Chapter 7

HOW POLITICAL INSTITUTIONS AFFECT THE CONFLICTS OF DUTY AND PRUDENCE FACING DEMOCRATIC VOTERS

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1. INTRODUCTION

Voters in European democracies regularly face ethical conflicts in deciding whether to vote, and if so, how.[1] Some of these conflicts are unique to – and most are vastly shaped by – local political, social, or economic contexts. However, the kinds of ethical conflict voters face, as well as their severity, also depend on how electoral institutions in which voters make their choices are designed. This chapter surveys those features of electoral institutions which play a significant role in shaping European voters' ethical conflicts. More specifically, the chapter has the following two objectives:

1. To describe, using the voter-centric framework we have developed (Mráz and Lever 2023a; Mráz and Lever 2023b; Fumagalli and Ottonelli 2023) those ethical conflicts that are created or shaped by the particularities of a given electoral system or electoral institution.

2. To generate and analyse corresponding scenarios to illustrate these conflicts, based on real-world testimonies of voters.

It is worth emphasizing that while the chapter builds on empirical, descriptive findings concerning various electoral institutions, its purpose is to provide a normative map of the various issues that could arise in different empirical circumstances.

This chapter does not aim to solve ethical dilemmas or resolve conflicts of duty or moral reasons on voters' behalf. Instead, this chapter supports decision-making in two ways. First, it offers considerations for voters to take into account in exercising their democratic rights – and their franchise, in particular. It is not the aim of this chapter to offer conclusive advice as to how voters should resolve ethical conflicts. Instead, considerations identified in this chapter can serve as inputs into voters' exercise of their own political judgment (see

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[1] "Ethical" and "moral" will be used interchangeably throughout this report.

Ottonelli, 2018; Steinberger, 1993; Steinberger, 2018; Mráz and Lever 2023b, Section 4.6; Fumagalli and Ottonelli 2023)

Second, the present chapter offers considerations for decision-makers to consider when designing electoral institutions. It is an underappreciated vice of some electoral institutions that they unnecessarily accentuate and aggravate electoral dilemmas and are likely to put voters into situations where they are subject to conflicting duties in particularly salient and ethically burdensome ways; whereas it is an underappreciate virtue of other electoral institutions that they eliminate or mitigate some of these burdens. This chapter helps identify and build electoral institutions which fall into the latter category.

The structure of the present chapter is as follows. Section 2 summarizes the methodological approach of this chapter. Section 3 outlines how electoral systems shape ethical conflicts in three key ways: by regulating when one's vote becomes wasted, by regulating whether and how one can split one's vote, and by making some normative functions or meanings of one's vote more emphatic (i.e., easier to realize through voting) than others. Section 4 reviews how further salient features of electoral institutions beyond the voting system narrowly understood - namely, the (dis)enfranchisement and procedural burdens of non-resident voters; compulsory voting; and the institutions which co-constitute voters' information environment - shape European voters' ethical conflicts. Section 5 addresses complications of non-party representation and its interaction with the electoral system – whether through independent candidates or candidates affiliated with other, non-party organizations – for voters' ethical conflicts. Section 6 analyses three case study-based scenarios in detail with a view to showing how the framework drawn up in the previous sections can be applied productively in understanding voters' ethical conflicts in complex real-world situations – as well as in mitigating these conflicts by normatively informed electoral institutional design. Section 7 concludes.

2. APPROACH

This chapter relies on the findings of (Mráz and Lever 2023a; Mráz and Lever 2023b; Fumagalli and Ottonelli 2023) in the following way. (Mráz and Lever 2023a) reviewed the descriptive characteristics of democratic political and electoral systems relevant to the ethical perspective of the voter, whereas (Mráz and Lever 2023b) identified normative criteria of evaluation for such elements of democratic institutional design. (Fumagalli and Ottonelli 2023) identified general normative criteria to analyse, understand and evaluate voters' ethical conflicts and guide voters' decision-making. This chapter largely builds on and synthesizes the findings of these previous chapters, applying the normative frameworks to the empirical, descriptive characteristics of particular electoral institutions.

The methodological approach of this chapter is normative. It does not aim to empirically map the diverse psychological motives and social, economic or political explanations for why voters (do not) vote in various ways. Instead, it identifies *moral reasons* voters have to regard particular electoral choices as ethically challenging because these choices involve a conflict of moral reasons, or even more radically, of duties. The chapter is not meant to provide moral advice to the individual voter to solve highly particular ethical conflicts in a specific manner. Instead, it helps elucidate the relevant normative considerations that voters have good reason to take into account in exercising their prudence (Ottonelli, 2018;

Steinberger, 1993; Steinberger, 2018; Mráz and Lever 2023b, Section 4.6; Fumagalli and Ottonelli 2023), on the one hand, and it helps guide electoral institutional design to mitigate unnecessary ethical conflicts in voting, on the other.

The normative method applied in this chapter is that of grounded normative theory (Ackerly et al., 2021). This means that this chapter takes the institutional context and empirical reality of voting in European democracies as a point of departure (see Mráz and Lever 2023a) and explores how specific elements of this descriptive context shape the ethical conflicts that voters face. In contrast to (Fumagalli and Ottonelli 2023), this chapter does not start from general characteristics of ethical conflicts - which are also highly relevant to the analysis of the ethical challenges voters face. Instead, using the analytic toolkit of (Fumagalli and Ottonelli 2023) as well, the chapter provides a "micro" level ethical analysis which shows how some of voters' moral challenges, or at least their severity and exact shape, do not merely depend on structures of normative reasoning but also on the electoral institutional context in which voting takes place.

At the same time, the chapter generates findings that are generalizable at least within certain limits. For this reason, it does not engage in a country-by-country analysis, even though such analyses no doubt can and should identify ethical conflicts specific to a given, highly particular institutional context. Instead, the chapter brings attention to how some salient electoral institutions that are shared across a number of European countries shape voters' ethical conflicts. Thus, this chapter both illustrates how finer grained moral analysis of the voter's perspective can proceed, and contributes to such future research with the "building blocks" that finer grained, highly context-sensitive and particularized analyses can combine and examine in their interaction – with one another as well as with further, highly unique contextual elements not covered here.

This chapter also shows through **case studies or scenarios** how the considerations covered in here can be applied in the analysis of individual voters' choices and electoral design. These case studies or scenarios are based on the first-person experience of voters, and interpret and elucidate these moral phenomenologies by means of the analytic toolkit provided in this chapter. The three cases analysed are as follows. First, a case involving ethical conflicts between the normative grounds of voting is analysed as it is manifested in the institutional context of French presidential elections. Second, a case involving ethical conflicts for resident voters with regard to the representation of non-resident voters is described in light of the challenges of the voter registration procedure in Spanish elections. Third, a case involving ethical conflicts regarding abstention and strategic voting is described in the context of the mixed voting system of Hungarian parliamentary elections.

3. ELECTORAL SYSTEMS AND ETHICAL CONFLICTS

Electoral systems are crucial in determining the particular ethical burdens and conflicts of duty that voters face, and hence also in specifying the context in which their prudence is to be used (Ottonelli, 2018; Steinberger, 1993; Steinberger, 2018). Electoral systems vary considerably in the extent they generate wasted votes, i.e., valid votes which, although counted, do not influence the electoral outcome, in how far they allow voters to split votes – assuming there is more than one vote to cast in a single election – and which functions or meanings of the ballot they foreground to voters.

3.1 Wasted Votes and Ethical Conflicts

Electoral outcome-related considerations. The likelihood of a wasted vote varies across electoral systems. The higher the likelihood of one's vote being wasted, the less weighty are considerations related to one's contribution to the electoral outcome – the consequentialist, instrumental aspect of voting. This has dual significance for voter's ethical conflicts.

On the one hand, voters have reason to see likely wasted votes as morally liberating: voters need not feel too burdened about using them *well* on consequentialist grounds. For example, one may feel obliged to promote justice or the common good using one's vote, and if these come into conflict (cf. Mráz and Lever 2023a, Section 4.2.; Lever, 2016), one may be torn about which one to choose. E.g., one may have to choose between a party or candidate promoting humanitarian aid and global climate justice at the expense of the growth of the national economy, and another one having opposite priorities. However, if one's vote is rather likely to get wasted, such choices are relatively weightless. On the flipside, constituency size matters for the severity of ethical conflicts, as the latter may be much more severe in very small constituencies where one's vote has a higher chance of being decisive or pivotal – such as in municipal elections in a small village.

It is *not* implied that electoral systems generating wasted votes, and in significant numbers, are - even *pro tanto* – good for this reason. Some ethical conflicts are simply necessary corollaries of voters' political agency. The lack of political agency is not to be celebrated, and ethical conflicts need not be eliminated at the expense of eliminating political agency. The implication, then, is rather that voters faced with a high likelihood of their votes being wasted have reason to be less concerned about such conflicts of duty where one of the conflicting duties is consequentially, instrumentally oriented. Further, voters may have reason to enjoy a wider prerogative to pursue their own interests through their vote if it is likely to be wasted - and hence is objectively less suitable to pursue morally prescribed aims (cf. Lever, 2016; Mráz and Lever 2023b, Section 4.1.2).

On the other hand, taking a broader perspective, the high probability of wasted votes does not necessarily relieve voters of their ethical burdens. In cases where one's votes are split between two options - e.g., by voting for a party list and an individual candidate affiliated with a different party - the high likelihood of one of the votes being wasted makes vote-splitting a less efficient way of responding to different moral reasons. In other words, vote-splitting is somewhat illusory if one's votes are split between a ballot that is not likely to be wasted and another one that is likely to be wasted. (See Section 3.2.1 below on the significance of vote-splitting for voters' ethical conflicts.)

Wastefulness is irrelevant for non-consequentialist, expressive considerations. The wastefulness of one's vote is only significant for instrumental, consequentialist considerations about voting. Yet voters may well use their vote for expressive purposes (Brennan and Hamlin, 1998; Lomasky and Brennan, 2000), or to vote with a clear conscience and distance themselves morally from unacceptable options they do not see as adequate subjects of compromise (Maskivker, 2019: 147–152; cf. Margalit, 2010). They may wish to express or act on their loyalty to a party, to a social group, e.g., a minority they are members of, and so forth. Such considerations are not affected by the wastefulness of one's vote.

Implications for voters' decision-making. The above considerations are significant for voters' decisions as to *whether* to vote and, if deciding to vote, as to *how* to vote. Voters may have reason to see higher ethical burdens as alienating, incentivizing them to avoid a difficult choice as to how to vote by not voting at all. Yet they may also have reason to see higher ethical burdens as an invitation to take responsibility for an especially important-seeming decision and hence to participate. Lower ethical burdens regarding consequentialist moral considerations may give reasons for voters to give more weight to non-consequentialist moral considerations – or to non-moral considerations – in deciding how to vote.

Implications for electoral system choice and design. Pure plurality- and majority-based voting systems are considerably wasteful of individual votes, i.e., they generate a large number of votes which do not contribute to the election outcome. First the votes not cast for the winning candidate are wasted; second, votes cast on the winning candidate beyond what is necessary for her to win may also be seen as wasted (not contributing to the election outcome). Proportional electoral systems, including list systems and single transferable vote systems, generate much fewer wasted votes, unless proportional electoral systems are paired with a high threshold of gaining seats. Mixed electoral systems, if their subsystems are unrelated, may generate wasted votes through their plurality/majority subsystem. However, subsystems of mixed electoral systems may be connected in such a way that (some of) the votes which would go wasted in the plurality/majority subsystem are transformed into the proportionality subsystem and contribute to its electoral outcomes. (See also the scenario in Section 6.3 below; for further details, see Mráz and Lever 2023a, Section 4.2.1; cf. King, 2016.) The more wasteful an electoral system is, the more salient ethical conflicts become, but at the same time, the less consequential voters may have reason to regard such conflicts. Further, the more wasteful a subsystem of a mixed electoral system is, the less suitable it is to offer effective vote-splitting compromises to voters.

3.2 Number of Votes and Ethical Conflicts

Contrary to the well-known slogan of "one person - one vote",[2] what is common to democratic electoral systems as a default rule is not that each voter has one vote, but that each voter has the *same* number of votes as other voters.[3] Different electoral systems give voters different numbers of votes to cast altogether in a single election. Electoral systems generate ethical conflicts, to a vast extent, due to the low number of votes they offer a single voter to cast, no matter how complex her voting-relevant preferences and views are. The higher the number of votes a voter may cast in an election, the more opportunities she gets to split votes and thereby reconcile different duties that bear on her electoral choices.

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[2] The slogan dates back to a late 19th century pamphlet by George Howell (Howell 1880), but it was popularized in the English-speaking world after a series of US Supreme Court decisions starting with Baker v. Carr, 369 U.S. 186 (1962).

[3] Even this is a considerable simplification. For example, in Hungary, each resident voter has two votes in parliamentary elections, one for a list, another for an individual candidate, whereas non-resident voters only have one vote – their list vote – as that is the only one not assigned to any particular (residence-based) constituency. (Az országgyűlési képviselők választásáról szóló 2011. évi CCIII. törvény ['Act on the election of the Members of Parliament'], Section 12. §.)

3.2.1 Votes Available in a Single Round and Ethical Conflicts

Voting systems differ with regard to how many votes voters can cast at the same time, in a given phase of an electoral procedure. **Presidential elections** typically allow voters to choose only one candidate (whether they apply a one-round or a two-round system - but the majority of countries apply two-round system) (Reynolds et al., 2005: 130). Similarly, **pure majority or plurality-based single member constituency electoral systems** in **elections of representative assemblies** (typically, legislative, regional or municipal) allow voters to choose one single candidate. This already implies voters need to take into account all ethically relevant considerations and condense these into a single ballot decision. Further, these electoral systems aggravate conflicts of duty for voters because they have an emphatic personal element. In addition to duties of justice and the common good, and considerations of group loyalty, concerns of descriptive representation, individual authorization and sanctioning may be reasonably given considerable weight in voters' decisions. Yet all these moral considerations may well lead in different directions that voters need to consider in a single, highly individual-focused vote.

Pure list systems – one significant subtype of proportional voting systems – likewise provide voters with a single vote to cast. However, the personal element is less pronounced here, especially in closed list systems. In such systems, voters need not choose between person-related ethical considerations and other kinds of ethical considerations, or they may have sufficient reason to deprioritize person-related considerations. Voters may still care deeply about, e.g., descriptive representation or authorization and sanctioning, yet they can only compare lists and the parties (typically) establishing them. For instance, one may care about the fact that a self-proclaimed leftist political party does not nominate enough women, Roma people, or people with a worker background on its party list, or it does not nominate them in the right places. Still, as voters often have no reason to feel responsible for the election of any particular candidate on a party list, they only have reason to take these considerations into account at the party or list level.[4] Compare this with the situation of voters in a majority system, who typically have reason to weigh these considerations at the party level, and *additionally*, also at the level of the individual candidate, e.g., they may find their duties of loyalty or concerns with descriptive representation are satisfied by the local female candidate, but not the party as a whole. Such ethical tensions do not typically arise in list systems in the same form.

Proportional systems using a **single transferable vote (STV)** may technically offer one ballot to each voter, but offer a much more nuanced opportunity for voters to grapple with conflicts of duty. As all voting systems inevitably do, STV systems also require voters to exercise their judgment and prioritize between conflicting ethical considerations. However, they reduce that burden because they only ask voters to prioritize, but not to ultimately set aside some of the ethical considerations they deem relevant to electoral choice. In STV systems, voters *rank* their choices, and not only choose one of the available options.

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[4] "Often," but not always. Voters who consider voting for smaller, less popular parties' lists may know full well, for example, that only the first 1-3 candidates on the list have any chance of winning seats. In such cases, person-related considerations become more emphatic. Hence, voters' ethical conflicts in these cases may be more akin to those that voters in majoritarian systems have reason to feel burdened with.

Some voters may treat some of the conflicting duties and other ethical considerations that bear on their voting as *constraints* on the application of other duties or ethical considerations (i.e., they function as exclusionary reasons in Joseph Raz's terminology; see Raz, 1999; Raz, 2021). For instance, some minority voters may see themselves as not only willing but duty-bound to vote for a candidate who offers a credible and viable program for addressing that minority's needs, or actually even belongs to that minority, and this may, in some voters' eyes, trump all other ethical considerations. Such voters see this duty as a constraint on applying other voting-relevant ethical considerations. For such voters, rank choice voting may not make voting more or less ethically burdensome. Whether through painful or easy choices, they only see themselves having sufficient reason to vote for a single candidate or party as their primary choice. (However, even for voters who vote primarily based on a constraint-like consideration, STV systems allow further considerations to be acted on if such voters have no reasons *against* indicating a second, third etc. choice.)

However, for other voters, conflicting duties and other ethical considerations may bear on electoral choice at the same time with different *weights* attached to them, and they could be *balanced* against one another. In other words, such voters do not see any relevant ethical consideration as a constraint on taking other considerations into account. For instance, such voters may think that helping other nations who are victims of climate change (global justice) is important, but not as important as economic growth at home which also makes a state retirement system sustainable (common good), and that it is even more important for them to be descriptive represented by or to show loyalty to a Christian or a woman candidate, or a Christian democratic party or one that takes the cause of gender representation seriously. In such cases, candidates or parties can be ranked along these different dimensions, and voters can exercise their franchise with a considerably reduced ethical burden compared to majority systems and (especially closed) list systems.

Mixed voting systems offer voters the opportunity to cast more than one vote in a single election. As such systems consist of a subsystem in which individual candidates are elected, and another one in which typically lists are chosen (Reynolds et al., 2005: 91), they offer unique ways for voters to compromise (Margalit, 2010; Rouméas, 2021).

First, voters may see a mixed electoral system as offering an adequate compromise regarding reasons for and against *participation*. They may have ethical reasons to dissociate themselves from the electoral procedure, e.g., a general condemnation of the corrupt political elite, or prevalent hate speech throughout the campaign (Fumagalli, 2021). Yet they may decide, for example, that even if they are unwilling to and ethically required not to cast a valid vote for any of the party lists, they may have sufficiently good moral reasons to vote for a particular individual candidate. Or the other way round, voters may see it as their ethical duty to express through no-show or invalid ballots that their constituency's local campaign was morally unacceptable to them in tone or content - yet they may not have similar moral reservations about (and constraints on) voting for a party list. This is entirely coherent as long as they either do not see local developments as symptomatic of the general politics of the party they are inclined to vote for, or they do not see the responsibility of the party in omitting to control the campaign.

Second, a mixed electoral system may shape voters' normative reasons as to *how to vote*. Namely, voters may see reasons to prioritize person-related ethical considerations when

voting for an individual candidate. This is because such considerations are largely inapplicable when voting for a (party) list, whereas duties of justice, the common good, or even self-interest-based considerations can be relevantly applied to promises made by parties as well. Hence, the latter considerations may be deprioritized when choosing an individual candidate.

Yet even this de-prioritization may be seen as ethically problematic, from both consequentialist and non-consequentialist perspectives. On the one hand, it may be objectionable if it seen to contribute to the overall insufficient votes gained by a party to form a majority, or pass the threshold of gaining mandates (cf. Fredén, 2014). On the other hand, de-prioritizing party-related considerations in voting for an individual candidate may also be ethically objectionable from a non-consequentialist viewpoint - as a matter of disloyalty, or as a matter of disrespect for considerations of justice or the common good interpreted as deontological constraints. Thus, while mixed systems can alleviate unnecessary ethical conflicts, they are far from eliminating such conflicts through offering the option of vote-splitting.

3.2.2 One-Round vs. Two-Round Systems and Resolving Ethical Conflicts

The question as to whether voters can split their votes arises not only synchronically – at a given stage in the electoral procedure – but also diachronically, between different stages of the same electoral procedure. When this is not possible, we are talking about one-round systems; when diachronic splitting it possible, we are talking about two-round systems.

The choice between one-round and two-round systems arises in majoritarian electoral systems. If plurality, i.e., gaining the highest number of votes, whether or not that means more than 50% of the valid votes cast, is sufficient for winning, then there is no need for a second round for the system to yield a determinate outcome. Nor is there any such need for a second round in proportional electoral systems.[5] Yet if a majority is required for winning, but there is only a plurality winner in a first round, a second round (also known as a 'run-off election') may be and often is required (Reynolds et al., 2005: 52). In practice, this implies that two-round systems are typical in presidential elections as well as in majoritarian (as opposed to plurality-based) elections of individual candidates for a seat in a (legislative) assembly.

In some respects, two-round elections are analogous to mixed electoral systems in how they may help resolve voters' conflicts of duties perceived as relevant to electoral choice. Again, when voters see some of their voting-relevant duties as constraints on applying other moral considerations to their vote, two-round elections do not affect the moral burdens on voters. Nevertheless, in other cases, voters may see the two rounds as opportunities to balance or discharge more than one of the duties or act upon more than one of the conflicting ethical considerations they find relevant to their electoral choice. In other words, two-round systems can pre-empt compromises that voters potentially see as necessary but

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[5] Thresholds could complicate this, as in theory, it would be possible not to distribute the mandates that correspond to the votes gained by parties that are sufficient for winning a mandate but are below the threshold. In such cases, the mandates not distributed in the first round could be distributed in a second round. However, instead, proportional systems with thresholds typically distribute all the mandates only between those parties whose lists have gained the number of votes necessary to pass the threshold (see, e.g., Reeve and Ware, 1992: 152).

objectionable (even if they do not pre-empt all strategic compromises, cf. the descriptive findings of Cox, 1997: 137). For example, in the first round, a voter may vote for a candidate who most clearly stands for what they see as the common good of the country - judging that to be a more urgent issue than descriptive representation (which she also finds morally important). Once the candidate she considers to be the best in terms of promoting the common good drops out of the race, though, the same voter might decide to vote in the second round for a female candidate to ensure proper gender representation - seen as a matter of democratic justice (in the eyes of a male or female voter), or a matter of loyalty to shared interests of women (in the eyes of a female voter), or in some other ethically significant way.

Thus, what appear to be conflicting duties and reasons in a single-round election can be discharged in different phases of the electoral procedure in a two-round election. This considerably reduces voters' ethical burdens of choice. Entry-barriers, such as the common requirement to collect supporting signatures for candidacy, can complicate this effect, though. The complete lack of such barriers, on the one hand, may make electoral choice more difficult in the first round: voters may have to evaluate a large number of candidates based on a number of different considerations, making informed, considered, prudent judgment rather burdensome. (See more in Section 4.3 below on the information environment and voters' ethical conflicts.) Excessive entry barriers, on the other hand, can deprive voters of the opportunity to split their votes temporally, as they pre-empt the need for a second round.

In other respects, however, two-round systems may even aggravate voters' ethical conflicts by exposing them to two profoundly difficult ethical choice situation rather than only one. This is especially so if voters in the first round already see themselves ethically compelled to vote strategically, i.e., to vote for a candidate who is not their first preference but who is more likely to win than their first preference, for what they see as a 'lesser evil'. In such cases, voters may have reason to make either the same morally unpalatable compromise twice, or in worse cases, when their strategic choice proves to be an unviable candidate in the second round or does not make it to the second round at all, voters may need to resort to even harder compromises in the second round than in the first one. For example, left-leaning voters in recent French presidential elections in 2017 may have felt compelled to vote strategically already in the first round - yet then found themselves having to choose between centrist candidate Macron and far right candidate Le Pen in the second round.

3.3 Voting Systems and the Meaning of the Vote

Voting systems can shape the ethical conflicts that voters face by influencing their understanding of what they do when they cast the ballot. Different normative functions of voting – sanctioning, authorization, selection, expressing alliance (loyalty) or identity – and moral considerations pertaining to them may come into conflict. Various voting systems may make some of these functions more salient, i.e., easier to realize through voting, and thereby also guide the resolution of these moral conflicts.

Sanctioning may be reasonably seen as weightier in voting systems with more emphasis on individual candidacy: namely, majority/plurality systems, STV systems, as well as open list PR systems (Reynolds et al., 2005: 12). These voting systems are efficient means of holding individual (incumbent) candidates to account for past performance and sanction them for unsatisfactory performance. However, the fact that these electoral systems are more

efficient tools of sanctioning individual candidates may aggravate ethical conflicts which arise when other morally relevant functions of voting are relevant too in the voter's eyes. For instance, a voter may find it important to contribute to the authorization of a political party to pursue what she sees as an appealing political vision for the future. Yet she may only be able to do that in a majority / plurality system by means of voting for the individual candidate affiliated with that party whose performance she would also find important to sanction. Conversely, a voter may face ethical conflicts because she wishes to sanction a political party but cannot do so, given the characteristics of the voting system, without sanctioning the incumbent representative at the same time - even if the latter performed well in the voter's eyes.

Authorization and **selection** may also be reasonably seen as weightier in voting systems with more emphasis on individual candidacy: STV systems and majority/plurality systems. However, party authorization figures strongly in list PR systems, and even individual authorization and selection are highly relevant in open list systems. Ethical conflicts arise, in part, from the fact that voters may see their own vote as authorizing and selecting both a candidate and (through her) a party – in STV and majority / plurality systems – or both a party and (through it) its candidates, especially in a closed list PR system, even if voters do not wish to publicly create authorization for both party and candidate but only for one of these.

Expressing alliance (loyalty) or identity. Some voting systems more typically enhance the descriptive representation of women and minority members of the political community than others. Lists PR systems are often combined with gender or minority quotas, and even without that, low or no thresholds can facilitate women or minority representation (Reynolds et al., 2005: 122; on quotas, see Dahlerup, 2013; Mráz, 2021). In such electoral systems, some of the ethical conflicts are more attenuated for some women or minority voters: namely, voters whose group membership is a matter of identity or who see loyalty-based moral considerations as especially weighty or perhaps even a constraint on other relevant moral considerations in voting. Such voters may not need to make radical choices between instrumentally more efficacious parties or candidates, on the one hand, and parties or candidates which offer them descriptive representation and through which they can express group identity or loyalty, on the other hand. However, this does not mean such conflicts entirely disappear. Voters may still find, for example, that their political views and interests are instrumentally more efficiently represented in political decision-making by one party or candidate, whereas another party or candidate is superior in terms of descriptive representation and expressing their identity or loyalty. Majority/plurality systems may also use reserved seats for minorities - examples of which can be found in Asia and Africa, but not in Europe. Yet even in majority / plurality systems, political parties can increase the presence of listing women and minority members on the ballot by short-listing them during nomination. This way, to their own benefit, parties in such electoral systems can alleviate the ethical conflicts of women and minority voters who otherwise prefer the party but also care about descriptive representation (Reynolds et al., 2005: 121).

4. FURTHER ELECTORAL INSTITUTIONS AND ETHICAL CONFLICTS

Electoral systems – narrowly understood as mechanisms of generating seats out of votes – are not the only electoral institutions which shape the ethical conflicts that voters face and

which challenge voters to use their prudence. Further electoral institutions also play significant roles in shaping ethical conflicts from the voter's perspective. This chapter focuses, in particular, on three such aspects as highly salient ones in a number of otherwise rather different European democracies: the (dis)enfranchisement and procedural burdens of non-resident voters; the challenges of compulsory voting; and the institutions which co-constitute voters' information environment, including campaign regulations and official avenues of disseminating information on the electoral system and procedure.

4.1 Voting From Abroad and Ethical Conflicts

Voting rights for diaspora populations show considerable variety all over Europe: while some Member States disenfranchise non-resident citizens, others enfranchise them without any restrictions, and yet others enfranchise them with substantive or procedural restrictions.[6] Such regimes also impact the ethical conflicts voters need to face.

Especially unrestricted franchise for **non-resident citizens** may generate **ethical conflicts** for those so enfranchised. On the one hand, non-resident citizens may have no intention to return to their country of citizenship. Hence, they may perceive it as unfair to have a say in the fate of that country (cf. López-Guerra, 2014: 90); or they might consider themselves to be insufficiently following public affairs in their country of citizenship to cast an informed ballot. On the other hand, non-resident citizens may regard their special epistemic status as outsiders as not (or not only) deficient but (also at least) in part privileged, since it allows them to contribute to political decision-making with a unique perspective (cf. feminist standpoint theories and black feminist epistemologies, e.g., Collins, 2009 [1990]; Harding, 1991; Longino, 1990; Longino, 2002), and they may see themselves obliged to so contribute. Alternatively, non-resident citizens may regard themselves as having an obligation to vote at least against outstandingly unjust policies or candidates - especially in a tight race (cf. Maskivker, 2019: 147-152).

The disenfranchisement of non-resident citizens, or even the imposition of excessive burdens on their exercise of the franchise, may generate **ethical conflicts for resident voters**, in turn. In some contexts, resident voters may regard themselves as having sufficient reason to represent non-resident citizens via voting. For example, because non-resident citizens may financially support populations *en masse* in their country of citizenship, and hence may be seen as having a legitimate interest in public affairs there (López-Guerra, 2005: 229). Alternatively, non-resident, disenfranchised populations may be liable to substantive harm in other ways, which may generate a need for their representation by resident voters. For instance, resident (and as such, eligible) voters in the Brexit referendum may have seen themselves as having a reason to protect the rights and privileges of non-resident UK citizens residing in (back then) other EU Member States. However, naturally, resident voters may well see themselves as duty-bound to act upon other moral reasons in voting. Hence the possibility of ethical conflicts for them.

Enfranchisement regimes which allow the electoral participation of non-resident citizens with some restrictions may alleviate the ethical conflicts of both non-resident and resident voters. Such restrictions may be temporal - limiting non-resident enfranchisement to a

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[6] See (Mráz and Lever 2023a, Section 4.1.1.2), for details on the (dis)enfranchisement of diaspora voters; see also (Mráz and Lever 2023a, Section 7.2) on voter registration.

certain duration or at least some active (re)engagement with electoral administration through (re)registration. Such temporal restrictions may give all voters reason to believe that mostly those non-resident citizens with sufficient interest in and knowledge about the public affairs of their country of citizenship are enfranchised to vote in the elections of their country of citizenship. Alternatively, electoral participation may be restricted in other ways, by enfranchising non-residents to vote for the candidates of a non-resident constituency (e.g., Croatia[7]), or only for lists within mixed systems with geographically defined constituencies (e.g., Hungary[8]). All of these kinds of restricted enfranchisement may alleviate non-resident voters' moral concerns of unfair electoral influence. At the same time, they may also give reasons for resident voters not to feel obliged to represent non-resident citizens through their votes, as the latter are not in need of surrogate representation (on surrogate representation more generally, see Mansbridge, 2003; see also Tremblay, 2006).

From the perspective of voters' ethical conflicts, then, enfranchising non-resident voters with some limitations may be the most conflict-reducing option in **electoral design**. This applies at least to contexts where diaspora populations continue to have a typically significant role in the economic or social life of the country.

4.2 Compulsory Voting

While voting is voluntary in most European democracies, several of them apply some compulsory voting regime, including Belgium, Bulgaria, Greece and Luxembourg.[9] Compulsory voting regimes also shape voters' ethical conflicts in the following way. Voters may find it important to abstain from an election for expressive reasons - e.g., contributing to a collective signalling of dissatisfaction with the political elite - or to preserve their moral integrity, e.g., by refraining from contributing to a political process they see profoundly flawed. While some of these concerns may be alleviated by casting an invalid ballot even in compulsory voting regimes, compulsory voting arguably limits voters' sphere of liberty, moral and political agency, and prudence (Lever, 2009, 2010a, 2010b; Ottonelli, 2018: 401; Saunders, 2016).

On the one hand, for those who find it ethically significant to stay away from the entire electoral process, compulsory voting may present an ethical conflict. This is because abstaining is a violation of the law in compulsory voting regimes, and voters may value obedience to law in general. On the other hand, compulsory voting may be thought to relieve more privileged voters who are more likely to participate anyways from an ethical burden: namely, that of representing in the polling booth even those who do not turn out - typically, the less privileged voters (Lijphart, 1997; Engelen, 2007; Birch, 2009; Hill, 2010; Brennan and Hill, 2014). Yet this holds only if compulsory voting regimes effectively enforce participation, which is rarely the case in today's democracies. Thus. compulsory voting does not have clear advantages in terms of mitigating ethical conflicts.

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[7] Croatian Parliamentary Elections Act, Article 8. (Available in English translation at https://www.izbori.hr/site/UserDocsImages/Zakoni%20-%20engl/Zakon_o_izborima_zastupnika_u_Hrvatski_sabor_PT_NN%2066-15-EN.pdf.)

[8] Az országgyűlési képviselők választásáról szóló 2011. évi CCIII. törvény ['Act on the election of the Members of Parliament'], Section 12. §, Para. (3).

[9] See Mráz and Lever 2023a, Section 4.3.2 for more details.

4.3 Information Environment and Voters' Ethical Conflicts

The information environment in which voters make their choices also influences the kind of ethical conflicts they are bound to face in making electoral choices. Electoral institutions, in turn, shape this informational environment to a great extent. Crucially among these institutions, campaign regulations partly determine how much information voters receive, when, and how, without particular efforts to actively seek information. Election authorities and the government may also disseminate more or less, better or worse information about the electoral system and procedure, which can also shape voters' ethical conflicts.

Even if voters make reasonable efforts, in some information environments, they may have very limited information either in general about their alternatives or about particular candidates or parties. For example, **electoral campaigns** may be short and political advertisements may be prohibited outside of campaign periods in certain media, as is the case in the UK with TV ads[10], putting a greater burden on voters to seek out information even if that is available in other media. To take another example, in lack of **public funding**, private funding may be insufficient for emerging political parties or candidates to convey their messages effectively. Thus, voters may need to decide for or against a new party or candidate without much knowledge about their/her platform.

Ethical conflicts in such cases may concern **insufficient or unequal information available to voters about the alternatives**. On the one hand, voters may have a duty to participate in elections based on sufficient information (see, e.g., Brennan, 2012; cf. Maskivker's concept of "voting with care", Maskivker, 2019: 77-129). On the other hand, they may see themselves as having a duty to participate in a particular election, and vote for or against a particular party or candidate, even without sufficient knowledge about the alternatives. The latter is a coherent attitude for voters who recognize a plurality of normative grounds to participate in an election.[11] For such voters, the various normative reasons to participate may trigger different informational requirements. In other words, what counts as sufficiently informed participation varies based on the normative grounds for participation.

For instance, voting for the common good requires knowledge about the platforms of the various parties and candidates such that is sufficient to make a justified comparative judgment about who is most likely to promote (what is, in the voter's eyes) the common good. Yet voting to ensure descriptive representation may require no more knowledge than which candidate belongs to the relevant group that the voter identifies with and considers just to see represented descriptively. Ethical conflicts arise, for example, when both of these considerations are important for the voter but she possesses sufficient information only concerning the latter. Then she must decide whether to act on what she may see as reasons of loyalty or a duty to ensure descriptive representation (and hence vote in an informed manner in this respect), or to act on what she may see as a duty to vote for the common good (and hence refrain from voting as she cannot vote in an informed manner in this respect).

Ethical conflicts may also arise if **insufficient information is available to voters about the voting system or the electoral procedure**. Voters' ignorance about some of their options may

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[10] See the landmark decision of the European Court of Human Rights in *Animal Defenders International* v. *The United Kingdom* (48876/08, 22 April 2013).

[11] For a detailed discussion of these grounds, see (Mráz and Lever 2023b, Section 4.2).

contribute to a false impression of diminished opportunities for individual and collective political agency. For example, in mixed voting systems, unfamiliarity with the rules concerning invalid votes may lead voters to have mistaken views about whether it is possible to cast one invalid (e.g., list) ballot while casting another, valid (e.g., individual candidate) ballot. Further, missing out on certain opportunities, e.g., voter registration deadlines, due to insufficient information can create otherwise avoidable ethical conflicts for voters. For instance, failing to register in electoral procedures which require active registration for expats can create ethical conflicts for others as to whether and how to represent expats through their own votes.

The **implications** of such conflicts **for the individual ethics of voting** are the following. First, voters need to prioritize between the duty to seek out sufficient information to vote in an informed manner, and their other duties (including those related to work, family and other commitments) which also compete for their limited resources. Second, voters need to prioritize between their different normative grounds for voting. This will resolve whether reasons for voting in an informed manner with regard to one normative ground for voting should be prioritized above reasons to refrain from uninformed voting with regard to another normative ground.

The **implications for the design of electoral institutions** are the following. First, campaigns can alleviate voters' ethical conflicts by ensuring that parties and candidates can effectively convey information to voters who cannot actively seek out such information at a reasonable cost. Campaign length is a double-edged sword: on the one hand, voters learn from longer campaigns (Stevenson and Vavreck, 2000); on the other hand, knowledge gaps between voters can increase over campaigns (Nadeau et al., 2008) and longer campaigns might also have an alienating effect, fuelling dissatisfaction with democratic politics. This implies that a reasonably but not excessively long electoral campaign before each election or sufficiently free public political communication outside campaign periods is necessary, as is at least some public funding of electoral campaigns.[12] Second, campaigns can alleviate voters' ethical conflicts by ensuring that voters have access to information that is sufficiently rich and diverse to supply sufficient information with regard to the various normative grounds voters see relevant to voting. Third, campaign regulations can also ensure that voters are better situated to evaluate both campaign sources and their own epistemic position vis-à-vis such sources. This implies, for example, transparency requirements concerning who publishes and finances a particular political advert, and on social media platforms, also concerning the criteria for targeting a certain population with a particular advert.[13] Fourth, especially when electoral reforms are introduced, election authorities and the government can prevent some unnecessary ethical challenges for voters by active, timely and politically neutral information

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[12] For support for a private-public mixed funding scheme, albeit for other reasons, see 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): "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).

[13] Consider, for example, the recent proposal for a new European regulation on transparency and targeting of political adverts: "European Democracy: Commission sets out new laws on political advertising, electoral rights and party funding", Press release of the European Commission of 25 November 2021. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6118

campaign concerning the most important (and especially new) features of the voting system and / or electoral procedure.

5. PARTY VS. NON-PARTY REPRESENTATION AND ETHICAL CONFLICTS

The role of political parties or the lack thereof in political representation also shapes the ethical conflicts voters face, in conjunction with the institutional context of a given voting system. The role of independent candidates and coalitions, on the one hand, and the role of non-party nominating entities, on the other hand, can introduce new ethical conflicts for the voter.

5.1 Independent Candidates and Voters' Ethical Conflicts

Party-mediated representation is the most common form of electoral representation in modern democracies, but **independent candidates** are significant actors on the electoral landscape in several jurisdictions (such as Ireland, see Weeks, 2014; Weeks, 2017; Kefford and Weeks, 2020; cf. Rodrigues and Breton, 2010). Independent candidates can have a dual effect on voters' ethical conflicts. On the one hand, **their presence introduces such candidates in voters' choice sets who can be evaluated purely on the basis of their individual merits or demerits**. Thus, when voting for an independent candidate, voters need not make compromises between party-related moral considerations and individual-related moral considerations. This **allows voters to evade conflicts** between these considerations, on one level. Further, the availability of independent candidates may give reasons for voters to be less alienated from the political process, as independent candidates can often be seen as new entrants into the process and as challengers of existing elites.

On the other hand, **the availability of independent candidates invites voters to make further difficult strategic and moral decisions** on another level. Voters may have reason to cast a ballot for an independent candidate if the individual merits of the candidate are especially convincing or are even seen as morally binding. For example, the independent candidate may be the only one with the promise of providing descriptive representation to a minority voter whose minority group is not attended to by any of the political parties. A voter may see this as a very strong *pro tanto* expressive reason or even duty to vote in such cases for the independent candidate. At the same time, however, independent candidates lack access to infrastructures, e.g., financial support for assistants, networks, access to expertise, and to some extent, even formal opportunities for political decision-making, such as the right to establish a faction in Parliament, with all the subsequent right of participation in commission work[14], that parties have access to. Thus, if a voter sees elections from an

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[14] For example, in the Hungarian Parliament, members of factions have certain speech rights as well as access to committee work that independent MPs do not have. See, e.g., az egyes házszabályi rendelkezésről szóló 10/2014. (II. 24.) OGY határozat ['Decision of the Parliament on the House Rules'], Section 1. §, Paras. (3)-(4); Section 63. §, Para. (3); az Országgyűlésről szóló 2012. évi XXXVI. törvény ['Act on the Parliament'], Section 17. §, Paras. (1)-(2). Likewise, in the UK House of Commons, HM Official Opposition – MPs affiliated with the second largest party in the Lower House of Parliament – enjoy special rights in Parliament, including 17 out of the 20 'opposition days' in each parliamentary session reserved for their business, while only the rest (3 days per session) remain for the business of the opposition forces beyond HM Official Opposition. See Commons Standing Order No. 14.

instrumental rather than expressive perspective, she may also have strong *pro tanto* reasons to support candidates who are affiliated with a political party. In this sense, the existence of independent candidates can create ethical conflicts.

Some electoral systems – **pure list systems** in particular – typically make independent candidacy extremely burdensome or impossible.[15] In pure list systems, party-based representation is prevalent, especially if combined with high parliamentary thresholds (Brancati, 2008). On the one hand, then, such electoral systems do not typically offer choices to voters that would relieve them of balancing moral reasons based on the party-affiliation of a candidate vs. on her individual merits or demerits. However, for non-leading and hence not necessarily well-known positions on a list, individual merit or demerit may be reasonably outweighed by competing parties' platforms, political viability, experience, infrastructural background, accumulated expertise etc.

On the other hand, voters in pure list systems - with no opportunity to vote for independent candidates - may have more reason to feel alienated from existing elites. Hence, their ethical conflicts may reasonably concern reasons for and against participation in the elections, in the first place. Further, if they decide to participate, choosing between party-related and individual candidate-related considerations remains fraught with ethical conflicts at least regarding leading positions on a list.

Ironically enough, **strong party discipline** in parliamentary systems - which is not only possible in proportional representation, but also in majority/plurality voting systems (Bowler et al., 1999; Thompson, 2015; Whiteley and Seyd, 1999; Dimock, 2012; Martin et al., 2014), constitutes a partially analogous case, from the voter's perspective, to electoral systems with a strong presence of independent candidates. On the one hand, strong party discipline simplifies the normative structure of electoral choices, just like voting for independents. Strong party discipline diminishes the relevance of moral considerations related to individual candidates, and hence also contributes to the generation of fewer ethical conflicts (as between moral considerations related to individual candidates vs. parties). On the other hand, quite unlike the significant presence of independent candidates, strong party discipline also provides reasons for voters to be alienated from the political process. This is because it creates an impression of little to no voter influence on high level political decision-making processes. In these regards, strong party discipline in majority / plurality systems creates a similar ethical environment for voters to the one that emerges in pure list systems.

STV systems may seem to be amenable to independent candidacy, as voters are well placed to express choices between particular individual candidates. However, in this respect, empirical data show mixed results in countries using STV voting systems for legislative elections. While independent candidates continue to be significant political actors in Ireland (Weeks, 2017), they were completely absent in Malta for a long while (Hirczy de Miño and Lane, 1996). This suggests that it is hard to make general claims about the extent to which

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[15] Extremely burdensome if even small and less resourceful parties (or other types of organizations) can meet the conditions of establishing lists – but impossible if only well-established and resource-rich parties can meet these conditions in the given jurisdiction. However, it is possible in some countries for natural persons to establish a "list" as if they were a party and run on their own lists (as the only candidate on the list), especially in local elections (Reynolds et al., 2005: 144).

STV systems contribute to ethical conflicts of voters by incentivizing independent candidacy.

In **majority systems and mixed systems**, independent candidates exist but are not prevalent - and the same holds for the ethical conflicts that they present voters with. Plurality-majority systems are more favourable to independent candidates than list systems, as the former put more emphasis on the individual candidate, and small district sizes typical of such systems decrease campaign costs (Brancati, 2008). Plurality systems may be more favourable to independent candidates than majority systems. Hence, the dual effect of the presence of independent candidates on voters' ethical conflicts arises more often in such electoral systems.[16]

5.2 Non-Independent Non-Party Candidates and Voters' Ethical Conflicts

Voting systems which allow or incentivize non-independent non-party representation may introduce new ethical conflicts for voters. For example, in Hungary, each registered **national minority** may establish a list in general parliamentary elections: the list is established by the given minority's national self-government.[17] Voters belonging to a national minority, however, can only vote for one list in the elections: either for a party list or for their own national minority's list.[18] While such electoral design preserves nominal equality (one person - one list vote), it can generate potentially conflicting moral reasons for minority voters. On the one hand, voters may value immediate descriptive representation offered by a national minority list that is not necessarily available if voting for a party list; and reasons of group loyalty may also bear on voters' choice. On the other hand, voters may recognize that political parties have more potential for impactful politics, and hence outcome-based moral considerations support voting for a party list. Further, in the long run, national minority voters may see their representation guaranteed only if they do not turn their backs on party politics. As Aladár Horváth, a Roma rights activist and founder of the Roma Civil Rights Movement in Hungary put it, "For the Roma in particular, it has been a matter of life and death that politics should not isolate us from society or oppose us either to the majority population or to each other" (Czene, 2013). This example also shows that **ethical conflicts related to loyalty, identity and descriptive representation**, generated by the voting system and party system, are often **most effectively resolved at the collective, group or movement level** rather than at the level of the individual voter. In this case, a minority movement supports minority voters by signalling to them that they are not disloyal to the minority if they choose not to vote for the national minority list but for a party list. Finally, such a system severing the political representation of the minority from that of the majority also interferes

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[16] The relevance of independent candidacy for voters' ethical conflicts may also be mediated through the voters' information environment. For instance, in two-party systems typical of plurality/majority electoral systems, the official opposition party often has such opportunities to convey its viewpoint to voters that are unmatched by third parties or independent candidates. Thus, voters voting for independent candidates often have to deal with ethical conflicts that result from more limited information about the candidate of their choice. On voters' information environment, see further Section 4.3 above.

[17] Az országgyűlési képviselők választásáról szóló 2011. évi CCIII. törvény ['Act on the election of the Members of Parliament'], Section 9. §.

[18] For an extensive critical discussion, see, e.g., Kállai et al., 2018. The present report solely focuses on the evaluation of institutional design from the voter's perspective.

with majority voters' opportunities to build coalitions with minority voters, and hence may also generate ethical conflicts for majority voters as well.

6. THREE SCENARIOS

The scenarios in this section serve to illustrate with normatively complex case studies how the toolkit provided in the previous sections can be productively used to elucidate individual ethical conflicts that are shaped, at least in a huge part, by electoral institutions. Further, the following scenarios are also meant to show how considerations about the ethical conflicts that voters face can be used to deliver implications about the design of electoral institutions. All case studies are based on real first-personal accounts of voters. However, while the scenarios take voters' moral phenomenology as a descriptive point of departure, they do not stop at phenomenological descriptions: they interpret, analyse, and relate this phenomenology to the role of electoral institutions in shaping voters' ethical conflicts. To this end, all scenarios also weave in some additional information about the context in which these voters exercise their franchise. Voters' moral phenomenology may be determined by various factors. Electoral institutions are among these, yet it is not assumed that they fully or exclusively determine the ethical conflicts that voters find themselves in.

Methodologically, this section does not summarize the findings of qualitative empirical studies. Instead, it relies on publicly available sources, e.g., press reports, of voters' own accounts of their moral phenomenology regarding electoral choices they face. The selection of these cases was also constrained by the scarce availability of first-personal accounts of voters' moral challenges. However, the selection of these cases was not primarily guided by how prevalent a particular ethical conflict or moral challenge is among voters: these cases are not meant to be representative in a statistical sense. Instead, they have been chosen with a view to focusing on characteristic moral challenges that voters *could* face across European jurisdictions given certain features of their electoral institutions.

The aim of this chapter is not to substantively evaluate the particular choices voters made in the cases covered. Nor should the analyses of the cases be understood as an endorsement of the ethical perspectives of the voters involved - including the way they see or fail to see ethical conflicts and relevant moral considerations. The aim, instead, is to understand through particular examples how electoral institutions partly shape or could shape the first-person perspectives of voters.

6.1 Scenario 1: Loyalty, Justice, and Self-Interest in Presidential Elections in France

The first scenario concerns voters in a presidential election in France.[19] BBC interviewed in 2017 a number of gay voters in Paris who have decided to vote for Marine Le Pen, the far-right candidate of the party Front National (FN) in the French presidential elections - a party with an openly homophobic and xenophobic agenda. One of the voters interviewed is reported to have said, "There are priorities in France other than homosexuality. I myself am in a same-sex couple and there have been many advances in this area [...] But for me there

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[19] This scenario is based on reporting in Chalk (2017).

are more pressing issues like the economy, the national debt and unemployment" (Chalk, 2017).

Voters in this situation seem to regard several grounds as relevant to their electoral choice: the common good – issues of national debt, unemployment or the state of the national economy more generally, justice – what it owed, in their eyes, to people living in same-sex relationships, including themselves, identity and loyalty – what they owe the LGBTQIA community as voters[20], and probably self-interest – what the interviewees regard as necessary to pursue valuable lives as gay, middle class, white men in France. Yet the voters concerned each have a single vote to cast in presidential elections, and they see these ethically relevant considerations as conflicting. Hence, they must prioritize between these considerations.[21]

Electoral institutions radicalize the choice between the considerations reviewed above in part due to the nature of presidential elections. Especially in a highly polarized political environment, presidential elections are bound to be highly simplified choice situations. This polarization is, to some extent, the effect of the majority system which tends to allow parties to be pulled to the extremes (even if it does not so readily allow extreme political forces to succeed within extreme parties of their own) (Schwanitz, 2021: 31). Polarized, radical choice situations are especially likely in a second round where voters are likely to face an even more constrained choice set – in 2017, this set comprised Emmanuel Macron and Marine Le Pen.

The resolution of voters' ethical conflicts in presidential elections can reasonably turn on what difference voters see presidents capable of making, given current or expected legislative majorities. If the presidential candidate that a voter chooses would have to face considerable political opposition from the legislature, the voter may justifiably prioritize expressive considerations over consequentialist considerations in voting. If, however, the candidate that a voter chooses could readily work together with the legislature on realizing a shared political platform, instrumental considerations also gain more weight. Voters in the present case (rightly or wrongly) may not have foreseen a political will on the legislature's part to cooperate with Le Pen to dismantle same-sex marriage - while they might have seen a political will to address unemployment and other issues on the economic left.

The design of electoral institutions could somewhat mitigate ethical conflicts like the one discussed here by keeping entry barriers low in the presidential race. In the first round, at

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[20] Perhaps another interviewee's view is indicative of the community's expectations in this regard: "Is she actually going to repeal same sex marriage? I don't care. Just the fact she thinks it's OK to say it makes her very dangerous" (Chalk, 2017).

[21] It is also possible to interpret these particular voters to mean they see no ethical conflict here at all. This is convincing if the voters concerned downplay the homophobia of the candidate they are voting for, essentially seeing her homophobic stance as a purely strategic move to win conservative voters, but likely without any consequences for the lives of LGBTQIA people. Alternatively, the ethical conflict may be downplayed if the voters concerned do not think institutions such as same-sex marriage potentially at risk if a far-right candidate wins are important either to justice to LGBTQIA people or as a matter of their self-interest, and if they do not recognize the normative significance of any loyalty to other LGBTQIA people either. However, while such interpretations of these voters' stance are interesting and important to examine as a matter of political sociology and anthropology, the aim of this report is to focus on voters' ethical conflicts and how electoral institutions shape them. Hence the focus on a plausible but conflict-ridden interpretation of the case.

least, a wider array of candidates is likely to present voters with less radical choice situations. For example, requiring fewer supporting signatures for presidential nominees could have this welcome effect.[22] However, France currently requires 500 supporting signatures for nominating a presidential candidate - which might not seem to be a high entry barrier, even though before 1976, only 100 signatures were required.[23] Entry barriers are vast in the second round, though, regardless of the number of signatures needed to enter the first round. In the second round, only two candidates remain, technically creating a majority support for the winning candidate but also radicalizing the electoral choice situation.

It raises questions regarding the information environment that the voters concerned in this case may not have been exposed to viewpoints of other voter groups, including people of colour. FN's campaign in the given case allegedly aimed at reducing the ethical conflict voters in this case faced by attempting to link the interests of LGBTQIA people with its xenophobic, Islamophobic platform. As another voter reportedly said, "Where are the gays most in danger? In Islamic countries. [...] Gay people are being crucified – it's a danger and I don't want it coming to France, definitely not" (Chalk, 2017). This perspective was not countered in the given information environment by other perspectives. As another interviewee put it: "The FN supporters you spoke to, were they white? [...] Yes? I'm not surprised. [...] I feel like a lot of LGBT people are very selfish. They feel like they're not targets for the FN anymore so they think it's OK to vote for them." (ibid.).

Voters have a duty to vote in an informed manner, but the framework of ethical conflicts may contribute to making sense of why they were not sufficiently informed, in this case. Unfortunately, the information lacking here may not have been relevant to what they held as relevant grounds for voting for a particular candidate. They may have not known enough. But it may have been more important for them to vote based on the grounds – self-interest, justice to LGBTQIA people, and the common good – to which the information they had was both sufficient and relevant. At the same time, they may have found it less important to refrain from voting based on the grounds, e.g., justice for both their fellow citizens in racial and ethnic minorities as well as for would-be immigrants, regarding which they did not have sufficient information.

Institutional design may mitigate the insulation of voters' views from one another's. For example, regulations of campaign advertisements in social media platforms may prescribe transparency rules.[24] These rules can help voters realize why they are targeted by a given political advertisement, and it may make them realize that a somewhat insulated, segregated information environment is created around them. Of course, this in itself would not necessarily provide voters with sufficient information related to all of the normative grounds they find relevant to their electoral choice. Yet it would at least warn voters that they might need to seek out more information from fellow citizens with at least partly different backgrounds.

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[22] It may make the acquisition and provision of information about the candidates more costly, though (see Section 4.3 above regarding the informational environment and voters' ethical conflicts).

[23] Loi n° 62-1292 du 6 novembre 1962 relative à l'élection du Président de la République au suffrage universel ['Act on the election of the President of the Republic with universal suffrage'], Article 1.

[24] See Section 4.3 above regarding transparency requirements applied to online political advertisements, for example.

6.2 Scenario 2: Non-Resident Voters in Spanish Elections

The second scenario concerns Spanish citizens who are eligible to vote but reside abroad. Spanish electoral law prohibits permanently non-resident citizens to participate in municipal elections,[25] whereas for legislative elections, there is a separate electoral registry for non-resident voters.[26] After a reform of the electoral procedure, non-resident citizens can register at consulates to be enrolled on the non-resident electoral registry in order to receive a postal ballot.[27] Some affected expats found this new regime of active (non-automatic) registration for non-residents prohibitively costly, as – at least at some consulates (Ventas, 2015) – it required in-person voter registration. A Spanish citizen living in Birmingham (UK) summarized her situation in 2015 as follows: "I would have to go to London. But I can't ask for a whole day off for that, besides the fact that public transport is very expensive here" (ibid.). The new situation led to an 80% fall in the electoral participation of non-resident citizens between the 2008 and 2011 general parliamentary elections (ibid.).

However, a creative solution emerged in the shape of a grassroots movement called *#RescataMiVoto* and its simple technology (Ventas, 2015). The movement established a website where non-resident Spanish citizens who wanted but failed to register to vote could be matched with Spanish resident citizens who were eligible to vote but otherwise planned to abstain in the given election. The website offered an opportunity for the latter to "donate" their vote to the former, in practice acting as *de facto* proxies for expats.

Ethical conflicts, in this case, have primarily been reported not on the expats' side, but on the side of "vote donors." On the one hand, at least many of them presumably had reasons beyond sheer convenience to abstain. On the other hand, resident citizens may have had reasons of justice to help represent non-resident voters in the polling booths. A vote donor's first-person account aptly summarized this conflict: "It has long been a dilemma for me whether to vote or not, and this time I was determined not to go to the polls. [...] However, taking a vote from someone who wants to vote but is prevented from doing so seems to me to be an act of justice and rebellion against an undemocratic system" (Ventas, 2015). Voters of this persuasion prioritized between reasons for their abstention and reasons of justice that counted in favour of their participation. This may have been easier for eligible voters who decided to abstain because they could not vote in an informed manner (trusting their expat "match" to be more informed when instructing them who to vote for), or if they neither felt their interests and views represented by any of the parties or candidates nor found the election to be of utmost importance (trusting that their "match" would not be in the same shoes). Yet prioritizing may have been more difficult for eligible voters who did not only fail to find sufficient reason to participate originally, but also found principled reasons *not* to participate at all (e.g., because they found the political elite thoroughly corrupt).

Vote donors may have had to face further ethical conflicts regarding the content of their quasi-proxy vote. As an interviewee reported her concerns, "I'm praying I don't have to vote against my leanings ['tendencia']" (Ventas, 2015). On the one hand, eligible voters may be committed to voting as proxies in an attempt to act against what they saw as the unjust

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[25] Ley Orgánica 5/1985 del Régimen Electoral ['Act on Electoral Regulation'], Art. 2. Para. 3.

[26] Ley Orgánica 5/1985 del Régimen Electoral ['Act on Electoral Regulation'], Art. 31. Para. 2.

[27] Ley Orgánica 5/1985 del Régimen Electoral ['Act on Electoral Regulation'], Art. 36.

exclusion of non-resident voters. On the other hand, they might still have had weighty reasons or even duties not to vote in ways that would compromise, for example, their identity or loyalties. Such ethical conflicts could, of course, have been mitigated by the initiative itself if vote-donors had been matched with pre-declared electoral choices rather than persons. However, such a solution might have resulted in fewer opportunities for expats with certain political leanings, depending on the distribution of vote donors' political views.

The design of electoral institutions could clearly mitigate the ethical conflicts involved in this scenario. A more flexible active registration procedure, including extended opening hours for in-person registration, as well as other forms of registration, could already pre-empt much of the need for "vote donors." Automatic or "passive" registration at a declared foreign address for postal ballots could avoid the ethical conflicts above. (At the same time, it may well raise questions about how to ensure that the relevant personal data of voters get updated in the electoral registry, including the removal of deceased citizens therefrom.) An active (re)registration at particular intervals (but not for each election) - as Sweden or Hungary require, for example - may serve as a potential compromise (see Mráz and Lever 2023a, Section 4.1.1.2). With the need for "vote donation" pre-empted, vote donors' ethical conflicts would also be eliminated.

The information environment may have also significantly contributed, in this case, to the ethical conflicts described above (Ventas, 2015). Election authorities or the government could have actively informed non-resident citizens about the new electoral procedure, including registration, applying to them. The clear, timely, active communication of requirements and deadlines certainly could not have solved all the difficulties expat voters faced, and as a result, the ethical conflicts vote donors faced, but it could have mitigated these.

6.3 Scenario 3: Split Votes in Hungarian Parliamentary Elections

The third scenario concerns general parliamentary elections in Hungary in 2018. Hungary introduced an entirely unique mixed voting system in its parliamentary elections in 2011. In this system, 106 out of the 199 parliamentary seats are distributed in a single-round plurality system as first-past-the-post single-member constituency seats, whereas the remaining 93 seats are distributed in a list PR system.[28] The uniqueness of the system consists in how the two subsystems are connected. First, votes cast for individual candidates who lose in their constituencies are transferred to the respective party lists of the parties that nominated these candidates, provided that they are not independent candidates.[29] Second, much more uniquely, votes cast for *winning* individual candidates in excess of the number of votes they need to win are also transferred to the respective party lists of the parties that nominated

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[28] Az országgyűlési képviselők választásáról szóló 2011. évi CCIII. törvény ['Act on the election of the Members of Parliament'], Section 3. §, Para. (2).

[29] Az országgyűlési képviselők választásáról szóló 2011. évi CCIII. törvény ['Act on the election of the Members of Parliament'], Section 15. §, Para. (1) *a)*; Section 16. § *a)*. In practice, only the number of the votes gained by the candidate who came in second in the race *plus one vote* is necessary to win the constituency seat. The remaining number of votes cast for the winner get transferred to the relevant party list.

these candidates.[30] (Again, provided that the winners are not independent candidates.) This voting system shapes the ethical conflicts voters face.[31]

The electoral system – in the given political context, and for presumably a large number but not all of the voters – created a sharp ethical conflict. On the one hand, some opposition voters in the general parliamentary elections of 2018 – the second general election after the new voting system was introduced – argued for a 'boycott' against the election that they saw as thoroughly unfair or illegitimate given the public legal developments in the country. In the opinion of an op-ed writer, "What can be achieved if everything goes ahead with the current method? You can't win" (Hont, 2018). While boycotting as a strategy may be an alternative for opposition parties' and candidates primarily, the op-ed clarified: "the success of a boycott does not depend on how many parties participate in the election, but on how many voters", suggesting that voters should also refrain from participation on common good and justice grounds.

On the other hand, other opposition voters may well have seen the voting system as generating a *pro tanto* duty of participation and strategic (tactical) voting as a method of harm reduction from their perspective, even if they saw little chance of their preferred individual candidates winning. This is because it is through co-ordinated strategic voting for the most popular opposition candidate that the votes for the candidate coming in second could be maximized. This at once entails minimizing the number of the votes cast for the winning candidate that would get transferred to the party list of the winning candidate. It was in part in recognition of this moral consideration that a website of a civil society initiative, *taktikaiszavazas.hu* (lit. "tactical voting") informed voters of the most popular opposition candidate in each constituency, in order to facilitate voters' co-ordination. This harm-reduction initiative may be seen as aiming at limiting the authorization or moral mandate of the ruling parties when winning them is not a realistic objective, as judged from the opposition voter's perspective.

Thus, for opposition voters in the 2018 election, there were weighty moral reasons to abstain, but also weighty moral reasons to participate in a specific manner at the same time. This ethical conflict would not have arisen with such force, had it not been for the specificities of the electoral system.

For some voters, the conflict may have appeared less sharp, though: "How does it not matter how big a majority Fidesz has? It does not matter at all." This perspective may be seen as prioritizing the expressive significance of abstention over consequentialist considerations in favour of participation. However, it is more precise to reconstruct this line of thinking as regarding, in effect, all opposition votes as wasted. Those who thought this way attributed

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[30] For details on mixed voting systems, see Mráz, A., and Lever, A. 2023a, Section 4.2.1.3.

[31] This voting system received harsh legal as well as political criticism, as many regard it as a system which distorted the characteristic legal function of a list system (i.e., to provide for a proportional element in electoral representation), and many criticize the current electoral regime at once as a system that was specifically introduced by the ruling parties (the FIDESZ-KDNP coalition) for no other reason than to ensure their own victory in future elections (see, e.g., Scheppele, 2014; see also Kállai et al., 2018). While these critiques are very significant for the overall normative evaluation of this voting system, it is beyond scope of the present report to fully engage with them. Instead, this report can only analyse how the voting system shapes individual voters' ethical conflicts from the voter's perspective, which necessarily offers a *pro tanto* evaluation only.

less significance to parliamentary politics, assuming that significant political decisions mostly were either made in extraparliamentary politics or could be forced through parliament regardless of its exact composition. This is not to say such a view must ignore issues of authorization or a moral mandate (or the lack thereof). Rather, it resolved the ethical conflict outlined above by assuming that a mass boycott of the elections could undermine the authorization and moral mandate of the incumbent parties and their candidates more effectively than reducing the number of votes they would receive.

For other opposition voters, the conflict described above may well have remained sharper as they attributed more significance to the authorization or moral mandate that could be gained through the voting system, even if seen as unfair by many. Voters with this outlook had to exercise their prudence in choosing between expressive considerations in favour of abstention and consequentialist considerations in favour of participation. Those who did not see expressivist considerations as a constraint on applying other considerations to voting may have found a compromise in casting a ballot only in the single member constituency subsystem but not in the list PR subsystem. This case illustrates, however, that the normative structure of ethical conflicts, e.g., whether a consideration against participation is constraint-like or it is merely another consideration to be balanced against others, partly determines whether a higher number of votes (2 instead of 1, given the two electoral subsystems in this case) allows voters to resolve some of their ethical conflicts through compromises.

In a different political environment, the same intricate design of electoral institutions could have potentially mitigated voters' ethical conflicts. However, it is a fairly general feature of this mixed voting system that it creates ethical conflicts for those who have moral reasons to vote for independent candidates that are unlikely to win. Such voters often must choose between these reasons, usually having to do with descriptive representation or issue representation or a disillusionment with political elites - on the one hand, and consequentialist moral considerations, on the other hand. That is because voting for an independent individual candidate who is not likely to win can be expected to result in a wasted vote, since losing independent candidates votes do not get transferred to any part list. In other words, this particular connection between the two subsystems aggravates ethical conflicts that arise when voters consider a choice between sincere voting for an independent candidate vs. strategic voting for a party-affiliated candidate.

The information environment can play an especially significant role in shaping voters' ethical conflicts if these relate to complex institutional design, as this case also show. The civil initiative mentioned earlier, which operated the webpage *taktikaiszavazas.hu*, may have played a crucial part in providing voters with necessary information. The information provided may have helped voters in two ways: by explaining the significance of their choices in light of the electoral system and by guiding them toward the choice in line with their convictions - if they decided to vote strategically instead of abstaining. Both ways helped to mitigate or resolve voters' ethical conflicts.

7. CONCLUSIONS

This chapter surveyed how the most salient electoral institutions in Europe can shape voters' ethical conflicts. First, it has outlined how electoral systems shape ethical conflicts in three

key ways: by regulating when one's vote becomes wasted, by regulating whether and how one can split one's vote, and by making some normative functions of one's vote more salient. Second, this chapter has reviewed how further salient features of electoral institutions beyond the voting system narrowly understood – namely, the (dis)enfranchisement and procedural burdens of non-resident voters; compulsory voting; and the institutions which co-constitute voters' information environment – shape voters' ethical conflicts. Third, the implications of non-party representation, whether through independent candidates or candidates nominated by non-party organizations, for voters' ethical conflicts have been explored. Finally, three case study-based scenarios were analysed in detail to show how the framework drawn up in the previous sections can be applied productively in understanding voters' ethical conflicts in complex real-world situations as well as in mitigating these conflicts by normatively informed electoral institutional design.

As the scenarios show, it is impossible to conclude in a general manner which electoral systems and further electoral institutional design choices mitigate and which ones aggravate voters' ethical conflicts in European democracies. Such conclusions can only be drawn context-dependently for a particular jurisdiction, since the relevant institutional features identified in this chapter interact in complex ways not only with one another but also with the noninstitutional features of the local political, social and economic context. This chapter has achieved to identify, for the first time from the voter's perspective, the most salient institutional features which should enter any complex normative study focused on how voters' unnecessary ethical conflicts could or should be mitigated.

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