an institutional choice imposes differential burdens, in this sense, on different groups of voters - for example, on racial, ethnic, linguistic, national, or religious minorities.
- c) *Value Pluralism*: Several different values and principles bear on the design of electoral institutions, some of which may and do conflict in practice. While some of these values and principles can be readily prioritized relative to others, the design of these institutions also involves hardly commensurable values. Hence, the ethically sensitive mapping of institutional alternatives provided in this chapter cannot be mechanically applied to fully determine which electoral institutions are the most morally commendable choice. Instead, it can provide constraints on as well as guidance for the exercise of moral judgment in choosing between institutional alternatives.

3. DEMOCRACIES AMONG POLITICAL SYSTEMS – DEMOCRATIC POLITICAL SYSTEMS

Democracies represent one of the major regime or political system types: they have institutional features and manifest values that form a common conceptual core and distinguish them from other regimes. At the same time, as already noted in Section 2, democracies showcase a diversity of political systems. This section distinguishes democracies from those other regime types which constitute its most salient current European alternatives – authoritarian and hybrid regimes in particular – and reviews those types of democratic political systems that either currently exist in Europe or have been significant in the recent political history of Europe.

3.1 Democracies Among Political Systems

Democracy as a political system has had various contenders or alternatives throughout global – and specifically European – political history, including, for instance, absolute and constitutional monarchies, and more recently, authoritarian regimes of various sorts. This chapter does not aim to provide a comprehensive map of all possible alternatives to democracy. Instead, it places democracy on the map of its most significant alternatives from a contemporary European perspective. The primary alternative to democracy today are authoritarian regimes (cf. Alvarez et al., 1996; Linz, 2000) as well as hybrid regimes and electoral autocracies (Levitsky and Way, 2010) – the latter showing characteristics of both democracies and authoritarian regimes and thereby raising methodological questions of classification.

Comparative political science has long been interested in methods of measuring how democratic a political regime is (Coppedge et al., 2011; Knutsen, 2014). One may conceptualize a political system as either democratic or not, without grey zones and with a clear threshold, or alternatively, one may conceptualize political regimes as democratic to varying degrees. (Both approaches to the categorisation of regimes may allow for judgements about the degree to which democracies fulfil the requirements that distinguish them from undemocratic regimes.) While democracies became much more prevalent in the second half of the 20th century than ever before in human history, they are still a privilege. The overwhelming majority of the global population today lives under authoritarian regimes or hybrid regimes, with a global democratic backsliding observed recently (V-Dem Institute, 2021: 15-17). This backsliding has not evaded Europe either (see Section 3.1.3 below).

3.1.1 Democracies

What precisely characterizes democracies (Greek for “rule of the people”) has been a subject of extensive scholarly debate in contemporary democratic theory, comparative political science, and political history (see, e.g., Held, 2006; Tilly, 2007; Christiano, 2008; Anderson, 2009; Coppedge et al., 2011; Warren, 2017; Wilson, 2019; Stasavage, 2020; Conway, 2020). This chapter need not engage in the details of these controversies in order to contrast democracies with their most significant contemporary European alternatives – authoritarian regimes as well as hybrid regimes – outlining their major differences. Such a contrast may identify democracies relying on an institutional or a substantive account.

Institutional accounts attempt to descriptively, i.e., value-neutrally, identify institutions characteristic of democracies but not other regimes (See, e.g., Dahl 1982: 11, cf. Diamond, 1999: 10-11). For example, democracies are characterized by periodic elections held at reasonable intervals, universal enfranchisement, the rule of law, as well as robust institutional guarantees of free speech, association and assembly (Dahl 1982; Diamond, 1999; Altman and Pérez-Liñán, 2002; Ginsburg and Huq, 2018: 18). Other political systems may exhibit some or none of these features, but not all of them. For instance, electoral autocracies also have elections, but not necessarily the other institutional elements of democracies (see Section 3.1.3. below).

Substantive accounts of democracy, in contrast, aim to define the concept with reference to the specific values that democracies realize. For example, the rule of the people, self-rule, popular sovereignty, political equality, political autonomy, participation; contestation of, accountability of and competition for power etc., or some unique combination of them (see, e.g., Gould, 2006; Christiano, 2008; Anderson, 2009; Pettit, 2012; Warren, 2017; Wilson, 2019). This approach can make better sense of the fact that the term ‘democracy’ in common parlance and public political discourse is not a value-neutral but an honorific characterization of a political system. Further, the substantive approach is well placed to explain the fact that political regimes, whether actually democratic or not, strive to be seen as worthy of that title (Roth, 2009). Finally, the substantive approach can also account for the remarkable institutional diversity of democracies while grasping what unites these various institutions.

3.1.2 Authoritarian Regimes

Authoritarian political systems have highly centralized power structures which distribute power very unequally, and only to a small elite. Authoritarian systems are also characterized by a lack competition for power or other mechanisms of accountability, e.g., no elections, as well as a lack of political pluralism. For instance, they often have only one political party, institutionally intertwined with the state. Political (esp. executive) power is often constitutionally unbounded or unclearly bounded (Linz, 2000; but cf. Tushnet, 2013). Currently, there are no authoritarian regimes in the European Union. However, authoritarian systems existed on the continent even fairly recently: for example, arguably, Francoist Spain until 1975, or Salazarian Portugal until 1974 (Griffiths, 1998; Townson, 2010; Viestenz, 2014). Although formally not completely devoid of elections, countries in the Soviet bloc until 1989 also arguably exemplified authoritarian regimes (McDermott and Stibbe, 2016). While authoritarian regimes may also be divided into further subcategories (Siaroff, 2013: 229-250; Hague et al., 2019: 94-102), a more nuanced description is beyond the (European) scope of the present chapter.

3.1.3 Hybrid Regimes, Electoral Autocracies

Hybrid regimes (Diamond, 2002), competitive authoritarian regimes (Levitsky and Way, 2002, Levitsky and Way, 2010), or electoral autocracies (V-Dem Institute, 2021) are regime types, or different names for the same, intermediary regime type, depending on usage, that exhibit a mix of institutional features of democracies and authoritarian regimes. As there is a general pressure in the international community for democratization, newly emerging regimes with authoritarian tendencies typically belong to this intermediary regime type (Krastev, 2011). Hybrid regimes can be relatively stable rather than being necessarily “in

transition” between full-fledged authoritarianism and democracy, one way or the other, although they may exhibit further backsliding toward authoritarianism, or on the contrary, signs of democratization.

While the European Union’s Member States are formally committed to upholding values such as democracy and the rule of law,³ also has Member States – primarily, Hungary and arguably Poland – which some have recently re-categorized as hybrid regimes or semi-consolidated democracies (Bozóki and Hegedűs, 2018; Gora and de Wilde, 2020; Körösenyi et al., 2020; Holesch and Kyriazi, 2021).⁴ Globally, while there is a backsliding in some institutional elements and values of democracy, this may not necessarily correlate with a backsliding in other institutional elements and values of democracy (Ding and Slater, 2021), thus making backsliding into hybrid regimes a complex phenomenon.

Hybrid regimes typically do have elections, and hence they do generate ethical challenges voters need to face. Some of these are akin to or identical to the challenges and dilemmas voters in democracies face. However, they need not be. The present chapter focuses on the most salient institutional features of democracies which have an impact on the moral outlook of the voter *in democracies*, and hence the findings may but need not be immediately applicable in hybrid regimes.

3.2 Democratic Political Systems

There is considerable variety among democratic political systems, and accordingly there are several possible ways of classifying them. However, a common categorization, based on the structure of the executive branch and its relation to the legislative branch, divides democracies into three types of democratic political systems – parliamentary, presidential and semi-presidential (Siaroff, 2013: 137-144; Hague et al., 2019: 127-136). This categorization is particularly helpful to highlight features that are relevant to the voter’s moral outlook.

3.2.1 Parliamentary Democracies

Parliamentary democracies are characterized by close relations between the legislative and executive branches of government (Hague et al., 2019: 129). The separation of these two powers is only partial, in at least two respects. First, there is only limited incompatibility between executive and legislative offices: leading members of the executive are often also members of parliament. Second, the executive branch is accountable to the legislature, and not the electorate. This entails, on the one hand, that it is not by popular vote that the head of the executive – the prime minister – is elected, but by the legislature. On the other hand, the legislature may remove the executive from office through votes of no confidence. The head of state in parliamentary democracies is not identical to the head of the executive branch: accordingly, the head of state takes on a more symbolic, apolitical role. The historical paradigm of parliamentary democracies is the UK, hence this system is also known as ‘the Westminster system.’ 13 out of the 27 EU Member States are parliamentary democracies today (International IDEA, n.d. b).

³ Treaty on the European Union, Article 2; Article 7.

⁴ Freedom House’s *Nations in Transit 2021* report (Csaky, 2021) classifies Poland merely as a semi-consolidated democracy, whereas Hungary is within the hybrid regime score range.

Parliamentary systems limit the role of voters in selecting, authorizing and holding the executive accountable. They structurally exclude the possibility of voters splitting their votes between the executive and legislative. At the same time, parliamentary systems increase the moral weight of choosing legislative representatives well, since that choice also determines the political orientation of the government.

3.2.2 Presidential Democracies

Presidential democracies are characterized by a clear separation of the legislative and executive branches of government (cf. Riggs, 1997). Legislative and executive offices are incompatible, i.e., they cannot be held by the same person at the same time. The executive power is vested in the president, who at once serves as head of state. Presidents are elected by citizens, and thus are primarily accountable to them, with very limited mechanisms of accountability to the legislature. The paradigm of presidential democracies is the USA (Edwards, 2018), while this type of democracy is prevalent in Latin America. Although presidential democracies are not particularly widespread in Europe, Cyprus serves as an example with the EU.⁵

Presidential systems allow for a much more significant and direct role of voters in selecting, authorizing and holding the executive accountable than parliamentary systems. Presidential systems also allow voters to split votes between the executive and legislative. The possibility of splitting votes creates an opportunity for less drastic compromises from the voter's perspective. However, it also generates an ethical challenge as the voter may have to decide to vote for two different political forces for the two offices respectively or line up the two votes. When the legislative and executive branches are affiliated with the same party, they only check and balance each other in a very weak manner, but coordination and cooperation between the two branches can enhance the realization of a coherent political vision. When the two branches are respectively affiliated with different political parties, they check and balance each other effectively but neither may be able to realize a coherent political vision. Voters may find it ethically relevant to consider which one of these outcomes they contribute to, especially if legislative and executive elections are held concurrently (see Section 4.3.1 below). As there is one single president to be elected, strategic considerations in voting for the president may have special weight from the voter's perspective, for two reasons. On the one hand, the person elected will enjoy considerable power, which raises the moral stakes of voting. On the other hand, the likelihood of wasted votes is considerable (even in two-round presidential elections, see Section 4.2.2).

3.2.3 Semi-Presidential Democracies

Semi-presidential democracies combine characteristics of parliamentary and presidential democracies (Duverger, 1980; Bahro et al., 1998; see also the subsections immediately above). As in presidential democracies, the head of state - the president - is elected in popular elections. Likewise, the president is a political actor, not seen as beyond party politics, and vested with significant (as opposed to merely symbolic) powers. At the same time, as in parliamentary democracies, there is an executive - with a prime minister heading it - approved by and accountable to the legislature, although selected by the president. The

⁵The Constitution of the Republic of Cyprus, Article 1.

prime minister is not identical to the president. In some presidential systems, the prime minister and her cabinet may be accountable not only to the legislature but also the president, the latter having the power to dismiss them.

The historical paradigm of semi-presidential democracies is France. Unlike presidential democracies, semi-presidential regimes are a widespread type of democracy in Europe. A large number of EU Member States are at least formally semi-presidential democracies today, including Austria, the Czech Republic, Finland, Ireland, Lithuania, Poland, Portugal, Romania, Slovakia and Slovenia (International IDEA, n.d. b). Distinguishing parliamentary and semi-presidential democracies is not always clear-cut (Siaroff, 2013: 144f), however, because presidential powers in some regimes may be almost purely or overwhelmingly ceremonial (e.g., the Czech Republic, and arguably Finland), whereas in others, they are more political.

The moral outlook of the voter in semi-presidential systems also combines elements of the moral outlook of voters in parliamentary and presidential democracies. Yet voters have only limited means to hold the executive branch accountable, and they may find it more difficult to put accountability into practice as the locus of responsibility for the executive's failures and successes is unclearly divided between the president and prime minister. The ethical challenges of splitting one's votes, characteristic of the voter's perspective in presidential democracies, arise in semi-presidential systems as well.

3.2.4 Levels of Government

The voter's moral outlook is determined not only by how powers are separated horizontally, as it were, between the legislative and executive branches, but also by what levels of government exist within democracies. Some European countries are unitary states (e.g., France), whereas others are federations (e.g., Germany). Some have regional or local governments with wider powers (e.g., Spain) than others (e.g., Hungary). The stratification of government can make it more challenging for voters to hold officeholders at different levels accountable. The correlation between participation levels in local authority elections and the powers of these levels of government suggests that voters see more reason to cast a ballot when they can see higher stakes in electing a body which has, in their eyes, significant powers (cf. Blais et al., 2011).

4. DEMOCRATIC ELECTORAL SYSTEMS

Democratic regimes show great variation in the electoral systems they use. In a narrow sense, an electoral system is a method of converting votes into electoral outcomes. This section understands the notion of electoral system broadly, and thus surveys regimes of enfranchisement; variations in electoral systems narrowly understood - such as the difference between proportional, majority and mixed systems - temporal considerations in transitioning between electoral systems, thresholds for gaining mandates, as well as procedural considerations such as compulsory and voluntary voting regimes and the timing of elections.

4.1 Enfranchisement and Regimes of Participation

Democratic electoral systems vary considerably in their scope of enfranchisement. Especially some marginalized groups within the population may not be enfranchised in all democracies. Even enfranchised populations may enjoy different levels of participation and involvement in candidate selection. Further, the low participation levels of young adults, even though they are formally enfranchised, raises some moral concerns that are partly similar those raised by disenfranchisement.

4.1.1 Enfranchisement and Disenfranchisement

The 20th century saw in all democracies a vast expansion of the franchise – the right to vote and (though less frequently emphasized) the right to stand for election – to the extent that democracies are commonly seen as *universal* enfranchisement regimes.⁶ However, the universality of the franchise is an aspiration rather than a fact in most European democracies. The suffrage was indeed extended, in the previous century, to women and the working class; and the voting age was considerably lowered across Europe (Rubio-Marín, 2014; Acemoglu and Robinson, 2000; Ansala, 2015). Yet there remain to be populations that are widely, if not uniformly, disenfranchised in European democracies: typically, adult persons with mental disabilities (Anderson, 2012; Barclay, 2019; Fiala-Butora et al., 2014; Mráz, 2020; cf. Mráz, 2023), persons who are serving or have served a sentence ensuing a criminal conviction (cf. Poama and Theuns, 2019),⁷ young children as well as younger adolescents (Cook, 2013; Peto, 2018; Priest, 2016; Beckman, 2018; Umbers, 2018; Wiland, 2018; Mráz 2020)⁸, and legal alien (non-citizen) residents (cf. Beckman, 2006; López-Guerra 2014; Hutcheson and Arrighi, 2015).⁹

⁶ International human rights instruments which recognize political rights typically also require that signatories ensure universal enfranchisement. See, most prominently, the UN International Covenant on Civil and Political Rights, Article 25 (b), which provides that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions [...] To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage [...]” Article 3, Protocol No. 1 to the European Convention on Human Rights is also taken to enshrine an individual right to vote, which, as a fundamental right, is by default universal. See also Article 39 of the Charter of Fundamental Rights of the European Union, which enfranchises “every citizen of the Union” in European Parliamentary elections and prescribes such elections to be held by “direct universal suffrage”.

⁷EU Member States are without exception also parties to the European Convention on Human Rights. The European Court of Human Rights has found that the *uniform* disenfranchisement of criminal convicts and persons under guardianship – essentially the blunt legal proxy for mental disabilities – is a violation of the Convention. See *Hirst v. United Kingdom (No 2)* (74025/01 [2005] ECHR 681, 6 October 2005), and *Alajos Kiss v. Hungary* (38832/06, 20 May 2010), respectively. For more details on mental disability and disenfranchisement, see Section 4.1.1.1 below.

⁸ The lowest voting age applied in the EU is 16, used by Austria. (See Ansala, 2015: 6, footnote 12.)

⁹ The Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level, Article 6, Para. 1 provides that “Each Party undertakes, subject to the provisions of Article 9, paragraph 1, to *grant to every foreign resident the right to vote and to stand for election in local authority elections*, provided that he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the State concerned for the 5 years preceding the elections” (emphasis added). As EU Member State parties to the Convention implement it, non-citizen residents can typically vote in local elections all over Europe, but not in national elections. Note, further, that the EU Charter of Fundamental Rights, Article 39, Para. 1 also provides that “Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same

The undue disenfranchisement of any part of the political community is, first and foremost, an affront to the individuals and groups disenfranchised as equal members of the political community (see, Dworkin, 2000; Mráz, 2020). Further, secondarily, undue disenfranchisement also generates ethical challenges for the enfranchised population. Individuals and groups within the political community can primarily count on their own voice and vote in ensuring their own political representation when they are enfranchised. But this is not so for disenfranchised populations. Hence, voters may find that the political representation of the disenfranchised population falls upon the members of the enfranchised population, or at least some of them.¹⁰

4.1.1.1 *Mental Disability and (Dis)Enfranchisement*

One of the recent battlegrounds of progressive enfranchisement efforts in Europe concerns the right to vote of adults with mental disabilities.¹¹ Even a decade ago, 17 Member States excluded adults under guardianship – the legal proxy for mental disability (European Union Agency for Fundamental Rights, 2010). It was this *blanket* disenfranchisement that the European Court of Human Rights found unlawful in 2010.¹² Nevertheless, the Court's judgment did not rule out *individualized* disenfranchisement of adults based on an individual assessment of their mental capacities. Shortly thereafter, however, the UN Committee on the Rights of Persons with Disabilities ruled in 2013 that *any* disenfranchisement “based on a perceived or actual intellectual disability” is a violation of the *Convention on the Rights of Persons with Disabilities* (cf. Mráz, 2023),¹³ an international treaty that all EU Member States – and, as a historical milestone, the EU itself in its own right – are parties to.¹⁴ This is interpreted as a prohibition disenfranchisement based on individual assessments of mental capacity as well.¹⁵

conditions as nationals of that State.” Cf. Article 22 of the Treaty on the Functioning of the European Union, which enshrines the same right. Accordingly, EU citizens who are not citizens of the Member State in which they reside are also enfranchised in European Parliamentary elections. These legal requirements have considerably expanded the enfranchisement of non-citizens in a vast region of Europe, yet they are very far from providing full enfranchisement to non-citizens (and especially third country nationals). See Section 4.1.1.2 below for more details.

¹⁰ Measuring electoral inclusion or inclusion is a complex task, and the voter's judgment as to how much she owes to those excluded to represent them, in some sense, may well depend on the overall level of their electoral exclusion. For a sophisticated measurement method for measuring levels of electoral exclusion, see Schmid et al., 2019.

¹¹ Clearly, persons with other kinds of disabilities also face major challenges due to social exclusion and inequities in exercising their franchise, see, e.g., Rawert, 2017. This subsection focuses on mental disability specifically because it is persons living with mental disabilities who are widely subject to even formal disenfranchisement.

¹² See the Court's judgment in *Alajos Kiss v. Hungary* (38832/06, 20 May 2010).

¹³ *Zsolt Bujdosó and Others v. Hungary* (Communication No. 4/2011, 9 September 2013).

¹⁴ See also the Council of Europe Recommendation of the Committee of Ministers Rec. (2011)14 on the participation of persons with disabilities in political and public life, adopted on 16 November 2011. While this recommendation cannot overrule the case law of the European Court of Human Rights, it can be seen as a development of the legal and political approach of the Council of Europe region to the issue at hand.

¹⁵ See *General Comment No. 1 (2014)* of the UN Committee on the Rights of Persons with Disabilities, adopted at its Eleventh Session (31 March – 11 April 2014): “a person's decision-making ability cannot be a

While these contemporary legal trends indicate a continued expansion of the franchise to adults living with mental disabilities, some European countries have limited political will to implement these more progressive principles in their national law.¹⁶ Some European states uniformly disenfranchise persons under guardianship (e.g. Bulgaria¹⁷ or Luxembourg¹⁸), others apply a case-by-case disenfranchisement regime (e.g., Hungary,¹⁹ Slovenia²⁰ or Spain²¹), while yet others – 13 EU Member States as of 2020 (Desjeux, 2020) – uniformly enfranchise adults under guardianship too (e.g. Austria,²² Finland,²³ Italy,²⁴ the Netherlands,²⁵ and Sweden²⁶). In 2018, the OSCE Parliamentary Assembly noted that persons with disabilities “remain widely under-represented in parliaments across the OSCE region”,²⁷ which still appears accurate, whether in terms of the selection, authorization, accountability or descriptive aspect of representation. Moreover, given that persons with mental disabilities are victims to special deliberative exclusions, representatives are hardly accountable to them even in the weaker sense of being held to justify policy positions and political decisions to voters (cf. Catala, 2020).

4.1.1.2 *Diaspora and (Dis)Enfranchisement*

The boundaries of the electorate also show considerable variation within Europe in terms of whether emigrant citizens – i.e., individuals who reside long-term in a country different from that of their nationality, often alternatively referred to as ‘expats’ or ‘external citizens’ – are allowed to retain their franchise in their country of nationality, as well as in terms of whether and how immigrant (non-citizen) residents are enfranchised in their country of residence without (before) naturalization. Currently 23 EU Member States allow their emigrant citizens to vote in their general parliamentary elections.²⁸ EU citizens who do not reside in their country of nationality but in another EU Member State have the right to vote in the municipal elections in their country of residence, and to vote in the European Parliament

justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote, the right to stand for election and the right to serve as a member of a jury” (p. 12, Point 48).

¹⁶ For example, while Hungary no longer imposes blanket disenfranchisement automatically on all persons under guardianship, it has not put an end to disenfranchisement based on individual assessments of mental capacity. (See the Fundamental Law of Hungary, Article XXIII, Para. (6).)

¹⁷ The Constitution of the Republic of Bulgaria, Article 42 (1).

¹⁸ Constitution of the Grand Duchy of Luxembourg, Article 53 (1) 3.

¹⁹ Fundamental Law of Hungary, Article XXIII, Para. (6).

²⁰ National Assembly Elections Act 2006, Article 7.

²¹ Law on Regime of General Elections, Article 3. 1. b)-c).

²² Constitution of Austria, Article 26.

²³ Constitution, Section 14; Election Act, Section 2.

²⁴ Law 180/1978, Article 11.

²⁵ Constitution of the Netherlands, Article 54 -2.

²⁶ Constitution of Sweden, Chapter 1, Article 1; Chapter 3, Article 2.

²⁷ See *Berlin Declaration and Resolutions* adopted by the OSCE Parliamentary Assembly at the Twenty-Seventh Annual Session, Berlin, 7–11 July 2018, <https://www.oscepa.org/documents/annual-sessions/2018-berlin/declaration-26/3742-berlin-declaration-eng/>. See, further, Gísladóttir and Office for Democratic Institutions and Human Rights, 2019.

²⁸ For data about emigrant citizens’ voting rights on January 1st, 2019, see <https://globalcit.eu/conditions-for-electoral-rights/>.

elections.²⁹ No EU country allows non-citizen residents to vote in its general parliamentary elections. The 4 EU Member States that do not allow their emigrant citizens to vote in their general parliamentary elections are Denmark, Cyprus, Ireland, and Malta. 5 other EU Member States (Germany, Greece, Hungary, Sweden, the Netherlands) and Switzerland allow their emigrant citizens to vote, but only subject to specific conditions. (These conditions vary from restrictions on the duration of residence abroad to restrictions on the candidates that emigrant citizens can vote for to a requirement to request renewal of voter registration after a certain duration of residence abroad). Among the 23 EU Member States who do not disenfranchise their emigrant citizens, Austria, Belgium, Cyprus, the Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Poland, Slovakia do not automatically register them as voters abroad (see also Section 7.2 below). 5 out of the 27 EU countries provide their emigrant citizens with special representation in their national parliaments.³⁰

This summary view of the EU emigrant citizens' voting rights seems to generally corroborate the idea that, as a matter of electoral policy and political practice, residing in one's country of nationality is no longer a widespread political or legal condition for having or indefinitely retaining the franchise, and that emigrant citizens are, for the most part, accepted as full members of their national political community. This marks a break with the recent political history of European democracies: until the 1960s, most European states had formal limits and restrictions on the franchise of their emigrant citizens that no longer exist today (Hutcheson and Arrighi, 2015). This distribution of emigrant citizens' voting rights also suggests that Europe - and, in particular, the states that are EU members - might be witnessing a shift from a normative conception that emphasizes the importance of long-term residence as a necessary condition for the right to vote (and political liberties more generally)³¹ to a normative conception that is less attached to territoriality as such and is more specifically sensitive to the stakes and basic human interests that individuals have in maintaining their relationships with a particular political community and that might transcend territorial attachments.³²

4.1.2 Candidate Selection: Voter-Selected via Primaries vs. Party-Selected

Enfranchised populations may enjoy different levels of participation and involvement in the selection and nomination of candidates. Candidate selection procedures are dominated by political parties in today's democracies (even if independent candidates do occur). Yet parties may select candidates in exclusive or inclusive ways. Exclusive selection means that the selection of candidates is treated as the internal affairs of the political party. At most, the membership of the political party has a say on candidate selection; but related decisions may also be made by party leadership. By contrast, inclusive selection means that the electorate at large may decide who are going to stand for election as candidates in a given election. The

²⁹ Ibid. See also <https://voterswithoutborders.eu/research-and-data/>.

³⁰ These countries are Italy (4 constituencies for Italian citizens abroad: 6 senators and 12 deputies), Portugal (2 constituencies, 1 for Europe and 1 for the rest of the world, each electing 2 deputies), Romania (4 constituencies: 4 deputies and 2 senators); Croatia (1 worldwide constituency, electing 3 deputies), France (11 constituencies, each electing 1 deputy).

³¹ For a (conditional) defence of such a conception, see López-Guerra, 2005.

³² For discussion and a defence of such a conception, see Bauböck, 2009.

paradigmatic, but not the only possible, institutional realizations of inclusive candidate selection are *primary elections or primaries* (for others, see Sandri and Amjahad, 2015; cf. also Molnár and Urbanovics, 2020).³³

Candidate selection procedures do not vary randomly but are correlated with political and electoral systems as well as party systems. They are standard practice in the presidential government and two-party-system of the US, whereas they are more rarely seen in parliamentary democracies with multi-party systems (cf. International IDEA, 2019). It is often held that in multi-party systems, primaries would be disruptive of the cohesion of political parties (cf. Debus and Navarrete, 2020). Inclusive selection procedures may be seen even more generally as a threat to strong parties and democratic accountability, (see McCall Rosenbluth and Shapiro, 2018). Counterevidence, especially such that would allow for generalization, is difficult to come by, given the distribution of primaries across party systems. Yet Indriðason and Kristinsson (2015) show that in Iceland, where an inclusive candidate selection procedure has been in place since the 1970s (Kristjánsson, 2004), no detrimental effect can be shown on the strength or cohesiveness of political parties in a multi-party system.

Inclusive candidate selection procedures are especially significant from the voter's perspective in two-party systems where the choice set voters routinely face at elections is extremely limited. If candidate selection is inclusive, voters may feel less alienated even from a limited choice set (International IDEA, 2019: 28). Hence, given inclusive candidate selection procedures, voters may find themselves less often in ethical dilemmas where they have to choose between voting for a party they cannot identify with, or voting for a party they can identify with but for a person or persons they find incompetent, untrustworthy or otherwise unworthy of their vote, or not casting a (valid) ballot at all. However, high levels of political polarization may potentially lead to similar ethical dilemmas for voters in multiparty systems too.

4.1.3 Youth Participation

Low levels of youth participation across Europe and indeed all over the developed world have pre-occupied decision-makers and researchers alike for a considerable time. A recent OECD report on first-time voters' participation rates has found that turnout among young voters (aged 18-24) is 17% lower than for middle aged adults (aged 24-50), with particularly low youth turnout rates observed in France, Estonia, the Slovak Republic and the United Kingdom (OECD, 2019). Low participation has been linked to alienation as well as apathy (for evidence that the latter is the cause, see Dahl et al., 2018). Young voters, although far from a monolithic block (Flanagan, 2018), may also suffer from a systematic lack of representation that can be linked to low participation levels. Earlier research found evidence that young people are not only disillusioned by the political system, but they also widely do not see candidates and parties as responsive to their needs (IDEA, 1999). The lack of adequate substantive generational representation is morally concerning in itself; yet low youth turnout

³³ Note that the difference between the two candidate selection approaches diminishes either if parties have extremely broad membership or if eligibility to vote in primaries requires a formal declaration of party affiliation.

rates also raise a further concern of political socialization if they correlate with lower turnout levels in later life as well (IDEA, 1999: 13).

Institutional design features may increase or decrease youth turnout. Voting systems matter: proportional representation and mixed systems correlate with higher levels of youth participation (IDEA, 1999: 39; cf. International IDEA, n.d. a). Compulsory voting is sometimes suggested as a potential remedy for the equal participation and deficient representation of disadvantaged minorities (Lijphart, 1997; IDEA, 1999: 31; Engelen, 2007; Birch, 2009; Hill, 2010; Brennan and Hill, 2014). Compulsory voting correlates with higher overall turnout rates (Solijonov and IDEA, 2016: 31). However, there is some empirical evidence specifically with regard to youth voters to the effect that compelling young voters to vote may rather increase their resentment than facilitate their deeper connection to the democratic process (Henn and Oldfield, 2016).

Youth participation is not only shaped by institutional factors but also by other variables, such as deliberative exclusion, marginalization or objectification. For example, it matters whether and when the youth are depicted as a political agent or an object of politics in public discourse (Giugni and Grasso, 2020; Kousis and Giugni, 2020; Lahusen and Kiess, 2020). It is especially alarming that some subgroups of young people, such as young women, may be subject to additional, intersectional marginalization in public discourse in several European countries (see Smith and Holecz, 2020). Lack of the relevant information about the voting procedure may also be a reason for abstention, but so can be the intention to protest or express dissatisfaction (IDEA, 1999: 31).

Low levels of youth participation generate ethical concerns similar to those raised by disenfranchisement and other forms of electoral exclusion. These include questions as to what institutional solutions could increase youth participation; who else should, in the meantime, represent youth interests and voices; and how these interests and voices should be represented, potentially including other voters using their own votes for that purpose.

4.2 Voting Systems

Voting systems or electoral systems (in the narrow sense) are different mechanisms for transforming votes into electoral outcomes (for an overview, see Horowitz, 2003; Klingemann, 2009; Lundell, 2010; McGann, 2013; Shugart and Taagepera, 2017). Votes determine the outcome of an election only together with a specific voting system; different voting systems may yield entirely different outcomes given the same number and distribution of votes, as we shall see below. In Europe, various voting systems are used to elect members of legislative assemblies at the national level, as well as the head of the executive in semi-presidential and presidential systems.³⁴ Voting systems are not only significant as they determine the outcome of elections, but also because the ethical challenges a voter faces in deciding whom to cast her ballot for vary considerably with voting systems.

³⁴While selecting judges as well as prosecutors via popular vote is not uncommon in North America (see, e. g., Blum, 2003), this is not common practice in Europe where the electoral unaccountability of the judiciary is often seen as a guarantee of its impartiality and independence.

4.2.1 Proportional Representation vs. Majority vs. Mixed Systems

Democracies use a variety of voting systems to convert votes into electoral outcomes—i.e., legislative or executive mandates. Notwithstanding this remarkable diversity and considerable historical and political contingency, voting systems are classified into three main categories: systems of proportional representation, majority systems, and mixed systems (Cotta and Best, 2007; Ezrow, 2010; Farrell, 2011; Kam et al., 2020; LeDuc et al., 2010). These systems generate different ethical challenges as seen from the voter's perspective.

4.2.1.1 Proportional Representation

Proportional representation systems distribute parliamentary seats between the parties or candidates running for a legislative mandate in proportion to the votes they have received. There are two main types of proportional systems used in Europe: list systems and single transferable vote (also known as “multi-winner ranked choice voting”) systems (Gallagher and Mitchell, 2005; Reynolds et al., 2005: 57). Proportional representation voting systems tend to correlate with multi-party systems (not necessarily only two major parties compete for the votes), and more often generate coalition parliamentary majorities and governments (Reynolds et al., 2005: 58–59). Proportional systems may but need not use geographical constituencies (electoral districts). In legislative elections using list systems, the entire country may function as one large multi-member electoral district. Single transferable vote systems use several electoral districts for legislative elections.

European Parliamentary elections, while organized separately by each Member State, must use a proportional representation-based voting system to determine electoral outcomes within the country.³⁵ (Member States are free to use either a list or a single transferable vote system.) The overwhelming majority of EU Member States use list systems in European Parliamentary elections. Further, the overwhelming majority of EU Member States that use proportional representation systems for legislative elections use list systems for that purpose as well. A single transferable vote system is used for both European Parliamentary and legislative elections only in the Republic of Ireland³⁶ and Malta.³⁷ (Estonia used it in legislative elections only once, in 1990, see Reynolds et al., 2005: 71).

In list systems, voters vote for lists – typically, party lists – of candidates. Candidates on the list gain mandates in a number proportionate to the number of votes cast on a list. For example, in a pure system of proportional representation (with some simplification), a party list receiving 20% of the votes in a national legislative election would fill 20% of the seats in the legislative assembly with its candidates. This implies that votes, in general, may not get

³⁵ See Article 1, Paragraphs 2–3 of the Council Decision of 25 June and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/787/ECSC, EEC, Euratom (2002/772/EC, Euratom); Article 223 of the Treaty on the Function of the European Union.

³⁶ Constitution of Ireland, Article 16, 2, 5° (for the lower house), Article 18, 5 (for the elected members of the senate – but the latter also has nominated, i.e., non-elected members); European Parliament Elections Act, 1997, 7. (1), (3). Ireland is the only EU Member State which uses a single transferable vote system for presidential elections as well, see the Constitution of Ireland, Article 12, 2, 3°.

³⁷ Constitution of Malta, S. 56. Para. (1); Denti, 2013.

easily wasted in systems of proportional representation: when voters cast their ballot for a less popular party, this just means the party will have fewer seats. Wasted votes are mostly generated in two cases: when a candidate or party does not receive a sufficient number of votes to get one (additional) full seat in parliament (e.g., in a legislative assembly of 100 seats, a candidate or party receives less than 1% of the votes), or when it fails to meet a threshold legally set above that level (see Section 4.2.3 below).

In single transferable vote systems, voters vote for candidates in multi-member districts, i.e., there are several district winners, and not only one. Voters may select a number of candidates: at most, as many as the number of winners (seats to be allocated). Voters may not only select multiple candidates, but they may also rank them in order of preference. First, the number of votes required to gain a seat is calculated. When candidates have the requisite number of votes based on first-preference vote cast for them, they immediately win a seat. Votes above that quota ('surplus votes') do not get wasted: they are added to other candidates' quotas based on the second etc. preference indicated ballot papers. So, votes cast for a winner do not get wasted even if there are more votes than necessary cast for the winner. Then another count follows. In each successive count, if there are no candidates with surplus votes, the least successful candidate is eliminated. The votes cast for the eliminated candidates are redistributed among other candidates based, again, on preference rankings. Hence, votes cast on those who fall out of the race are not wasted either. Successive counts end when all seats in the district have been allocated. This somewhat more complicated system also minimizes wasted votes, and ultimately yields proportional results.

Proportional representation can generate specific ethical challenges as seen from the voter's perspective. First, voters may be challenged in discharging the forward-looking, *selection* and especially *authorization* function of the ballot because they have to decide on whom to vote for without necessarily much information about how *coalitions* will be formed, what *compromises* will be accepted by which candidate or party, and often also about who will be likely coalition partners at all (cf. Wilson, 2019: 205). This can make *strategic voting* more difficult and less attractive (but see Meffert and Gschwend, 2010 who finds evidence in Austria for explicit tactical coalition voting; see also Hobolt and Karp, 2010; Bargsted and Kedar, 2009 for further evidence of coalition-targeted Duvergerian voting, but cf. Riambau, 2015). Single transferable systems fare better than list systems at allowing voters to control coalition-formation, and they also give more leeway for voters to select independent candidates (Reynolds et al., 2005: 76). Some have assumed that proportional representation does not necessitate strategic voting (Duverger, 1951). Still, given the number of small parties, strategic voting with all its ethical dilemmas may be fairly prevalent in proportional representation (Riera, 2016; Irwin and Van Holsteyn, 2012; Alvarez et al., 2018; or even more prevalent than in majority / plurality systems, as Abramson et al., 2010 argue). At the same time, the potential availability of several alternative choices - the possibility of ranking choices in single transferable vote systems - may somewhat ease the voter's moral burdens and pressure to compromise.

Second, the coalition-conducive nature of proportional representation can also reduce the *accountability* potential of elections: especially in list systems, parties may retain power even if they suffer a major blow to their popularity as long as they manage to find a coalition partner (Farrell, 2011; Norris, 2004). Third, some evidence suggests that proportional representation correlates with the existence and electoral gains of *extreme parties* (Farrell,

2011; Norris, 2004). This may lead voters to more often engage in strategic voting specifically in order to avoid what they see as the worst option winning, which is further combined indeed by complexities of strategic voting under proportional representation systems (Cox and Shugart, 1996). On the flipside, voters may also engage in strategic voting against their most preferred candidate specifically to ensure that small parties survive and get into parliament too (Fredén, 2014). However, more recent empirical findings suggest that even in a multi-party proportional representation system, the strong bipolarity of political parties makes coalitions more predictable and hence both selection and accountability more viable, revealing some collateral benefits of political polarisation (Kam et al., 2020). Further, the link between the existence and strength of extreme parties and proportional representation has been questioned (Carter, 2002, 2004). Moreover, voters may see more reason to participate in elections based on proportional representation. At any rate, this voting system correlates with higher turnout rates than majority / plurality systems (IDEA, 2016: 37). Finally, voters may find and appreciate that in proportional representation systems using several electoral districts - especially single transferable vote systems - representatives owe their *constituents* special consideration (Reynolds et al., 2005: 76).

4.2.1.2 Majority / Plurality Systems

Majority or plurality systems³⁸ usually generate an electoral outcome in legislative elections based on constituencies (electoral districts). In the versions in use in EU Member States, the number of constituencies matches the number of parliamentary seats to be allocated.³⁹ One parliamentary seat is awarded to the winner of the election in each constituency. The winner in each district is either the candidate who gets more than 50% of the votes (in a majority system, strictly speaking), or who gets the highest number of votes, in a single member plurality system (even if that number is lower than 50% of the votes, but higher than the number of votes received by any other candidate, hence the name 'first-past-the-post' system for such systems, see Reynolds et al., 2005: 35). Majority systems (strictly speaking) often require a second round (run-off) election in multi-party systems, whereas plurality systems usually deliver an electoral outcome in a single round and often correlate with two-party systems (but cf. Raymond and Tromborg, 2016). Majority systems function the same way when applied in executive (presidential) elections. However, in such elections, there is only one mandate to be allocated.

Majority systems also determine the moral outlook of the voter in characteristic ways. First, typically, voters need not be concerned about the unknowns of coalition-formation, as coalitions are exceptional in such voting systems given the overwhelmingly bipolar nature of the political spectrum. In this respect, majority systems are more amenable to the selection function of the vote and may make strategic voting easier. At the same time, majority systems often necessitate strategic voting to avoid wasting one's vote (Crisp and Demirkaya, 2020; Cox, 1997; cf. Eggers and Vivyan, 2020 showing that older voters and wealthier voters, but not more educated voters, vote more strategically than their younger, poorer

³⁸"Majority systems" will be used as a shorthand for both majority and plurality systems unless otherwise indicated or evident given the context.

³⁹EU Member States with majority / plurality electoral systems use single member plurality ("first past the post") systems and two-round systems. Yet other versions of majority / plurality systems with multi-member district also exist globally, see esp. Reynolds et al., 2005: 44f.

counterparts, respectively). Second, majority systems foster accountability by ensuring that candidates and parties losing popularity cannot retain power by coalition-formation (see McCall Rosenbluth and Shapiro, 2018; cf. Pinto-Duschinsky, 1999; Curtice and Philips Shiveley, 2009). Third, while majority systems curtail the diversity of the party system, they also contribute to the containment of extreme parties (Norris, 2004). Fourth, however, voters may constantly have to make morally hard compromises in majority systems. Given the limited choice set, it is conjectured to be highly probable that voters have to choose between what they see as the right policy and whom they see as the right candidate, or between two policy positions both of which they find hard to identify with or even accept (cf. Kurella and Rosset, 2017). Fifth and finally, majority systems may fare worse in terms of ensuring the descriptive representation of disadvantage groups and minorities (Reeve and Ware, 1992).

4.2.1.3 *Mixed Voting Systems*

Mixed voting systems - also referred to, in different varieties, as 'parallel voting' or 'supplementary member systems' or 'mixed member majoritarian systems', 'mixed member proportional representation' - combine elements of list-system based proportional representation and majority / plurality systems (Shugart and Wattenberg, 2003). A certain number of seats are distributed proportionally among party lists, while the remaining seats are distributed among constituencies on a majority / plurality-basis. The two subsystems may exist side by side, independently of each other (this is called 'parallel voting', e.g., in Italy since 2017),⁴⁰ but they may also be connected. Connecting the two subsystems can reduce the number of wasted votes by strengthening the proportional element in the voting system. For example, votes cast on a candidate who loses in a constituency in the plurality / majority subsystem may be counted toward the party list of the losing candidate's party (cf. Italy up until 2005, see Reynolds et al., 2005: 91). Exceptionally, a connection between the two subsystems can also be used to weaken the proportional element in the mixed system. For example, votes cast on candidate who wins in a constituency may get counted toward the party list of the losing candidate's party if they are not needed for winning the constituency (cf. single transferable vote-based proportional representation systems in Section 4.2.1.1 above).⁴¹

Evaluated from the voter's perspective, mixed voting systems can alleviate some of the moral burden on voters (cf. King, 2016). First, instead of facing hard choices, voters may frequently be in a position to divide their votes between two alternatives (Stumpf, 2020; but cf. Gschwend and van der Kolk, 2006). For example, if they can vote for national party lists and individual candidates at the constituency level, they can prioritize policy-considerations in their vote on the party list, while prioritizing personal merits or demerits or constituency relations when voting on the constituency candidate. Second, mixed voting systems may also allow for mixed approaches to sincere vs. strategic voting. For example, voters may cast a

⁴⁰ Law of 3 November 2017, no. 165.

⁴¹ Hungary uses such a mixed system in parliamentary elections. For example, if a candidate won over the candidate coming in second place by 1000 votes, 999 votes are added to the winning candidates' party list. While the system is confusing called 'winner compensation,' the justification for it may be maximize the number of effective (non-wasted) votes even if they are cast for a constituency winner. See Act CCIII of 2011 on the election of parliamentary representatives, S. 15, Para. (1) b). Cf. Mécs, 2017.

sincere ballot in a proportional representation component of the voting system while casting a ballot more strategically in the majority / plurality component of the system if there is a higher risk of their vote being wasted there. Third, the nature of the connection, if any, between the component voting subsystems may also have an effect on the moral outlook of the voter. For example, if votes cast for a losing candidate in the majority / plurality subsystem are converted into votes that count toward the proportional representation subsystem, the risk of wasted votes is minimized, which may provide an additional reason for voters to vote sincerely even within the majority / plurality subsystem. Yet if the winning margin of the winner in the majority / plurality subsystem is also converted into votes that count toward the proportional representation subsystem, voters may have additional strategic reasons to vote for the losing candidate who is most likely to come in second (instead of just any other likely losing candidate). This way voters can maximize the votes cast for the second place, and thereby minimize the winning margin of the winner, which would be transferred to the proportional representation subsystem, further advantaging the winner's party therein.

4.2.2 One-Round vs. Two-Round Systems

Elections may be conducted in one single round or using a second round, also known as 'run-off', 'second ballot' or 'ballotage'. These different systems may crucially determine candidates' and parties' behaviour (Duverger, 1951). Two-round systems are coherent with majority / plurality systems where they are applied to ensure there is a candidate who receives more than 50% of the votes - in parliamentary elections in single-member constituencies, or in executive (presidential) elections. In two-round systems, the second round may only be used if there is no candidate gaining a majority (but only a plurality) out of multiple candidates (Reynolds et al., 2005: 52). In the run-off election, typically only those (often only two) candidates are eligible to run who received the highest number of votes in the first round. Thus, run-off elections typically apply a majority system in the narrow sense to deliver an overall majority winner of the election.

The choice between one- or two-round systems may also impact the moral outlook of the voter. Two-round systems are sometimes conjectured to allow for more sincere voting in the first round, reserving strategic considerations mostly for the run-off (Duverger, 1951; but cf. Cox, 1997 and Blais et al., 2007 for counterevidence). Coalitions are typically formed - or at least endorsements of other candidates are typically negotiated and announced - between the two rounds, partly based on the electoral outcomes of the first round. Voters can thus have a significant impact on coalition-building and hence selection and authorization. One-round plurality systems, in contrast, either correlate with two-party systems and hence highly untypical coalitions or require that coalitions be formed before the election (instead of between the two rounds). In mixed voting systems, where multi-party systems are more frequent, this may result in several parties supporting a single candidate in the plurality-based subsystem. Accordingly, voters may find they have to make more unpalatable and ethically problematic compromises already in the one and only round (see Cox, 1997).⁴²

⁴² Proportional representation systems use a single round, with voters' limited control over coalition-formation: see Section 4.2.1.1 above.

4.2.3 Parliamentary Thresholds

Legally imposed parliamentary electoral threshold are a frequently used device in proportional representation systems (Reynolds et al., 2005: 83). They are legal prescriptions to the effect that a certain minimal proportion of the votes should be gained in order to convert votes to parliamentary seats. For example, if there is a 5% threshold in effect, but a party gains 3.5% of the votes nationally, it will not have just fewer seats, but no seats at all: the seats corresponding to 3.5% of the votes are reallocated among the parties who have passed the relevant threshold. In European Parliamentary elections, Member States may set such thresholds, but they may not exceed 5% at national level. Further, in Member States where the list system is used (including single-constituency Member States), it is obligatory to set a threshold for constituencies which comprise more than 35 seats, which must fall within the range 2%–5% for each constituency.⁴³

Parliamentary thresholds have an impact on the moral outlook of voters similar to that of majoritarian elements in the voting system. They curtail the diversity of political parties, thus potentially making selection and descriptive representation harder to achieve to the satisfaction of voters and in line with their ethical outlook. While thresholds have an effect of containing extreme parties, they also make it difficult for smaller communities to exercise narrower community-based voting, incentivizing them to form coalitions and vote in solidarity with the causes of a wide community. Some evidence also suggests that thresholds generate strategic voting behaviour aiming at keeping small parties above the threshold (so-called “threshold insurance” voting, see Fredén, 2014), and hence they contribute to ethical dilemmas of strategic v. sincere voting and ethical challenges of compromising.

4.2.4 Changing Voting Systems

Voting systems rarely remain intact over longer periods of time, and even in the politically more stable European region, they can be subject to relatively frequent and substantive changes (Reynolds et al., 2005: 24; Renwick, 2011). This is hardly surprising as voting systems are themselves products of political compromises and changing power relations within any given society. However, first, as they determine how votes get translated into electoral outcomes, voting systems also provide the descriptive parameters that voters, as well as parties and candidates, must adapt their strategic behaviour to. Second, from the voter’s perspective, every voting system type (and even some tokens within a given type) generate certain ethical concerns others do not (as detailed above in Sections 4.1–4.3), whereas every voting system type alleviates some moral burdens on the voter that other voting systems do not alleviate or even positively aggravate. Thus, voters have to adapt their strategic as well as moral reasoning to new voting systems. Hence the significance, from the voter’s perspective as well, of how frequently and foreseeably voting systems change.

From the voter’s perspective, the above suggest there should be some constraints on the temporal aspects of changing voting systems. The Venice Commission, the expert body of the Council of Europe working on issues of constitutional democracy, specifies in its *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report* that “the electoral system proper [...] should not be open to amendment less than one year before an election”

⁴³ See Council Decision (EU, Euratom) 2018/994. Member States will have to implement this requirement – at the latest – in time for the 2024 elections.

(European Commission for Democracy through Law, 2002: 10; II.2.b.). This requirement serves to ensure that sufficient time is left for parties, candidates and voters to adapt to new fundamental rules of political competition. What time frame is necessary for voters to be able to effectively adapt to a new voting system (including its specific ethical challenges) depends, as some evidence suggests, on several institutional as well as social factors, with grave ethnic tensions being among those factors that can severely delay adaptation (Selb, 2012).

4.3 Further Institutional Design Choices Affecting Turnout

Voting systems have an impact on the voter's moral outlook not only with regard to *whom* she has reasons to vote for, but also as to *whether* the voter sees sufficient reason to participate in elections (see above, in Section 4.2.1). However, in addition to a choice of voting systems, other institutional design choices also correlate with higher or lower turnouts. In particular, concurrently held elections and compulsory voting correlate with higher turnout rates, whereas registration requirements may negatively impact turnout; and further (procedural) voting arrangements may likewise facilitate or hinder participation in measurable ways (IDEA, 2016: 37-38; Lijphart, 1997). Crucially, a perception of electoral integrity has a positive impact on turnout (Birch, 2010, 2011), as does decentralization in regional elections (Blais et al., 2011). In other words, when voters have a perception that their vote actually matters (it will not be a victim to electoral malpractices or it will not be cast in electing a relatively powerless body), they see more reason to turn out. This subsection focuses on concurrently held elections and compulsory voting.⁴⁴

4.3.1 Concurrently Held Elections

Concurrently held elections – for example, legislative and (where applicable) executive elections, or national as well as regional or local authority elections held at the same time – increase turnout, or so some data from Mexican elections suggest (IDEA, 2016: 38). There is no data available that would suggest voters who turn out in concurrently held elections are more likely to cast an invalid ballot or no ballot at all for one or some of the concurrently held elections. Concurrently held elections are likely to prevent ‘election fatigue’ (IDEA, 1999) as well as lowering the costs and increasing the benefits of participation for voters.

4.3.2 Compulsory vs. Voluntary Voting Regimes

Regimes of compulsory voting correlate with higher turnout rates. While more typical in other regions of the world, especially Latin-America, some EU Member States also have some sort of compulsory voting regime in effect. Currently, voting is compulsory in Belgium, Bulgaria, Greece and Luxembourg nationwide (Sabbati et al., 2019; IDEA, n.d.), whereas the list historically included even further European states (e.g., Cyprus, Italy, and the Netherlands) as well as some regions in further Member States (including Tyrol and Vorarlberg in Austria) (IDEA, n.d.). Switzerland has retained compulsory voting in one canton (ibid.).

Compulsory voting is not a unified legal institution. What is common to all such regimes is a legal duty to *turn out* (but, crucially, not a legal duty to cast a valid ballot). Yet sanctions for non-compliance vary considerably. For instance, Bulgaria (which introduced compulsory

⁴⁴ On registration, see Section 7.2 below.

voting in 2016) does not sanction non-compliance at all, while Belgium may even impose fines or imprisonment.⁴⁵ Other sanctions may include civil rights infringements and disenfranchisement, or a disadvantage in employment in the public sector (all of which may be exemplified by Belgium, see IDEA, n.d.).

Compulsory voting correlates with higher turnouts (IDEA, n.d.). As turnout in contemporary democracies in the developed world is not only relatively low overall but also rather unequal, compulsory voting is often seen as a means to combat political inequalities (Lijphart, 1997; Engelen, 2007; Birch, 2009; Hill, 2010, 2013; Chapman, 2019). From the voter's perspective, however, the right to non-participation may also be valuable (Lever, 2009, 2010a, 2010b; Saunders, 2016), even if some, but not all, of its value can be saved by casting an invalid ballot (Looney and Werner, 2020).

5. POLITICAL PARTY SYSTEMS, PARTY TYPES, PARTY REGULATION

Political parties have a central role to play in modern democracies in Europe (Dalton et al., 2011; Cross, 2011; Gauja, 2016). Modern democracies are pluralistic regimes where political parties are the major actors competing for power. Accordingly, current democracies either have two-party systems or multi-party systems (cf. Sartori and Mair, 2005: 35–49, 193–216).⁴⁶ While party systems correlate, to some extent, with different democratic political and electoral systems, the characteristics of the party system and party regulation also have a significant role to play in shaping the voter's moral outlook (van Biezen and ten Napel, 2014), together with institutional features of democracies (see esp., Section 4 above). The grounds on which parties associate, as well as how closely parties are linked to parliamentary mandates, and what role they take in improving gender representation, are all crucial for the ethical challenges voters face in using their ballots to ensure better representation.

5.1 Grounds of Association

Political parties are associations formed on several potential grounds in two-party and multi-party systems, in circumstances of political pluralism. They may be organized based on class interests or occupations (e.g., the historical labour parties and farmers' parties in Europe cf. Robison et al., 2021; for Scandinavian agrarian parties, see Elder and Gooderham, 1978; Christensen, 1997), ethnic or national (minority) or regional interests (e.g., some Catalan parties in Spain, Flemish parties in Belgium, see Haute and Pilet, 2006, or the Scottish National Party in the UK, as well as Sinn Féin in the Republic of Ireland and in Northern Ireland). Political parties may also be religion-based (such as Christian Democratic parties all over Europe, see Grabow, 2001; Accetti, 2019). Further, political parties may be based on third-party interests, or ideologies which focus on some concrete aspects of the common good or social justice – consider, for example, animal welfare parties or Green parties (Kitschelt, 2019). Finally, while political parties are organized primarily as associations of national or regional politics, European integration (and the emergence of 'Euro-parties')

⁴⁵ Belgium, however, no longer enforces the duty to vote. Accordingly, the threat of these sanctions, while drastic, is largely theoretical by now (see Lever 2010b: 927, n. 7).

⁴⁶ Two-party systems may have more than two political parties if only two of them are major actors who have a chance of winning national elections (cf. Sartori and Mair, 2005: 164–192).

provide new potential grounds of association, or an opportunity to raise old grounds of association to a European level (Hanley, 2008; Rensmann, 2014).

Even though political parties organized on various grounds are seen in democratic political systems as legitimately pursuing partial interests, causes and voices, several democracies impose constraints on party pluralism. Specifically, bans on the foundation or operation of extremist political parties with an anti-democratic agenda, or on their electoral participation, are not uncommon especially in democracies with a relatively recent totalitarian history. Such restrictive measures are also known as the “militant democracy” approach to democracy defending itself (see Invernizzi Accetti and Zuckerman, 2017; Bourne, 2011; Gordon, 1987; Loewenstein, 1937; Niesen, 2002; Minkenberg, 2006; Sajó, 2004). Banning parties may be criticized on both normative grounds (as antithetical to the values undergirding democracy) as well as practical empirical grounds (as counterproductive, i.e., conducive to more robust anti-democratic political sentiments and movements, see Invernizzi Accetti and Zuckerman, 2017), although some evidence suggests that such bans are not necessarily counterproductive on practical grounds (Bale, 2007). In addition to ideologically based bans, as in the case of militant democracy, some European states impose constraints on other grounds of political association that may be seen in the given context—justifiably or not—as a threat to national unity. For instance, Bulgaria imposes a constitutional ban on political parties on “ethnic, racial, or religious lines” (Lublin, 2014: 205); and ethnic minority parties are banned in Albania and Turkey as well (Stojanović, 2018: 352).

Party bans as well as the existence of parties on certain grounds of association crucially determine the voter’s moral outlook. They may make voting with regard to the self-interests or the common good of certain communities practically impossible, and hence may alienate the voter, or generate dilemmas for voters belonging to disadvantaged groups or minorities. Party bans and the lack of party-level organization of certain groups may also hinder voters in contributing to the descriptive representation of their identity-constitutive social group(s).

5.2 Parties and Parliamentary Mandates

Political parties in some political and electoral systems are very closely bound up with parliamentary mandates won by representatives affiliated with them. This close connection can manifest itself in at least two different ways. First, in proportional representation systems based on party lists, parliamentary mandates left vacant between elections (e.g., due to resignation or death) may be filled by the party of the former representative without holding by-elections (e.g., in Hungary).⁴⁷ Second, strong party discipline - characteristic of parliamentary democracies (Bowler et al., 1999; Thompson, 2015), both in majority / plurality electoral systems such as the UK (Whiteley and Seyd, 1999), and in voting systems of list proportional representation with a multi-party system, to enhance party cohesion (Dimock, 2012; Martin et al., 2014) - may also mean that the legislative deliberative agenda and decision-making is strongly determined by parties irrespective of the persons occupying parliamentary seats. Party discipline may be strengthened and enforced in different ways, ranging from *ex ante* selection procedures that ensure loyalty to *ex post* sanctions of various

⁴⁷ Act CCIII of 2011 on the election of parliamentary representatives, S. 20, Para. (1).

kinds (loss of privileges, monetary ‘fines’, delay of promotion), depending on the legal context, imposed on representatives by their party (Martin et al., 2014).

Strong party control over parliamentary mandates has been argued to enhance contestation and accountability in legislatures (McCall Rosenbluth and Shapiro, 2018), although it may be argued to have rather complex effects on both. At the same time, strong party control over parliamentary mandates impacts the voter’s moral outlook as it gives the voter less reason to consider the individual merits and demerits of the candidates in legislative elections, and more reason to focus instead on the merits or demerits of the political parties nominating candidates for legislative offices.

5.3 Gender Equality, Party Policy and Party Regulation

Given how strongly political parties determine in modern European democracies the allocation of political offices, party policies and the legal environment regulating the operation of political parties and their participation in elections also has a vast influence on gender equality in politics. This influence is particularly significant in light of the fact that as of 1 January 2017, not a single European country had 50% or more female representatives in national legislatures, and only Iceland, Sweden and Finland had more than 40% female representatives, whereas Hungary barely passed a 10% threshold, surpassed within the EU by Latvia Cyprus, Greece and Croatia which fell between the 15-19.9% range (UN Women and Inter-Parliamentary Union, 2017; cf. Arceneaux, 2001; Beckwith and Cowell-Meyers, 2007; Galligan, 2013; Howell and Day, 2000; Tolley, 2011; Vengroff et al., 2003). While the equal right to vote, a hard earned right of women over the past century, is no longer questioned in Europe, women’s participation in politics as elected (or even appointed) officeholders is considerably lagging behind (Piscopo and Shames, 2020).

The political participation of women as elected officeholders can be and is facilitated by various institutional means (Barnes and Holman, 2020). Among these, *gender quotas* of different sorts have gained prominence (Dahlerup, 2005, 2013; Dahlerup and Freidenvall, 2005; Darhour and Dahlerup, 2013; Freidenvall and Krook, 2011; Mráz, 2021). Such quotas may be voluntarily adopted by political parties for candidate-nomination procedures, providing, for example, that no two consecutive places on a party list be filled by persons of the same gender (Krook, 2007; Bjarnegård and Zetterberg, 2011; Kjerulf Dubrow, 2011). Alternatively, gender nomination quotas may be legally prescribed (Belschner and Garcia de Paredes, 2021; Schwindt-Bayer, 2009; Verge, 2012), as is the case, for instance, in Croatia,⁴⁸

⁴⁸ The Act on Gender Equality 2008, Article 15 (1) (minimum overall ratio of candidates for each gender on candidate lists).

France,⁴⁹ Greece,⁵⁰ Italy,⁵¹ Ireland,⁵² Poland,⁵³ Portugal,⁵⁴ and Slovenia.⁵⁵ While quota measures sometimes apply to the output of legislative elections, reserving a number of parliamentary seats to representatives belonging to a certain group, this method is typically not applied to enhance the participation of women (Htun, 2004, but cf. Nanivadekar, 2006).

Gender quotas are often perceived as considerable burdens on political parties, candidates and voters who do not stand to benefit from them (cf. Rehfeld, 2009). Yet, from the voter's perspective, they can also be seen as enablers: institutional solutions which finally allow a potentially very large number of voters to vote for candidates they wish to select and authorize to represent them but could not, were it not for quota measures in place (e.g., because parties would not otherwise decide to nominate them, see Dahlerup, 2013:11; but cf. Dolan, 2014). However, quotas are widely recognized to be temporary measures that may become unnecessary and unjustified with changing socio-political circumstances.⁵⁶

6. CAMPAIGN REGULATION

Democratic elections are preceded by political campaigns which provide special occasions for candidates and parties to share their views and persuade voters, as well as for voters to become interested in the elections (Goldstein and Freedman, 2002). From the voter's perspective, they are concentrated occasions for the cheap acquisition of information relevant to their decisions as to whether to vote and for whom (Nadeau et al., 2008; Goldstein and Freedman, 2002). Properly regulated, rich and diverse campaigns contribute to the circumstances which allow voters to make a free and informed choice at the polling station (Thompson, 2018). Campaigns, due to their special roles, are heavily regulated in almost all democracies. Regulations may target the qualitative or quantitative dimensions of political campaigns.

⁴⁹ Law No. 88-227, Article 9 (1) (maximizing the difference between the numbers of candidates of each gender on party lists for single-member constituency elections in 2%).

⁵⁰ Decision 65/2019 by the Supreme Civil and Criminal Court of Greece (minimum overall ratio of candidates for each gender on candidate lists).

⁵¹ Law No. 165/2017 article 3, 3.1 (maximum overall ratio for each gender on candidate lists, alternating gender order on candidate lists).

⁵² Electoral Act 1997, section 17, as amended by the Electoral (Political Funding) Act 2012, section 42 (minimum overall ratio of female and male candidates for each political party).

⁵³ Election Code 2011, Article 211 (3) (minimum overall ratio of candidates for women and for men on candidate lists).

⁵⁴ Equality Law No. 3/2006 of 21 August 2006, Articles 1, 2 (1), and 2 (2) provide for the composition of candidate lists in such a way as to be conducive to a minimum 33% ratio of each sex in the National Assembly, while also prohibiting more than 2 consecutive candidates of the same sex to appear on lists in multi-member constituencies.

⁵⁵ National Assembly Elections Act 2006, Articles 43:6 and 43:7 (minimum overall ratio of candidates for each gender on candidate lists).

⁵⁶ See, for example, UN Committee on the Elimination of Discrimination Against Women (CEDAW) (2004), General Recommendation No. 25: Art. 4, para. 1, of the Convention (temporary special measures), UN Doc. A/59/38 (SUPP), 18 March 2004, para. 22.

6.1 Quality

Campaigns are hardly ideal sites of high-minded political deliberation (Thompson, 2018: 229–230). In developed democracies, a vast amount of campaign messages are fiercely negative, while lying and misleading, as well as strategic ambiguity and pandering, are part and parcel of campaign practices (Ansolabehere and Iyengar, 1995; Callander and Wilkie, 2007; Tomz and Houweling, 2009; Goodin, 2010; Haselmayer, 2019). Voters themselves are keen on taking shortcuts in interpreting campaign messages and political information in general (Popkin, 1994), they are a biased audience (cf. Dolan, 2004, 2014), and they typically will not change their minds as a result of campaigning; they have lives to lead even during political campaigns and consequently spend a limited amount of time and effort in acquiring and processing campaign messages (Garner, 2009; Christiano, 1996). Yet campaigns can achieve limited aims, as long as they are properly regulated, even within their strict temporal limits (Thompson, 2004) and the strategic and psychological limits of candidates, party leaders and voters.

In order to ensure some minimal standards of quality, outright lies are banned in several states, although such bans are not very common on continental Europe, and face free speech (normative) challenges in the USA, besides practical challenges in their application and enforcement (Rowbottom, 2012). Hate speech, especially racist and xenophobic speech, may have a particular impact in the electoral context, and restrictions on such campaign speech also exist in Europe.⁵⁷ More recently, debates concerning the quality of campaigns have focused on the challenges of online electoral campaigns (Tambini, 2018; Neudert and Marchal, 2019). Regulation of online campaigns, for all practical intents and purposes, is mostly in the hands of social media platforms to date (Dommett, 2020).

From the voter's perspective, the quality of campaign discourse has a dual significance. On the one hand, exceedingly untruthful campaigns do not serve their informational function, and hence make it more burdensome for the voter to cast an informed ballot (cf. Estlund, 2000). On the other hand, the low quality of campaign discourse, which may also be linked to inequities in the campaign, see the subsection immediately below, may alienate voters and contribute to political disaffection (Ansolabehere and Iyengar, 1995; Goldstein and Freedman, 2002, Haselmayer, 2019).

6.2 Quantity

Both absolute and relative quantities of campaign expression have been subjects of philosophical as well as practical regulatory concern. *Absolute quantities* of campaign speech matter from the voter's perspective because if campaigns are not rich or long enough, they might not deliver sufficient information to the voter or raise her interest in participation (cf. Estlund, 2000). At the same time, if they are too loud or long, they may turn away voters (cf. Goldstein and Freedman, 2002). Electoral campaigns, at least formally, are temporally limited in democracies (Thompson, 2004): they end with or before election day, and start a fixed period of time before election day.

⁵⁷ On the compatibility of such restrictions with freedom of speech based on the European Convention on Human Rights, see the judgment of the European Court of Human Rights in *Féret v. Belgium* (15615/07, 16 July 2009).

Relative quantities of campaign speech also matter hugely, in terms of *equalizing concerns*. It is uncontroversial that some standard of *equality of opportunity* should apply to the distribution of campaign speech opportunities. Nevertheless, the exact content of the requirements of equality of opportunity to be applied in campaigns is controversial and, while some argue the aim should be to equalize opportunities between candidates (Brighouse, 1996), others argue the principle should apply as between political views (Christiano, 1996). The philosophical literature is also somewhat unclear on whether equalizing ambitions should apply to political deliberation in general or to electoral campaigns specifically (but see Thompson, 2004, and Cohen 2001 for a campaign-specific argument, as well as Christiano, 2012 for a more general argument). Characteristic inequalities of opportunity arise for newcomers, challengers, parties with a less wealthy base, and independent candidates, amongst others (see, e.g., Briffault, 1999).

While some equalizing measures directly target the allocation of scarce vehicles of political messages – such as TV or radio airtime – egalitarian aspirations must tackle questions of *campaign financing* too, since unequal opportunities to convey one’s political views are primarily due to unequal resources available for campaigning. Efforts to realize equality of opportunity in electoral campaigns have been subject to constitutional challenges in the US, whereas measures such as equal airtime on public service media as well as campaign financing restrictions such as caps on campaign contributions and expenditures have been central to campaign regulation in Europe (Szilágyi, 2017; for an overview of regulatory means, see Falguera et al., 2014: 21-29).⁵⁸ The theoretical literature focuses on the merits and demerits of different campaign financing regimes. In order to ensure equality of opportunity, some views in the literature entirely oppose privately financed campaigns and advocate for publicly funded campaigns (see Cagé, 2020), whereas others only support campaign expenditure and contribution caps (Falguera et al., 2014: 22).⁵⁹ Some argue that campaign expenditure ceilings and contribution caps, albeit promoting equality of opportunity, violate freedom of speech (Anderson, 2000), while others argue they do not (Dworkin, 1999); yet others offer more nuanced views, recognizing the impact of such restriction both for equalizing opportunities and for free speech interests (Cohen, 2001; Christiano, 2012). Further, recent some analyses underline the importance of diversity and inclusion, in

⁵⁸ See, for example, Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (Adopted by the Committee of Ministers on 7 November 2007 at the 1010th meeting of the Ministers’ Deputies). See also the landmark decision of the European Court of Human Rights in *Animal Defenders International v. The United Kingdom* (48876/08, 22 April 2013), where the Court established that freedom of speech may legitimately be restricted in pursuit of the aim of “protect[ing] the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media” (112), although the case did not concern campaigns but a fairly general ban on political advertising. Cf. also *Guidelines on media analysis during election observation missions*, adopted by the Council for Democratic Elections at its 29th meeting (Venice, 11 June 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009).

⁵⁹ An expenditure ceiling is also recommended by the Venice Commission, the expert body of the Council of Europe on constitutional democracy (European Commission for Democracy through Law, 2019). Further, the Council of Europe *Recommendation 2003/4 of the Committee of Ministers to Member States on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns* (adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers’ Deputies) declares support for a private-public mixed funding scheme: “The state and its citizens are both entitled to support political parties. The state should provide support to political parties. State support should be limited to reasonable contributions” (Appendix, Article 1).

addition to equality, in campaign financing regulation (Agrawal and Hamada, 2021). Finally, in addition to concerns with *equality* of opportunity, campaign finance regimes also influence the competitiveness of elections and the rigidity of the political spectrum by making it more or less difficult for newcomers and challengers to reach voters in campaigns (Briffault, 1999).

Some of the newest challenges in campaign equity and campaign financing include the role of companies in financing electoral campaign, as well as issues specific to online campaign financing. The role of companies in political campaigns raises theoretical and practical questions especially in the USA, where constitutional challenges have been successfully mounted against limiting their role in campaign financing (Levitt, 2010). However, reflection on their role in European electoral campaigns is less salient, matching a more nuanced regulatory environment. By contrast, the financing of online electoral campaigns poses challenges in democracies worldwide. These include the media- or platform-specific character of relevant legislation which hence lags behind rapid technological change; the multinational nature of social media corporations, with the consequent lack of transparency regarding payments for political advertisements, which also aggravates concerns with third-party financing, and the challenges of enforcing national campaign regulations internationally (Agrawal et al., 2021).

From the voter's perspective, robust equality of opportunity among the contenders of the electoral race or their views, including appropriate campaign financing restrictions, is significant for instrumental reasons. It is a means to facilitate the acquisition of balanced information. For the same reason, levelling down to the point of silencing the campaign as a means of equalizing opportunities cannot be a satisfactory regulatory solution, given that it deprives voters of valuable sources of information (see Estlund, 2010; Szilágyi, 2017).⁶⁰ Further, such levelling down may also deprive voters of opportunities to engage in the conduct of public affairs through monetary contributions rather than direct political activism. Finally, nevertheless, exclusive reliance on voters' preferences in the distribution of campaign funds - whether it comes from private sources or publicly funded voucher systems, as some have proposed (Estlund, 2000; Cagé, 2020) - may well put newcomers and challengers at a considerable disadvantage relative to established political forces (Briffault, 1999: 570). This disadvantage may be counterbalanced by a distribution of public funds independently of voters' preferences, not necessarily instead of, but rather in addition to funding regimes based on voters' preferences and / or agency. The right regulative ideal of equality of opportunity thus must take account of voters' informational interests, as well as their interests in indirect political agency and their interests in counteracting excessive barriers of entry to the political competition.

7. PRIVACY AND PUBLICITY IN ELECTORAL PROCESSES

Transparency and publicity are central values of democratic electoral processes and of democracy more generally (European Commission for Democracy through Law, 2002; Christiano, 2008). At the same time, the public interest in this transparency can come into conflict with the privacy interests of individual candidates, voters, and campaign

⁶⁰*Animal Defenders International v. The United Kingdom* concerned, for example, a ban on paid political advertising as such, even though not specifically during campaign periods.

contributors.⁶¹ European democracies may balance these interests in different ways, yet they may not completely surrender the public interests to the private interests concerned.⁶²

7.1 Candidates' Privacy

Candidate running for office, while undeniably public figures, also have a private life. Their family affairs, health conditions, religious convictions and sexual life may paradigmatically fall within this realm: candidates have weighty interests in protecting its inviolability and retaining control over what the public may learn and discuss about them. This is recognized in regimes of campaign regulation which provide some specific protection for the privacy of the candidates (see Rowbottom, 2012). Challenges arise not only due to the interest of the general public in learning about the private matters (especially scandals) of well-known public figures - among them, politicians, public officeholders and candidates for public offices. Such interest need not necessarily be promoted without limits (Thompson, 1993: 140, 2005). Much more significantly from a normative perspective, though, voters may deem facts pertaining to a candidate's private life as relevant to their electoral choice, given what light these facts cast on the candidate's fitness for office, including all sorts of politically relevant merits and demerits in the voters' eyes (Dobel, 1998; Rowbottom, 2012, Mokrosinska 2015). Least controversial among these may be facts related to the law-abidingness of the candidates, including, for example, criminal convictions or tax evasion. Yet political campaigns often also public bring attention to a (contender) candidate's allegedly failing health or disability (cf. Blunkett and MacCormick, 2002). Further, facts concerning a candidate's religious life may well be considered by some as indicative of meritorious character traits and trustworthiness in some voters' assessment, or on the contrary, of the overly conservative leanings of or undue church influence over the candidates' political activity, in other voters' assessment (cf. Robson, 2020). Finally, sexual orientation or marital indecencies, while at the core of one's private life, may be considered revelatory of a conservative candidate's hypocritical stance (cf. Parris, 1996), or on the contrary, one's LGBTQAI identity may be seen by some voters as insufficiently bearing on a progressive candidate's policy positions (cf. Kluttz, 2014), or simply as a moral failure in the eyes of more conservative voters (cf. Bloch, 2014). Thus, from the voter's perspective, there is considerable value in a regulatory framework which allows for the free public discussion of a wide range of private matters that pertain to the candidate's fitness in the voter's eyes. However, as negative campaigns may have an effect of alienating voters (see Section 6.1 above), this freedom should not be unlimited even if evaluated only from the voter's perspective.

⁶¹ While regulation primarily sees the relationship between privacy and publicity as a value (and rights) conflict, more fine-grained analyses reveal that privacy has a complex relationship to democracy and the public realm of politics, rather than being merely antithetical to them (Lever, 2012, 2015a, 2015b; Mokrosinska, 2018).

⁶² See the judgment of the European Court of Human Rights in *Saaristo and Others v. Finland* (184/06, 12 October 2010).

7.2 Voters' Personal Data: Targeted Campaigning and Electoral Registers

Voters' personal data play an increasingly important role in the electoral procedure, which implicates their privacy as well as.⁶³ First, online campaigning increasingly reaches voters in a highly targeted way. This is made possible by social media platforms benefitting from access to users' personal data for the purposes of targeted advertisement (more generally, see Zuboff, 2019). 'Pandering' – campaign practices specifically adjusted to a subpopulation within the electorate – is hardly a new practice in electoral campaigning (Wittman, 2008). Yet it may be found objectionable as evaluated from the voter's perspective (see Beerbohm, 2016). Targeted advertising makes it more burdensome for the voter to acquire sufficient information to see if a candidates' entire policy position is an acceptable compromise for her. Moreover, accountability to and authorization by voters is highly fragmented if a candidate does not publicly commit to the pursuit of her entire policy package and political agenda vis-à-vis all voters at once. Further, online platforms also allow voters greater opportunities to control *whose* campaign reaches them. Thus, not only can different voters get different messages from the same party or candidate, but different voters may not be reached by the same parties or candidates either. The consequent (partial) lack of a shared campaign exposure can negatively affect voters' informational interests. Finally, targeted political advertising may be an alarmingly effective means of hate mongering, as well as of creating or exacerbating troubling religious, racial, ethnic, sexual and class divisions in (or on the pretext of) electoral campaigns.

Second, processing voters' personal data is also necessary for the administration of elections. Electoral administration must maintain electoral registers which contain up-to-date personal data of voters (European Commission for Democracy through Law, 2002). In some countries, registration for voting is automatic (passive) and even obligatory – the overwhelming majority of EU Member States fall within this category – whereas in other countries, it is voluntary (active).⁶⁴ The electoral register is public in some countries (e.g., in Ireland), whereas it is possible to opt out of being listed on the public register in other countries (e.g., in the UK, those opting out of the 'open register' are still eligible to vote), and the register may be available only to election administration in yet other countries. From the voter's perspective, a public register may increase public trust in the legality of the elections,

⁶³ Theoretical debates concerning the secrecy of the ballot, recently revived in political philosophy and political theory, focus on a further locus of democratic life and elections where issues of privacy and publicity arise from the voter's perspective (Brennan and Pettit, 1990; Lever, 2007, 2015a, 2015b; Engelen, 2013; Vandamme, 2018). However, as the present chapter focuses on European electoral institutions, where the secrecy of the ballot is currently beyond legal and political dispute (see Aidt and Jensen, 2012; Mares, 2015; see also Article 3, Protocol No. 1 to the European Convention on Human Rights), the relevant theoretical debate falls outside of its scope.

⁶⁴ Obligatory registration does not always entail a duty to vote as well; it only means that eligible voters' data are entered on the electoral register regardless of whether eligible voters wish so, with no right to opt out. Further, in some countries where registration is obligatory and automatic by default (e.g., the electoral register is extracted from the population / civil registry), eligible voters may still need to actively register in some situations (e.g., address change, establishing residence etc.; see International IDEA, n.d. c). Finally, registration may also be passive or automatic but not obligatory. For instance, one may or may not opt to have a driver's license, while a driver's license application may be automatically processed as a voter registration request as well.

whereas its publication may, depending on its exact content, compromise the voter's privacy (e.g., by revealing her address).⁶⁵

7.3 Transparency of Sources of Funding

Concerns of publicity and privacy also arise with regard to the funding of political campaigns and, more generally, political parties in and out of campaigns. Political parties in European democracies, as well as candidates, quite frequently, and third parties, less frequently, are subject to various reporting requirements and audits regarding their campaign activities, incomes, and expenditures (Falguera et al., 2014). While national reporting and auditing frameworks might differ, international standards - among them, those applied by the Group of States against Corruption (GRECO), the Council of Europe anti-corruption body - have achieved significant convergence within the European region in the norms of transparency of political finances (cf. Smirnova, 2018).⁶⁶ Financial reports serve the voter's informational interests by allowing her, if income sources are reported (see Falguera et al., 2014: 29-30), to properly judge the monetary influences behind a particular candidate or political party. At the same time, such reports may also promote voters' interest in exercising indirect political agency if voters can donate to political parties or candidates without their donations or campaign contributions being made public, revealing their political preferences.⁶⁷ Voucher systems may be well placed to satisfy both interests, and so are reporting regimes which only require the disclosure of the donor's identity above a certain donation threshold (Falguera et al., 2014: 29).

8. CONCLUSIONS

European democracies - unsurprisingly, due to their diverse historical origins - exhibit a variety of electoral institutions that cannot be uniformly tackled by a sufficiently finely grained ethics of voting. Understanding the practical necessities and moral challenges that are specific to various electoral institutions or their unique combinations is only possible with due regard to the particularities of these institutions. The voter's perspective is not the only one that matters for a democratic political ethics of voting, but appreciating how these institutions matter for the moral outlook of voters is a necessary step in building an ethics of voting that can guide European voters through the specific ethical challenges they face, as well as in designing electoral institutions which minimize undue ethical burdens on voters.

⁶⁵ On the challenges of voter registration for nomadic citizens, see Häggrot, 2018.

⁶⁶ See also *Recommendation 2003/4 of the Committee of Ministers to Member States on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns* (adopted by the Committee of Ministers on 8 April 2003 at the 835th meeting of the Ministers' Deputies), esp. Articles 6, 11, 13, 14 and 16 on matters of transparency of funding.

⁶⁷ Transparency requirements more generally implicate the funder's as well as the beneficiary's privacy. However, sometimes voters are at once funders too.

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