

Voting Secrecy and the Right to Justification*

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1. Introduction

Suppose we value public deliberations, both for their individual and collective effects¹. From this point of view, we have reasons to be unsatisfied with the practice of secret voting. While we want voters to discuss collectively, exchange views and perspectives, justify their positions, consider all interests impartially, we let them perform the crucial action of voting² alone, in the secrecy of the voting booth. What a poor incentive to behave as a responsible citizen committed to justice! On the one hand, we want people to be influenced by the opinions of their peers. On the other hand, we use a voting system aiming at isolating people from any influence.

Aware of this problem, thinkers like Montesquieu, J-S. Mill, Tocqueville and Durkheim were very skeptical regarding secret voting (Buchstein, 2015). “In any political election”, said Mill (1861/1948), “even by universal suffrage (and still more obviously in the case of a restricted suffrage), the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage, and give his vote, to the best of his judgment, exactly as he would be bound to do if he were the sole voter, and the election depended upon him alone” (p. 232). Therefore, he continued, “it is at least a *prima facie* consequence that the duty of voting, like any other public duty, should be performed under the eye and criticism of the public; every one of whom has not only an interest in its performance, but a good title to consider himself wronged if it is performed otherwise than honestly and carefully” (p. 232-233).

Nevertheless, there are good reasons why every contemporary democracy uses secret ballots in general elections. As I will argue, these reasons are mostly instrumental³: we want to avoid perverse consequences of publicity such as intimidation and corruption. Yet this does not make a perfect democratic tool of the secret ballot. There are reasons to be dissatisfied with it and to look for alternatives which would better combine the respective benefits of secrecy and publicity, and so alleviate the tension between votes and deliberations, tension characterized by the non-justificatory nature of secret voting and its breaking down of the deliberative process.

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¹ Individual beneficial effects include reasoned opinion formation, mutual recognition, and capacity for decentration, i.e. taking the others' perspective (Habermas, 2001a; Pourtois, 2002; Steiner, 2012). Collective beneficial effects include civilization, circulation of information, and reduction of biases (Rawls, 1971, p. 358-359; Elster, 2000; Landmore, 2013). Negative effects, such as conformism, plebiscitary discourses or collective error are obviously possible. Here it will be assumed that the desirable effects of public deliberations outweigh the undesirable. On this, see Landmore, 2013.

² See Brennan, 2011 and Beerbohm, 2012 for convincing accounts of the ethical stakes of voting.

³ Arguments for open voting are also instrumental. The point is that there is no intrinsic value either in voting secrecy or in public voting. Both options should be assessed on the basis of their likely effects.

Although voting appears as the necessary complement to deliberations⁴ and can be informed by the deliberative process, one can nonetheless regret the brutal substitution of the “unforced force of the better argument” (Habermas, 1996, p. 306) by the law of the larger number sanctioning a balance of power. Liberals, republicans, deliberative democrats and others believe that the use of power should be accompanied with justifications. Modern political processes are characterized by their recognition of the centrality of this “basic right to justification” (Forst, 2012). Few people accept the mere majoritarian principle as sufficient. The fact that the greater number authorizes to rule does not discharge the majority from its moral duty to justify its actions to all those affected. And this does not merely apply to governments. The liberal principle of legitimacy states that, from a moral viewpoint, “political authority cannot exist unless it can, in principle, be justified to each person it purports to bind” (Eslund, 2000, p. 111). Deliberative democrats go further. As Benhabib (2004) puts it, “every person [...] who has interests and whom my actions and the consequences of my actions can impact and affect in some manner or another, is potentially a moral-conversation partner with me: I have a moral obligation to *justify my actions with reasons* to this individual [...]” (p. 14).⁵

This is controversial. Some people argue that the demand for justification and accountability applies to representatives, but not to citizens. Nadia Urbinati (2014), for example, claims that “we are not accountable to anybody when we cast our ballot, and this is the condition of our autonomy” (p. 25). If by this she means that there exists no mechanism forcing citizens to give accounts and that it is valuable for the autonomy of choice, she may be right. As we shall see, this is the standard defense of voting secrecy. But if she means that citizens should not feel morally accountable to anyone when they vote, I disagree. My view is that the demand for justification addressed to citizens is legitimate insofar as they make use of their political power through their votes (see Gosseries, 2005; Beerbohm, 2012, p. 259).

The underlying idea is that every use of political power generates a moral demand for justification, because politics is a common good which cannot be instrumentalized for private purposes. As Rainer Forst (2012) puts it, reasons for action “are not private property” (p. 14). Admittedly, as mentioned by Annabelle Lever, it is not the same power that is at stake in the relationship between citizens – who all share that same power – and in the relationship between citizens and their representatives – who govern with their trust (Lever, 2007, p. 359-361). Therefore, the demand for justification can be judged more important in the latter case. But this does not entail that citizens should be exempted from this duty. Because if representatives have a duty to justify their actions and if these actions are constrained by the will of the citizens that elected them, surely the latter also have at least a moral duty to justify their vote. This is simple transitivity: if X is accountable to Y but acts on behalf of Z⁶, then Z is accountable to Y.

The exchange of justifications is crucial for the understanding of democracy as a communal action. It creates a “justificatory community”, i.e. a democratic community having the ambition to be governed by norms that can be justified to everyone.⁷ And it fosters deliberations because the reasons provided in justifications are often contested, which gives

⁴ Voting in itself is not the problem. Deliberations cannot be treated as a decision procedure, so they must be articulated with votes. See Goodin, 2008, p. 108-124; Landemore, 2013, p. 89.

⁵ See also Gutmann & Thompson, 1996, p. 128: “In a deliberative forum, each is accountable to all.”

⁶ And if Z agrees with what X does, one might want to add. However, it seems to me that it is our duty, as electors, to try to anticipate the actions of the representatives that we choose, which makes us accountable even if the representatives we have chosen betray their electoral promises.

⁷ I borrow this formulation to Cohen, 2008, p. 43-45, but I take it to be at the heart of the works of Habermas (1983) and Forst (2012) on which I rely.

voice to the minority and tempers the purely majoritarian character of democracy⁸. What we therefore need are incentives fostering this justificatory process, and voting secrecy is – to say the least – a very poor one. Public voting used to be considered as the perfect incentive. Yet it engenders other worries. After a review of the arguments for and against the secret ballot (section 2), this paper will critically examine two proposals that have been made for making votes more open and deliberative while avoiding the undesirable effects of full publicity (section 3). It will then present an innovative voting practice – justified votes – (sections 4 and 5) and review several difficulties and objections it could face (section 6).

2. Assessing the secret ballot

Nowadays, the secret ballot has been adopted in every democracy. Votes are always formally secret – yet organized under public scrutiny (Elster, 2013, p. 8) – in elections and referendums (Przeworski, 2015), and generally public in parliaments⁹, for reasons of electoral accountability mainly. In general elections, as Robert Dahl puts it, “secrecy has become the general standard; a country in which it is widely violated would be judged as lacking free and fair elections”(Robert Dahl, quoted in Buchstein, 2015). The secret ballot is even listed by Article 25 of United Nations’ Civil and Political Covenant as a crucial component of a fair electoral process (Gerber, Huber, Doherty & Dowling, 2012, p. 77).

Nonetheless, at the time of its progressive adoption in the second half of the 19th century, it seemed far from obvious that voting in secret was the best way of voting. The opponents of the secret ballot were afraid of an extreme individualization and privatization of politics. They thought it would allow and banalize self-oriented voting, whereas open voting was considered to be favorable to judgments about the common good.¹⁰ At the core of the debate lies the tension between *social influence* and *domination*, which can be both fostered by the pressure of the peers. Social influence is considered as valuable because we want citizens to listen to each other’s arguments and aspirations. A decision taken in pure isolation will likely be ill-informed. What is more, as we shall see, some social norms have desirable effects on political actions. Yet social pressure can also turn into domination, which is undesirable because it prevents some citizens to act as they would legitimately do in the absence of pressure. Hence the question is whether it is possible to reap the benefits of social influence while avoiding domination.

J. S. Mill was not the only one concerned with the likely undesirable effects of secret voting. Émile Durkheim, for example, criticized the secret ballot for “not providing citizens with an incentive to engage in political thinking” (see Buchstein, 2015). Taking this path, he argued, electoral democracy would only bring together, once in a while, atomistic individuals expressing their private opinions without even knowing their fellow citizens and without having shaped those opinions through confrontations with others. Carl Schmitt, anticipating the Internet, was afraid that someday citizens would be able to express their opinions without leaving their rooms. “That would [...] provide a proof that the state and the public were fully privatized. It would not be public opinion, for even the shared opinion of millions of private

⁸ From a normative perspective, you cannot be satisfied with democracy as something purely statistical, the mere aggregation of private independent preferences. See Elster, 1986; Dworkin, 1990.

⁹ The Italian parliament voted by secret ballot until 1988 (Giannetti, 2015, p. 108-130).

¹⁰ Jason Brennan (2011, ch. 5) offers a good account of why it is generally wrong for voters to pursue (exclusively) their (narrow) self-interest. Yet he suggests that voters should pursue the common good, which he understands broadly as whatever is in everyone’s interest. Thus he thinks it is legitimate to pursue your own interest when it coincides with the interest of your fellow citizens. This however, is not how I understand the ethics of voting. The kind of attitude that this paper seeks to promote is *justice-oriented* voting. Justice-promoting policies will often (yet not always) run against the interests of the most advantaged. On the opposition between justice and mutual advantage, see Barry, 1989.

people produces no public opinion [...]. In this way, no common will arises, no *volonté générale*; only the sum of all individual wills, a *volonté de tous*, does" (see Elster, 2013, p. 8).

More recently, several scholars have revived this old debate, renewing the criticisms addressed to the now widely accepted secret ballot. Geoffrey Brennan and Philip Pettit, in accordance with the republican tradition, describe the ethics of voting as the expression of a judgment as to what is best for society – judgment that is of course likely to be biased by one's position in this society. In this perspective, they argue, it is important that citizens be publicly accountable for their political choices (Brennan & Pettit, 1990). And as Bart Engelen and Thomas Nys (2013) put it, "[w]hile secret voting already allows citizens to express their judgment, open voting further encourages the discursive and public-spirited behavior that is central to the judgment ideal" (p. 493).

Publicity has the effect of incentivizing impartiality. "The reason is that if the vote is unveiled the desire for social acceptance will play a larger role in your decision as to how to vote; and in a pluralistic society the surest way of winning social acceptance will be to vote in a way you can discursively support." (Brennan & Pettit, 1990, p. 326) Purely private arguments are difficult to defend publicly, because no one wants to give the impression that she values her own interests higher than the others'. As brought to attention by Jon Elster (2000), there exists a strong social norm condemning self-interested behaviors, such that publicity has the virtue of shifting the focus from private to public considerations. Thanks to hypocrisy, politics can thus become more than the mere expression of a balance of power between competing interests.¹¹

A qualification is nonetheless necessary. The pursuit of personal interest does not seem to be the general norm under secret voting. While electoral sociology has long been dominated by rational choice theory, recent investigations offer another picture of voters' motivations (see Mackie, 2011; Pourtois, forthcoming). A survey ran in 2006 by Mark Elchardus among the Flemish-Belgian electorate indicates that "contemporary men and women apparently draw a strict line between their private lives and the public realm" (Elchardus, 2011, p. 420) and do not consider personal worries as public matters. Their criteria to evaluate the state of society do not depend directly – and very weakly indirectly – on their personal situation, but are shaped by their level of education and media preferences.

In the early eighties, an inquiry by Kinder and Kiewiet (1981) had already led to some similar conclusions for the US, showing that American citizens' assessments of federal politics were moved by "sociotropic" judgments rather than selfish preferences. What voters seemed to take into primary consideration in their judgments was the state of the national economy, not their particular position in it. Of course, this is not to be confused with an altruistic voting attitude (Kinder & Kiewiet, 1981, p. 132), but it still expresses a concern for a certain kind of common good – whatever the quality of its measure instrument.

What these results teach us, beyond the shortcomings of rational choice theory, is that some extreme concerns about voting secrecy and its danger for democracy are misplaced. But this should not turn our attention away from the problems yielded by the effects of secrecy on the collective conception of political action and the ethics of voting. Thus, as observed by Brennan and Pettit, while current institutions do allow for a distinction between private and public realms, preferences and judgments, they do not provide *incentives* for preferring judgments to the expression of personal or particular preferences. Furthermore, "people may vote according to an unexamined surrogate of judgment, given that they do not actually have to enter into discourse with others; they may vote according to whim and prejudice" (Brennan & Pettit, 1990, p. 325), while increased public deliberations could improve the quality of

¹¹ Note that the statement that politics should not be a mere competition between private interests does not amount to the complete rejection of self-interest from deliberations. See Mansbridge et al., 2010, p. 64-100.

voters' judgments. It is not the same to express a judgment about what is best for society in private or in public.

Why then do most democratic theorists – and all democratic countries – still prefer secret to public voting? Mostly because arguments for public deliberative voting seem to rely on an idealized picture of politics. Mill himself was aware of this issue. He knew that some ill-intentioned people, more driven by lust for power than by a concern for the common good, would probably be tempted, after having identified their political opponents, to intimidate them or buy their votes before the next election. After all, Cicero and Montesquieu advocated open voting in their respective time as a way to make sure that people could be guided in their votes by the elite. As Manin (2015) explains, “checking the ways other people vote is likely to be driven by private concerns, not by a concern for the common good” (p. 112). And yet Mill considered this threat as not relevant anymore – or at least not decisive – in the social and political circumstances of his time. Brennan and Pettit push this argument further, noticing that threats such as “bribery, blackmail and intimidation were obviously thought to be more serious by nineteenth-century advocates of the secret vote”, but arguing that “much has changed since the last century, at least in Western democracies. Electorates are larger; the law is stronger and more interventionist; unions and other associations have emerged to produce a better balance of forces, and the experience of democracy has reinforced an ethos under which bribery, blackmail and intimidation create a great scandal” (Brennan & Pettit, 1990, p. 332). What they might discount is the contribution of the secret ballot to this new ethos¹². Yet one new fact supports Brennan and Pettit's claim: new communication technologies – notably smartphones – easily enable vote corruption: you can buy someone's vote and ask him to take a picture of his ballot.¹³ Yet this does not raise many fears nor does it seem to lead to the interdiction of smartphones in the voting booth.

Nonetheless, there remain strong reasons not to adopt public voting. My view is that these reasons are mostly prudential – avoiding social and political¹⁴ domination –, but this is a matter of debate. There is, for example, an interesting discussion of Mill's views on public voting by Annabelle Lever. She provides sound arguments defending the secret ballot, but she does not think it should be considered as a second best; she intends to make a principled case for secrecy. The reason is that she considers privacy as “central [...] to democratic citizenship and politics” (Lever, 2007, p. 378) – fact that is revealed, according to her, by our practice of secret voting (Lever, 2012).

The first thing to say is that one can doubt that our practice of secret voting reveals anything. Most people take it to be natural because they have never practiced anything else, because one can have the impression that votes have always been secret.¹⁵ Now, the importance of privacy for democracy is not itself to be questioned. What I reject is the

¹² In this case, as brought to my attention by an anonymous reviewer, reintroducing open voting would be, as Justice Ginsburg once wrote (in *Shelby County v. Holder*), “like throwing away your umbrella in a rainstorm because you are not getting wet”.

¹³ Elster, 2013, p. 8. Actually, this is not possible with all voting systems. Sometimes, all you have to do is to put a paper in an envelope. In this case, you can take a picture of a paper with a candidate's name and then put another one in the envelope. Yet with electronic voting it is often possible to see a confirmation of your vote. In order to avoid corruption, you could then make sure that there is always a way of turning back and changing your vote, yet this is not always the case nowadays.

¹⁴ Voting secrecy also protects against intimidation of the opposition by the incumbents. As Przeworski (2015) explains, this may partly explain historical transitions from public to secret voting. Incumbents won 92% of recorded elections with public voting and 76% of recorded elections with secret voting (Przeworski, 2015, p. 104).

¹⁵ The same goes with elections. People consider them consubstantial to democracy because of habit. Yet the connection between democracy and elections was very controversial until the end of the 18th century, and it is the same with the connection between voting and secrecy, which was controversial until the end of the 19th century. On the first aspect, see Manin, 2012. On the second, see Przeworski, 2015, p. 100.

association of voting with a private action. What should be protected is what really pertains to the *private* realm – self-regarding actions, mainly –, whereas voting can be considered as a public action – seriously affecting other people's rights and opportunities –, even if this action involves personal matters.¹⁶ Nevertheless, one could argue that *political* actions and opinions should also be protected against pressures from the community. From this point of view, it matters for voters' freedom of conscience that they enjoy the option not to express themselves in a vote, be it by allowing blank ballots or by offering the freedom not to vote – otherwise they would be deprived of the right to contest the candidates or to reserve judgment. But is there a right to independence so strong that it would justify protecting people from any social pressure? This seems implausible from a deliberative point of view, because social pressure incentivizes socially oriented voting – which is to be valued if one wants people to take (at least) their fellow citizens into account when exercising their political power. There are good reasons why some people would feel ashamed to disclose their votes. This potential shame reveals a social norm stating that one way of voting – seeking the public interest, or considering all interests impartially – is generally¹⁷ more appropriate than another – pursuing particular interests. This social norm is a good indicator of our understanding of democratic action. Although some people might have a crude conception of democracy where ballots replace stones and elections sanction a balance of power (see Przeworski, 1999), this is not how most people understand democratic processes. And in any case, this is not how they should be understood from a critical perspective.

Lever also suggests that the open voting proposal “rests on the assumption that voters cannot be trusted to take voting seriously unless faced with the prospect of public scrutiny and interrogation about their political intentions, beliefs and interests”. Not only, she comments, is this assumption “condescending and rude, but its likely consequences are to favor the presumptuous, thick-skinned, confident and socially advantaged over everyone else” (Lever, 2007, p. 376). I agree with her concerns about the elitist bias in public voting – it is a strong basis for prudential rejection of it. The problem of the disrespectful assumption is also serious. We would want our democratic processes to be based on other things than suspicion. Yet most democratic settings are conceived as “securities against misrule” (Elster, 2013), and the secret ballot itself is based on the rude assumption that public voting would most likely be misused. Therefore, although people's self-respect certainly matters for justice, prudence might be even more necessary for democracy to be justice-promoting.

In what follows, I will assume the controversial view that democratic institutions should be designed as to maximize their likeliness to engender just decisions.¹⁸ Mill's arguments can be understood in this perspective. Justice, according to him, requires us to consider other people's interests with impartiality (Mill, 1863/2001). Thanks to the previously mentioned social norm, people are more reluctant to act upon self-interest in public. Thus, on first view, openness appears as favorable to impartiality in voting. Therefore, only if openness threatens the pursuit of justice in other respects – Mill seems to think it does not – should we consider (partial) secrecy.

As I already suggested, there are prudential reasons for defending the secret ballot. They make us prefer secret ballots for their beneficial effects on vulnerable voters. If, for example, we believe that the voices of the vulnerable are of primary importance in the

¹⁶ Lever argues that Mill makes use of a too strict dichotomy between the public and the private realms in his defence of public voting. Even if this is right, I am not sure it makes a case for secret voting, because the difficulty of drawing a strict line between the private and the public does not necessarily make the distinction irrelevant.

¹⁷ On the legitimacy of references to self-interest in deliberations, see Mansbridge et al., 2010.

¹⁸ For philosophical defenses of such approach, see Shapiro, 1999; Van Parijs, 2011. For the more modest claim that democracy should be designed so as to minimize misrule, see Elster, 2013. I discuss epistemic approaches to democracy in more detail in Vandamme 2016a.

democratic quest for justice, we might want to make sure that they will be in a position to defend their legitimate interests and/or express a judgment free from *domination*, which must be contrasted with a judgment free from *social influence*. A judgment is socially influenced when it would be different if the agent was not taking others into account.¹⁹ There is domination when the agent's judgment is altered as a result of an illegitimate use of power by a person or a group (Shapiro, 2016, p. 23)²⁰. Domination is thus a form of influence but influence is not reducible to domination. It can be legitimate, if it fosters other-regarding judgments for example.

This kind of rationale – protecting the vulnerable from domination – seems to have grounded the adoption of secret ballot in the late Roman Republic (Yakobson, 1995; Manin, 2015, p. 213-214) and its revival in the 19th century (Buchstein, 2015). The secret ballot might then have an instrumental value²¹, to be balanced with its defects. I agree with Brennan and Pettit (1990)'s claim that “if intimidation is absent or can be eliminated from a society, then the open system of voting is preferable” (p. 331). But we cannot be sure whether this is true, even in developed societies, and therefore I think we should here prefer Bentham's prudence (see Elster, 2013) to Mill's ambition and try to foster mutual influence by other means, less vulnerable to domination.

In addition to social domination, one should note that voting secrecy also protects against political domination, or the intimidation of the opposition by the incumbents. As Przeworski (2015) explains, this may partly explain historical transitions from public to secret voting. The incumbents won 92% of recorded elections with public voting and 76% of recorded elections with secret voting (Przeworski, 2015, p. 104).

Beside the issue of domination, another instrumental argument in favor of secrecy can be grounded in the value of participation. As Lever and others suggest (Lever, 2007; Engelen & Nys, 2013, p. 502), the obligation of justification is likely to have an undesirable effect on participation. And it is true that, to a certain extent, there is an historical correlation between the extension of suffrage and the reintroduction of the secret ballot, and evidences that secret voting has initially fostered electoral participation (Buchstein, 2015; Przeworski, 2015). Under realistic conditions of large inequalities in wealth, education and self-respect, public voting would most probably work for the poor as a disincentive to participate in the democratic process. They might be afraid – in addition to sanctions by their superior or the government – of not being able to justify themselves or to defend their opinions in public. And this is likely to have a negative effect on social justice, not because wide participation necessarily improves decisions, but because the voices of the poorest, the most marginalized and the excluded are of paramount importance.²² They matter because their interests are too easily neglected by the majority. As Mill (1861/1948) himself pointed out, participation is the only guarantee that all interests will be taken into account.²³ I doubt that the negative effect on participation could be compensated by the positive consequences of publicity.

¹⁹ There is a trivial way in which all human judgments are socially influenced as we build them through communicative interactions. I focus here on synchronic influence (at the time of the vote), not diachronic influence.

²⁰ As Shapiro explains, there can nonetheless be domination “without explicit orders emanating from identifiable agents” (p. 21), if for example someone anticipates the possibility of a sanction.

²¹ We should also take into account the negative effect of public voting on neutral officials, such as judges, teachers and other civil servants. One could of course imagine an exemption of public voting for them, but it is still a good argument against publicity.

²² One could argue that those social categories are already more or less excluded from politics. In any case, we should not defend a system that would increase this trend.

²³ “[T]he rights and interests of every or any person are only secure from being disregarded when the person interested is himself able, and habitually disposed, to stand up for them.” (Mill, 1861/1948, p. 186)

In sum, despite the developments from Mill's time to ours, there are still good instrumental reasons for preserving the secret ballot—or at least to avoid immediate disclosure. We could imagine disclosing votes only several years afterwards, in order to reduce the temptation of corruption yet make voters accountable to their children and fellow citizens (Beerbohm, 2012, p. 259; Vermeule, 2007, pp. 203–208). What would be lost is the temporal link between votes and deliberations. Under the implausible assumption that secrecy could be effectively secured before disclosure, this could nonetheless have a desirable effect on voters' attitudes. Yet we should obviously take seriously the plausible threat that this information could be misused by an ill-intentioned government or by other technologically powerful actors. Many people already distrust the secrecy of their vote (Gerber et al., 2012). Late disclosure is therefore likely to reintroduce many of the drawbacks of public voting. Nonetheless, the reason why this detour through the debates surrounding public voting is necessary is that we must keep in mind the virtues of publicity and avoid falling into the trap of adaptive preferences (Cohen, 1995, p. 253–257). It is not because full public voting is not a desirable option that secret ballot becomes the best way of voting. It might be a *better* and yet not necessarily the *second best* option. Therefore, we should look for ways of improving our voting practices. The next section considers two proposals setting up this ambition, and rejects them in favor of another proposal, examined in the remaining sections.

3. Openness without corruption or intimidation

What have we learned from our critical examination of the secret ballot? 1) Publicity and secrecy in voting both have interesting potentialities. The former seems to foster the expression of public-oriented judgments; the latter the expression of judgments free from domination. 2) There is no reason to consider the secret ballot as the only remedy to the problems of corruption and intimidation affecting public voting. It is in this spirit that we can interpret the proposals advanced by Brennan and Pettit, and then Engelen and Nys.

A. Semi-open voting

Surprisingly, after a strong attack against secret voting, Brennan and Pettit make a rather timid proposal. Because they still recognize some threats with full publicity, they suggest “unveiling the vote” only partly, in a way that “no one can be sure that how he votes will be hidden from his friends and associates” (Brennan & Pettit, 1990, p. 327). Therefore, they imagine allowing several voters at the same time into the polling station and an obligation for voters to indicate their voting intentions to other people voting at the same time. For example, if you vote A, you enter one booth, and if you vote B, you enter another one. Whereas in fully open voting *anyone* can potentially see your vote, under semi-open voting *some people* might see your vote.²⁴

Because they imagine friends and associates to go together to the polls, Brennan and Pettit believe that this system would potentially stimulate discussions among them, which is to be valued from a deliberative point of view. The desire for social acceptance among fellows would incentivize voting in a discursively defensible manner. It would thus encourage making a reasoned choice rather than relying on prejudices. This way, they expect to “see the

²⁴ As a reviewer rightly pointed out to me, the difference between open and semi-open voting might be exaggerated. What often happened under open voting, in the past, was that people were voting together with their acquaintances. Although voting was open, not everyone knew what others voted. Vote choices were usually not recorded and published (Elster, 2015, p. 5). So the main difference is that under open voting, vote choices *might be* recorded and published, whereas semi-open voting precludes that.

emergence of a more robust, republican form of democratic life” (Brennan & Pettit, 1990, p. 328).

Compared with this latter aim, the proposed arrangement appears too modest. First, your friends and associates are already the people with whom you are the most likely to enter into a political debate, to whom you might already confess your votes²⁵. Now, why believe that people would vote with their friends and associates? If they know that the vote is partly unveiled, they might either go voting with people with similar ideas, or people they know well and who do not judge their choices, or people they do not know and whose judgment they do not care about. Nothing would foster cross-group deliberations, which are of primary importance if you want to counter positional biases and nurture decentration – i.e. the capacity to consider things through the eyes of very different others. There is something too easy in having to justify oneself in front of one's fellows only. Admittedly, the desire for social acceptance is higher among fellows, which stimulates a justificatory process. But what would matter for increasing impartiality of judgment is an incentive to enter discussions with people belonging to other social classes, geographical contexts and groups of interests. As Engelen and Nys (2013) argue, “[i]f open voting is to generate more attention to society's public interest, the public gaze should not come from one's friends and associates but from a random selection of fellow citizens” (p. 504). This claim finds support in Cass Sunstein (2000)'s observations about group polarization when groups are too homogeneous. What confers epistemic value to deliberations is cognitive diversity (Landemore, 2013); what increases impartiality is social diversity (Vandamme, 2016a).

In sum, Brennan and Pettit's idea is not in itself undesirable. Yet it suffers from two main defects. First, there is no guarantee that their device will incentivize people to go to the polls with their friends and associates. Second, even if it were the case, the effect might be disappointing. It is reasonable to expect intimidation and corruption to be low among peers²⁶, which motivates limited openness. But this comes at the cost of cross-group deliberations. Hence the proposal appears too modest compared with its ambition. It seems reasonable to doubt about its impact on people's political judgments and votes.

B. Justificatory assemblies

Sharing this doubt about Brennan and Pettit's proposal, Engelen and Nys have recently offered a more ambitious proposal, also aiming at reaping the desirable effects of publicity without the negative consequences of shame and intimidation. Thus, inspired by Ackerman and Fishkin (2005)'s Deliberation Day, where a random selection of citizens is gathered before an election to deliberate on competing political programs, they imagine a Justification Day, after the votes, i.e. “small assemblies of randomly selected citizens, in which their votes will be truthfully revealed to each other and in which they will be asked to discuss the reasons for and against their votes” (Engelen & Nys, 2013, p. 504). This way, voters would “cast their vote in complete secrecy (as they do now) but in full knowledge that they may have to defend and argue for it in the future” (Engelen & Nys, 2013, p. 504) if they are randomly selected. It is the anticipation of the possibility to have to justify oneself that would incentivize discursively defensible votes. As regards the probability to be called to Justification Day, Engelen and Nys imagine a probability of 1 per cent, which would mean 450,000 selected citizens for a country as France, and 2,200,000 for the United States if the random selection is

²⁵ Surveys reveal that 73% of Americans “report sharing their vote choices with close friends or family members ‘most’ or ‘all of the time’” (Gerber et al., 2012, p. 79-80).

²⁶ If by “associates”, the authors mean people occupying relatively similar positions in the social hierarchy.

made among voting-age citizens²⁷ – assuming that abstention also requires justification (more on this in a moment).

The advantage the authors perceive in their proposal is that it would stimulate a more deliberative attitude in the voting booth – a willingness to be able to justify oneself if selected for the Justification Day – without providing incentives for bribery, manipulation, intimidation, conformism or withdrawal, because the probability of being selected remains low. The potential impact of the proposal is difficult to assess. It would be interesting to have an opinion survey indicating how citizens would perceive it and whether they would change their voting attitude under such device. Depending on people's attitude toward risk, a probability of 1 per cent might appear serious or insignificant. But judging the cost of gathering 1 per cent of the voting-age citizens in justificatory assemblies, it is likely that the probability to be selected would need to be much lower and the risk, therefore, even less significant.

The two main problems with this proposal, beyond the important institutional cost, are its potentially coercive aspect and the deliberation-participation dilemma. First, if attendance to Justification Day is optional, its effect (people anticipating a duty to justify themselves) might be almost imperceptible. It needs thus be mandatory and non-attendance at least sanctioned by a fine.²⁸ But for whom should it be mandatory? Even abstention might require justification. After all, if you have the power to make things better and you do not use it, the disadvantaged could reasonably hold you to account.²⁹ Yet it would be quite coercive to oblige people to justify themselves even when they are doing their best to avoid any political commitment, be it by lack of interest in politics or lack of confidence in their judgment. This would be a serious denial of the freedom to remain uninterested in politics or to reserve judgment about political issues. Few people would defend mandatory participation to deliberative assemblies, and Mill himself would probably have granted a right to silence under public voting.

Engelen and Nys could avoid this coercion by selecting for Justification Day only citizens who have *chosen* to vote and knew in advance the chance of being selected. Enters the second issue: if the probability to be selected is low, so will be the effect on the voting attitude; but if it is high, the effect on participation will probably be very negative. A pressure to be able to justify oneself publicly might temper people's willingness to participate. If attendance to Justification Day is mandatory (for those selected) but voting is not, abstention might increase significantly. If voting is mandatory, the number of blank ballots, and indeed abstentions³⁰ might increase. Faced with this objection, Engelen and Nys might accept the

²⁷ Sources: <http://www.interieur.gouv.fr/Actualites/L-actu-du-Ministere/44-6-millions-d-electeurs-inscrits-sur-les-listes-electorales> for France and

<http://www.census.gov/content/dam/Census/library/publications/2015/demo/p20-577.pdf> for the USA.

²⁸ One could also wonder how it would be possible to force people to participate to the Justification Day. To illustrate this point, consider the G1000, a Deliberation Day organized in Belgium in 2011. Only 3% among the randomly selected citizens answered positively, and the organizers faced a 30% last minute dropout rate among those who had first accepted to participate (Caluwaerts & Reuchamps, 2014, p. 17-18).

²⁹ To foster participation to elections, a possibility suggested by Elster (2015, p. 12) is to lift the veil of anonymity and publish the names of abstainers. In stark opposition to this view, Jason Brennan (2011) suggests that we have a duty to abstain if we are ill-informed. I agree that an ill-informed vote can do more harm than good. Yet encouraging voting – even ill-informed – has instrumental value from the point of view of justice. In an elite-dominated political system, the votes of the disadvantaged (often also the less well informed) are crucial. Even if their votes are insufficient to secure genuine accountability, the elite would have free rein to neglect their interests without these votes.

³⁰ Voting is compulsory in Belgium, but there is nonetheless around 10% of usual abstention (Van Reybrouck, 2013, p. 14).

possible consequence of reduced political participation³¹ and focus on non-punitive incentives to participate, such as defrayal for those participating into justificatory assemblies. They could argue that participation might be reduced but increase in quality, thanks to their mechanism. Yet, while Engelen and Nys want to make our voting procedures more truly democratic – whatever this means –, I am concerned with making their results more likely to be just. And from this perspective, for the reasons previously mentioned with reference to Mill, I do not think we should sacrifice participation to deliberation when they conflict directly. There is a strong correlation between lack of self-confidence and disadvantage, and we need the votes and voice of the disadvantaged.

Nevertheless, the merit of this proposal, as its authors put it, is “to show that there is room for proposals between complete secrecy and complete openness” and to “challenge the ‘sanctity’ of the secret ballot” (Engelen & Nys, 2013, p. 505).

4. Justified votes: mechanism and aims

The alternative mechanism I want to put forward is quite simple: on the ballot, the voter is asked to choose one or several justification(s) for her vote among a list of proposed justifications (see fig. 1 and 2). Voting secrecy is preserved, but the selected justifications are made public after the vote.³² The idea is to get some of the benefits of publicity – in particular, deliberations and justifications – while eliminating the threats of intimidation and corruption that made us prefer the secret ballot to public voting. Therefore, it is useful to separate voters and ideas. Justifications should be assessed independently of persons. Thus, in the proposed arrangement, possible public justifications would be discussed before the vote in formal and informal spheres, in order to assess the potential rival justifications and set up the list. After the vote, the statistics of the justifications would be disclosed, allowing for a new public debate on the validity of the winning justification(s).

Publicity in itself does not necessarily foster deliberations – it can also lead to silence. In this respect, justified votes would score better than public voting because the “winning” justification(s) would most probably be controversial and lead to further discussions, while secrecy reduces the temptation of silence. The advantage of preserving secrecy is that people would more comfortably enter the public debate. They would not feel they are judged *qua* persons as they would be under public voting, and there is no reason why abstention would increase. Admittedly, active participation in public debates is often limited to an elite, but even passive participation – reading about competing justifications in the press, for example – can be beneficial, so the advantages of the deliberative justificatory process would not be restricted to those publicly defending their ideas.

Secrecy remains nonetheless perverse. It allows for hypocrisy and lies. You can pretend that you voted for an option while you actually voted for the other, which would be more difficult under public voting. This is why justified votes should be considered as a second best, the first best being open voting in a world free from domination. Yet hypocrisy has been showed to have some beneficial effects. Jon Elster once suggested that the cognitive dissonance it creates in the agent's mind can push her towards believing what she openly says rather than admitting her inner egoism (Elster, 1986, p. 113). But the absolute necessity to

³¹ I do not think they would, as they highlight the importance of inclusive participation and blame Brennan and Pettit for neglecting this point (see Engelen & Nys, 2013, p. 502). Yet this option is open to other defenders of Justification Days. One could think, with Jason Brennan (2011), that participation is valuable only if one is genuinely committed to the common good (and thus ready to provide justification).

³² David Robichaud suggested to me that sociological information about voters and their justifications could also be disclosed. I think it would be interesting for political sociology, but I doubt that it could improve the quality of the post-electoral debates. To the contrary, it might contribute to confining voters in alienating categories.

reduce dissonance is an assumption that does not always hold – one can remain hypocritical for quite a long time!³³ There remains however a virtuous effect of hypocrisy at the collective level, because once a political actor gives up self-interested justifications for public-oriented ones – even if they are hypocritical –, she gets caught up into a logic of public arguments and can be defeated on this field – while her position would not have been that easily attacked had she stayed at the level of self-interested justifications.

Figure 1: example of justificatory ballot in a referendum³⁴

³³ Therefore, Elster (2013, p. 92-93) has recently reconsidered this explanation.

³⁴ Justified votes need not be binary. Evidence suggests that votes with multiple options are more favorable to deliberations as they reduce polarization and partisanship. See LeDuc, 2006.

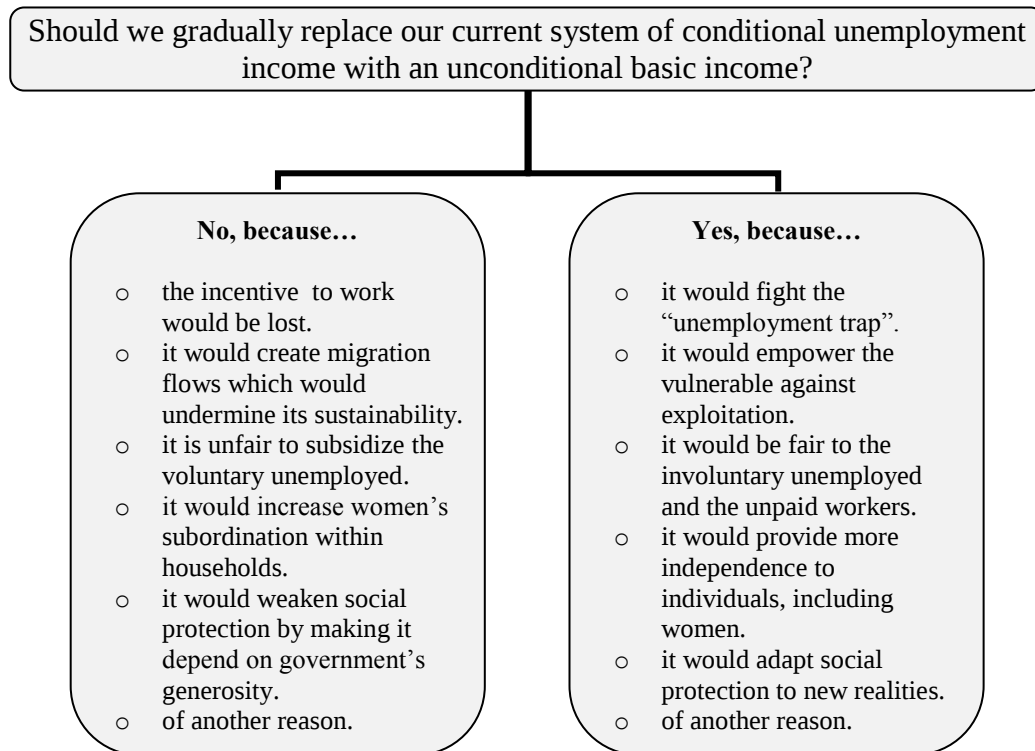


Figure 2: example of justificatory ballot in election

I choose the following candidate:

- Candidate 1
- Candidate 2
- Candidate 3

For the following reason(s):

- The candidate shows a willingness to fight unemployment through adequate and fair means.
- The candidate has a vision of the tax system likely to engender more social justice.
- The candidate shows a willingness to conduct a fair migration policy.
- The candidate has a vision of public education likely to remedy its current shortcomings.
- The candidate has convincing ideas for addressing environmental challenges.
- Other reasons.

The first aim of justified votes would be to improve the articulation of the two core components of democratic action: deliberations and votes. There now exists a massive literature on deliberative mechanisms, but the articulation with votes may not have received sufficient attention so far (see Mackie, 2011; Pourtois, forthcoming)³⁵. As mentioned above, this tool could render the very act of voting more deliberative and foster deliberations

³⁵ One important exception is Gastil, 2000.

upstream and downstream of the vote; first on the list – in order to clarify the terms (such as “unemployment trap”) and stakes of the debate – and then on the winning justifications and their validity.

In a larger perspective, the proposed mechanism could contribute to the creation of a “justificatory community” (Cohen, 2008, p. 43-45) as mentioned in the introduction. The justifications accompanying the results of the vote would allow for a reconstructive deliberation (Ferry, 2009), i.e. a process of collective understanding and critical evaluation of the decision. This possibility of a never-ending process of justification and reason-giving would, it seems to me, alleviate the tension between the slow deliberative interactions currently preceding the votes and the brutal break provoked by the majoritarian decision. In a way, it could make democracy less majoritarian.

To illustrate this, imagine a referendum taken by a political community on a crucial decision, deeply dividing the people. If justified, the decision taken would then be more easily re-assessed years after, if the debate opens up again. In addition to this, the next generations would be able to understand better the decision and would be in a position to question the continued validity of the justifications then advanced. It could thus make of the democratic process a more truly intergenerational quest for justice (Habermas, 2001b; Rummens, 2007).

Another goal is to create an incentive for citizens to make decisions based on relevant reasons, to use the language of public reason and to consider all interests impartially. In Robert Goodin (2004)’s terms, it could be a “gentle role reminder” (p. 111) – ‘remember how you are supposed to act as a citizen’ – that could help “encourage democratic agents to internalize a more justice-apt range of external reasons than they might otherwise, and to weigh them more appropriately than they might otherwise” (p. 109), and thus “make democracy a more reliable tracker of true justice” (p. 111). In addition to fostering public deliberations, the mechanism would thus also encourage what the same Goodin calls “deliberation within” (Goodin, 2003), which is the necessary complement to public deliberations. Of course, hypocrisy would be possible and easy, but as mentioned earlier, it can be virtuous and civilizing.

What is more, in the case of referendums, the most selected justification(s) could potentially influence governmental action in the implementation of the policy (if accepted) or in the reshaping of the proposal (if rejected). Imagine that the political community accepts the basic income proposal (see fig. 1) but shows important concern for negative effects on women, such as an increased withdrawal from employment. The government could act on this with a policy promoting a fair division of labor within households, thus expressing regards for the concerns of the “losing side”. Or imagine that the basic income proposal is rejected but the community shows concern for the unpaid workers and involuntary unemployed. Then the government could decide to extend the circle of activities counting as work and soften its activation policies. In both cases, it would render the procedure less majoritarian, taking the opposition’s views more seriously. Besides, if the government is favorable to a policy which is rejected by a majority of citizens, it could use the information about the reasons why the policy was rejected when reshaping the policy proposal in the future. If, for example, a universal basic income is rejected mainly because people are concerned with its financial cost, the government could come back with a more modest proposal in the future, such as a basic *retirement* income. All these possibilities would provide the citizens with an incentive to take the exercise seriously and choose the right justification.

In the case of elections, the use of the tool would be more complex, given the amount of motives that can guide the choice for a candidate over another. Nevertheless, adding justifications to choice could have at least two desirable effects. First, it could somewhat shift the attention from the personal characteristics of the candidate – which nowadays seem to

weigh considerably in voters' considerations (Manin, 2012, p. 279-283)³⁶ – to her ideas. Secondly, it could transform the mandate given to the representatives by highlighting the aspirations and concerns of the electorate. Elected people would receive a better defined *mission* for which they would be held accountable at the end of their mandate. This would make easier the interpretation of citizens' expectations nowadays blurred by the extreme reduction of complexity entailed by the traditional ballot, which reduces a variety of views, hopes and aspirations to a single unmotivated choice. The result, as John Ferejohn (2015) puts it, is that “at the heart of modern representative democracy is the fact that its most important choice is made for reasons that can only be guessed at or speculated about by those seeking to make or influence policy. Private voting is in that sense an irresponsible act at least in a legal sense” (p. 233).

Now, how do justified votes differ from post-electoral polling, an already existing practice where voters are asked by polling institutes to provide justifications for their electoral choices? The difference lies mostly in the scope of the practice. Post-electoral justificatory polls, which are certainly valuable, are not often used. Polls generally focus on unjustified statements or sociological information about voters, which does not stimulate public debates. The attractive feature of justified votes, once again, is that they would *systematize* the practice of justification. Although a poll among a representative sample of citizens can deliver the same statistics about preferred justifications as justified votes, it does not *incentivize* voters to vote in a justifiable way, or to make considered judgments. Recall that the potentially desirable effects of justified votes are both the stimulation of public debates and of a deliberative attitude within the citizen's mind. Only if the duty to provide justifications applies to all citizens can it work for them as a role reminder.

5. Potential uses

What would be the scope of such innovation? As showed in the figures, it could be used both in elections and referendums. The advantage of referendums – or non-binding public consultations – is that they focus on one or a few issues, which makes the setting up of the list of proposed justifications easier than in the case of elections (which aggregate a great variety of issues). Yet this does not necessarily rule out the electoral use of justified ballots, because even if the proposed justifications are far from being exhaustive, there would still be an increase of information compared with traditional ballots.

Regarding referendums and public consultations, I leave aside the question of the desirability of involving citizens more into decision making. The fact is that some countries use these participatory tools and others might come to use them in the future as they seem to enjoy strong popular support (Bowler, Donovan & Karp, 2007) and their use is on the rise in contemporary democracies (Dalton, 1999). My point is simply that justified votes would make referendums more attractive and public consultations more informative. One reason to be skeptical about the virtues of referendums is their majoritarian nature. Direct democracy is taken to be less deliberative than representation (Urbinati, 2006). But as mentioned above, justification-giving might temper this majoritarian character and make referendums more deliberative.

One example of fruitful use of justified referendums would be their articulation with mini-publics. Decisions taken by mini-publics are often submitted to referendums because those small deliberative assemblies obviously lack popular legitimacy (Goodin, 2008; Lafont, 2015). And this sometimes brings about disappointing results. People spend time elaborating

³⁶ Although the personality of a candidate certainly has its importance for good governance, it seems to me that the primary stakes of an election are the political options of the candidates. Because those options have important repercussions on our fellow citizens, they should attract our primary attention. See Vandamme, 2016b.

and discussing in depth policy proposals in genuine deliberative settings, but may see them rejected by an ill-informed anonymous majority, without more explanation or justification (Talpin, 2015). Justified referendums would not solve all the communication issues between mini-publics and the wider public, but they might help alleviating an existing tension.

An interesting way of articulating votes and deliberations is the kind of “deliberative elections” envisioned by John Gastil (2000) and practiced nowadays in Oregon (Gastil & Richards, 2013), where referendums or elections are prepared by civic assemblies who provide deliberated assessments and recommendations to the wider public before the vote. Justified votes might then be an additional tool for explicitly linking micro and macro deliberations, recommendations by civic assemblies and people’s decisions. The deliberative assembly could be in charge of setting up the list of proposed justifications in addition to communicating the results of its deliberations on these competing justifications.

Besides, one might consider that the demand for justification is even stronger for parliamentary votes, for reasons of democratic accountability. Representatives must constantly give account of their actions and decisions to the people they represent. In fact, parliamentary deliberations already include exchanges of arguments and justifications.³⁷ What is more, representatives usually vote publicly. Thus, if they were to use justified votes, those would be fully public. The tool would not then be an alternative to secret ballot, but a way to increase the deliberative dimension of representatives’ votes. As already mentioned, publicity does not necessarily entail deliberations. The vote, unless justified, remains a potentially monological act. Publicity surely makes MP’s accountable, but they could be made even more accountable – this time in a deliberative rather than electoral way³⁸ – if citizens had the possibility to see the selected justifications for their votes and ask for more explanations or accounts.

One problem with this is party discipline, which is strengthened by the publicity of parliamentary votes. Justified votes would certainly lose some of their value if party leaders were to impose a justification to all party members. This would nonetheless increase transparency in party decisions – voters would be able to see more clearly how parties justify their conducts. Although many decisions taken in parliaments are already justified by party members to their voters, the proposed tool would make it more systematic. Votes without justifications would become suspicious, creating a better deliberative connection between voters and representatives.

Another issue is the amount of votes taken in parliaments. This raises two problems. First, it might take time to set up appropriate lists of justifications for each vote. But this should not worry us too much. Slowing down decision processes might sometimes be beneficial, especially if more time is dedicated to making reasoned choices and communicating with the public.³⁹ The second problem is that the public might not follow all the discussions and lose interest. Yet the aim would neither be to generate universal interest in politics, nor to bring citizens to scrutiny each and every decision taken. The media have their role to play in the deliberative process. It would be their mission to bring public attention to issues of general interest discussed in parliament, or to wanting or suspicious justifications for parliamentary decisions.

³⁷ As brought to my attention by Charles-Ferdinand Nothomb, former president of the Belgian Chamber of Representatives, it is already possible for MP’s to take a moment to justify themselves before the vote. But it should neither be too long, nor generalized, otherwise other MP’s would protest.

³⁸ On “deliberative” or “discursive” accountability, see Gutmann & Thompson, 1996, p. 142-144; Goodin, 2008, p. 155-185.

³⁹ Alternatively, if one is concerned with the cost of preparing lists for every single vote taken in parliament, we could make up a system allowing citizens to choose beforehand on what topics they ask for justifications.

6. Objections and difficulties

Certainly, one should not see the proposed mechanism as a panacea. Its ambition is modest – a tool for experimentation – and some difficulties are to be expected. The first and not the least is certainly the setting up of the list. How could one ever hope to draw up an exhaustive list of people's justifications of their opinions? The challenge for the public authority, if it is in charge of it, would consist in establishing a list which would not be too large and yet would not forget important plausible justifications. Hence a good public debate would be needed beforehand.

Another source of concern is that, as for the organization of referendums and mini-publics, those in charge of determining the question and the possible justifications would be in a position to manipulate. It would thus be tempting for the government to “nudge” the voters by framing the alternative in a biased way, which would harm democratic autonomy. While we can regret this, it does not make a case against justified votes in particular. As Adam Przeworski (2010) puts it, “elections are inextricably manipulated” (p. 119). While fraud can and should be fought, manipulation, i.e. organizing things in a convenient way for the incumbents, is almost unavoidable. All we can do is to rely on the “tribunal of public opinion” (Elster, 2013, quoting Jeremy Bentham), led by the media, to push the public authority towards more impartiality.

Given the danger of manipulation by the incumbents, one might want to increase the quality of the justificatory ballots by letting each “camp” select – and construct – its best arguments and prepare the list of main justifications. One difficulty would be to identify the representatives of each side – pros and contras –, but it could be their responsibility to organize themselves properly and decide who sets up the list. There are nonetheless reasons to resist such move. One is that manipulative power could simply shift from public authority to powerful interest groups within civil society. There is no reason to assume a peaceful and civilized deliberative convention within each camp. Another worry is that pros and contras would be tempted to seduce voters with rhetorical and passionate arguments. Although those kinds of discourses have their place in public debates, an emphasis on public reason would probably increase the quality of deliberations. In this perspective, letting a deliberative assembly such as a mini-public set up the list (see above), possibly after consultations with experts, appears as a more promising idea.

One could also wonder whether the proposed mechanism would foster debates or conformity. If only a few justifications are available, would it still be possible to express non-conformist opinions? I think it would – not in the vote itself, but in the debates surrounding it. In any case, there would be no loss in this regard compared with current practices. And if people do not recognize themselves in the proposed justifications, they could check the last box: “other reason”. There are two reasons why we should prefer such box to one offering the possibility to write down one's own justification. First, the institutional cost of reading and gathering all the personal original justifications. Second, the possibility of blaming those in charge of the list if many voters check the last box.⁴⁰ Admittedly, if the question is badly phrased and the list of justifications is made of very superficial arguments, leveling down the debates, the device could have a net negative effect. Nonetheless, a tool is not made useless by the fact that it can be misused.

Along the same line of thought, one might also fear, in the case of parliamentary justified votes, that short justifications could provide an easy escape for representatives and impoverish public debates by favoring “Twitter-style politics”.⁴¹ From a deliberative point of

⁴⁰ If justified votes are used in parliaments, we might want to avoid the last box, which would be too convenient for MP's.

⁴¹ I borrow the expression and owe the objection to Andrea Felicetti.

view, there would then be more to lose than to win. Yet this objection misunderstands the role of justificatory ballots. Their purpose is not to limit exchanges of justifications to a given sentence. The justifications selected have the function of inviting further discussion. Opponents will never be happy with a lapidary justification. They will always ask for more. All the mechanism is doing is systematically linking decisions to justification in order to make unjustified decisions unusual if not suspect.

Another possible worry concerns the kind of justifications that should and would be selected. From a normative perspective, we should clearly prefer *public justifications*, i.e. justifications which could be accepted by all citizens, whatever their particular conception of the good (Rawls, 2005). This is not meant to imply that religious discourses or perfectionist views have no role to play in public debates in general. The idea is just that if we have to focus on a limited number of possible justifications, and if we want to foster dialogue, public justifications are more promising as they are based on what people could agree on (even if they will not actually reach consensus) not on what divides them. The aim should thus be to find reasons that are “sharable” (Forst, 2012, p. 21), that cannot be reasonably rejected (Scanlon, 2003). Now, as a matter of facts, it is another issue which kind of justifications will actually be selected. In contexts of pluralism, there will be a natural incentive to select public justifications as they are more likely to secure wide agreement. Yet in contexts where religion is more politicized – and this can overlap with pluralism, as in the US – religious justifications might enjoy more support. And this could be detrimental to the goal of creating a justificatory community.⁴² A source of hope is that justified votes are more likely to be used in political communities that are committed to mutual justifiability and hence likely to favor public justifications.

Yet some scholars judge that contemporary democracies rightly apply a strict division of moral labor (Nagel, 1991; Rawls, 2005). By authorizing representatives to rule in their name, citizens get rid of their political duties – including the duties of impartiality and justifiability – other than obeying the laws. This division of labor is not sufficient. In a well-functioning representative democracy, citizens are supposed to monitor their representatives, to check them. They must take some responsibility for what their representatives do in their name (Beerbohm, 2012). Hence, justice might never occur without transformation of the citizens’ political ethos. Institutions need therefore to foster decentration and mutual concern. This is why it is not enough for the “civilizing force of hypocrisy” (Elster, 2000) to apply only in the formal political sphere, with political parties proposing their conceptions of the just society and citizens making their choice among the offered options. One could argue that if citizens support impartial⁴³ political programs for interested or private reasons, it does not really matter; there is no need for their justifications. The problem is that existing political programs are only seemingly impartial. As a result of hypocrisy, most political parties present their programs as serving the interests of the whole country. Yet this often hides the fact that they serve particular interests, and sometimes illegitimately so.⁴⁴ Hence it is the mission of citizens to critically assess rival pretensions to impartiality. This means that the representative use of public reason is not sufficient, and it requires citizens with a capacity for public reasoning. Such capacity is absolutely not fostered by the traditional secret ballot.

⁴² I thank the anonymous reviewer who made this good suggestion.

⁴³ Impartial in the sense that they give equal weight to everybody’s interests, which is not incompatible with focusing on the least well-off for example, as a matter of compensation for a disadvantage.

⁴⁴ My view is that it is legitimate for a political party to serve the particular interests of disadvantaged people. It is not contrary to the ambition of impartiality, as the goal is to combat an existing partiality, to restore some impartiality. To the contrary, it is illegitimate to serve the interests of people who are already advantaged.

7. Conclusion

The question guiding this paper was ‘how to combine the benefits of secrecy and publicity in voting as to incentivize a deliberative attitude in the voting booth, stimulate the exchange of justifications and thus alleviate the tension between deliberations and votes?’ Public voting was rejected on consequential grounds for its potential undesirable effects on the vulnerable. Semi-open voting and justificatory assemblies were critically assessed and their likely effects questioned. The paper then defended justified votes as a tool with a potential for fostering public exchanges of justifications and a deliberative voting attitude. This mechanism could be used in elections, votes on specific issues – public consultations or referendums – and for closer examination of MP’s decisions.

The result is that whatever one’s views on representative versus more direct democracy, justified votes have some appeal. If one believes that it is in parliaments that the deliberative imperative applies primarily, this tool could allow for more parliamentary deliberations and a more discursive accountability of representatives. On the other side, one might hope to revitalize democracy⁴⁵ by consulting more the people – with the same mechanism and others, like deliberative assemblies – and making them believe again that their voices matter. For those convinced by the virtues of mini-publics, justified votes might help bridging a gap with the wider public and thus alleviate the tension between such deliberative assemblies and general referendums. For those who are happy with electoral-representative democracy, justified votes can be seen as an enrichment of traditional practices.

This paper is based on the hope that exchanges of justifications could foster both impartiality and the sense of belonging to a – justificatory – community, two essential components of a just society. I cannot see what else than aversion to change prevents us from experimenting new voting mechanisms when the risks and costs are so low – as I believe they are with justified votes. Yet what is to take away from the discussion of the secret ballot is the need for a consequentialist approach to democratic engineering. We want a justificatory community, not an oppressive one. I hope that my proposal provides some support in the former direction.

Pierre-Étienne Vandamme
FNRS Research Fellow
University of Louvain
pierre-etienne.vandamme@uclouvain.be

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⁴⁵ Which might be necessary to preserve legitimacy in contemporary “hollowing” democracies (Mair, 2013), marked by a growing citizen disaffection for institutionalised politics.

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