

# 29

## DISCRIMINATION AND POLITICS

*Nenad Stojanović*

UNIVERSITÄT LUZERN

### Introduction

Political philosophers and legal theorists working on the concept of discrimination hardly ever mention the sphere of electoral politics (see, e.g., the various essays in Hellman and Moreau 2013; Altman 2015). They mostly refer to discrimination arising in areas such as employment, education and housing (cf. Chapters 25 and 26). And yet, as numerous empirical studies show (see, e.g., Fisher et al. 2015; Street 2014), discrimination is present in politics too. Hence, the aim of this chapter is to elaborate a conceptual roadmap – supported by selected empirical examples – that shall help to address the concept of discrimination in the political–electoral sphere of liberal democracies.

To accomplish this I distinguish between three key political actors in representative democracies: voters, political parties and candidates. While they often overlap – in any given election a citizen can be both a voter and a candidate running on a party ballot – it is useful to keep them separated for analytical purposes. Also, I will address discriminations against these three political actors on grounds of morally objectionable and (supposedly) politically irrelevant identity characteristics such as race, ethnicity and gender (cf. Chapters 15 and 16).

A couple of additional remarks are in order. First, my account of discrimination in politics draws upon a *moralized* concept of discrimination, as defined by Altman (2015: §1.2; cf. Introduction), that is applied to

...acts, practices or policies that meet two conditions: (a) they wrongfully impose a relative disadvantage or deprivation on persons based on their membership in some salient social group, and (b) the wrongfulness rests (in part) on the fact that the imposition of the disadvantage is on account of the group membership of the victims.

*(Altman 2015)*

Second, as in most accounts of discrimination, it will be useful to distinguish between direct and indirect, as well as between explicit and implicit forms of discrimination in politics (cf. Chapters 1 and 2). Third, for reasons of space I will focus mainly on cases of morally wrongful discrimination (discrimination *against*) and will not address instances of morally justified

“positive” discrimination (discrimination *in favor*) and discrimination *between* (see Lippert-Rasmussen 2014: 14). Finally, at the end of each section I will mention a number of difficult, borderline cases.

### **Discrimination of citizens qua voters**

The right to vote – also called suffrage or the franchise – is a political right and a central element of democratic political systems (Beckman 2009). The main idea is that in a democracy *every* citizen, in principle, should have the right to participate in the body politic. In the wording of the *Universal Declaration of Human Rights* of 1948 (article 21.1), “everyone has the right to take part in the government of his country, directly or through freely chosen representative.”

The most frequent exceptions to this principle – considered as not unreasonable and, thus, legitimate in contemporary democracies – are grounded on *age* (no country allows children to vote), on basic *mental capacity* (in nine out of ten democracies the mentally impaired cannot vote) and on *citizenship* (resident non-citizens are almost never enfranchised in national elections) (López-Guerra 2014; cf. Chapter 20).

Nowadays there is a general consensus that the distribution of the right to vote “should not discriminate unfairly between individuals on the basis of *irrelevant* distinctions” (Beckman 2009: 1; emphasis added). In this regard, the most commonly cited politically irrelevant traits are “race, color, sex, language and religion”.<sup>1</sup> These traits are typically considered as next to immutable (“ascriptive”) and the groups based on them are in most contexts *socially salient*. This remark is important, because, arguably, in any viable account of discrimination only the socially salient groups can qualify as potential grounds of discrimination (Altman 2015: §1.2; Lippert-Rasmussen 2014: 30–36).

In the remaining part of this section I will map the possible discriminations, drawn from real-world examples, indicating discriminatory laws and practices grounded on such ascriptive and socially salient traits of citizens *qua* voters.

#### ***Direct and explicit discrimination against citizens qua voters***

The most clear-cut case of legal, direct and explicit discrimination against citizens *qua* (potential) voters is the history of women’s suffrage. Before the late nineteenth century, certain states or sub-state entities had granted the right to vote to women. But it was a history of partial enfranchisement *and* disenfranchisement. For example, women could vote in Sweden between 1718 and 1771 and in the state of New Jersey from 1776 to 1806. The first country to grant the right to vote to women (without restrictions), and not to revoke it, was New Zealand in 1893, followed by Finland in 1906 and Norway in 1913. The major waves of women’s enfranchisement came after the First World War and then again after the Second World War. Today, women’s suffrage exists in almost all countries that use elections.<sup>2</sup>

In some cases, the enfranchisement of women was accompanied by a restatement of discriminatory practice on the basis of illegitimate criteria *other* than sex. In 1902 New Zealand, for example, explicitly excluded aboriginal men and women from the franchise.<sup>3</sup>

#### ***Direct implicit discrimination against citizens qua voters***

Legal provisions can also implicitly deny the franchise to certain groups of citizens. Consider a law stipulating that only people with a basic level of literacy can vote. Depending on the context, this might amount to a form of discrimination against individuals who belong to

socially salient, minority groups. That kind of discrimination can be seen as “structural”, because it “concerns the rules that constitute and regulate the major sectors of life such as [...] political powers and responsibilities (Altman 2015: §2.3; see Lippert-Rasmussen 2014: 77–78). For example, the literacy tests that Southern states in the US began to adopt in 1890 had a large differential racial *impact*, since 40–60 percent of blacks were illiterate, compared to 8–18 percent of whites (Kousser 1974). So, until the 1965 Voting Rights Act, literacy tests as well as poll taxes and various other bureaucratic restrictions *de facto* disenfranchised large numbers of African-Americans. The Voting Rights Act, however, did not completely eradicate this form of discrimination. An amendment to the Act was introduced in 1975, and again in 1982 and 2007, to address the discrimination against language minorities (Sher 2011: 65–69). In recent years, other and more subtle devices – such as voter ID laws, requiring citizens to provide an official identity card before they are permitted to vote – have been devised in some US states to make it harder for citizens belonging to minority groups to participate, *qua* voters, in elections.<sup>4</sup>

Notice that structural discrimination cuts across the distinction between direct and indirect discrimination. As a *conceptual* matter, it is necessarily indirect “by its very nature” (Lippert-Rasmussen 2014: 78). Nevertheless, as an *empirical* matter, “direct discrimination is (almost) always part of the story of how structural discrimination came to be and continues to exist” (Altman 2015: §2.3). The aim of the agents who had designed the literacy tests in the US was to keep off the polls as many African-Americans as possible. Indeed, Altman (2015: §2.1) cites precisely this example as a case of *direct* discrimination even though such a policy, “on its face, makes no explicit reference to the group that [its agent] aims to disadvantage.”

### ***Discrimination against citizens qua voters by parties***

A peculiar, but rare, form of discrimination against citizens *qua* voters does not concern their right to vote in elections but rather the way in which parties excluded them from the democratic process. The “White Primaries”, practiced by the Democratic party in southern US states up to the 1940s, are an example in point. This practice excluded African-Americans until the Supreme Court declared it unconstitutional (*Smith v. Allwright*, 1944).

### ***Difficult cases***

#### ***Plural voting***

Provided that there is universal suffrage and that, in principle, everyone has the right to vote, can we say that the problem of discrimination against citizens *qua* voters has been solved? Not necessarily. Indeed, (a) equal rights of participation (that include also the rights of association and political expression, as well as the right to run for office) constitute only one of three components of political equality. The other two components are (b) the idea that every vote should have an equal weight and (c) that there should be “equal opportunities for effective political influence” (Cohen 2009: 271).

As for the second of these components, John Stuart Mill famously argued in favor of “plural voting”: everyone should have the right to vote but the votes of more educated citizens should have more weight. Many thinkers have rejected this proposition, claiming that it would undermine the principle of political equality (e.g., Beitz 1989). In the past, some democracies did allow certain categories of citizens to cast more votes, on the basis of their level of education or wealth. For example, Belgium practiced plural voting between 1894 and 1919. Citizens with

higher education and certain abilities received two extra votes, while householders and other wealthy citizens had one additional vote. So it was possible to accumulate up to three extra votes (Bartolini 2007: 352).

Nevertheless, I reckon that *prima facie* this kind of treatment appears less wrongful than, say, the (imaginary) proposition to grant white citizens two votes each and one vote each to black citizens. Again, the reason is that, in principle, given proper background conditions (in particular, equal chances and equal access to education), being less educated or poor is not a permanent human condition, nor a socially salient group identity.

A form of legal “plural voting” exists, however, in many contemporary democracies, especially in federal systems. It does not concern the question of how many votes citizens can cast, but how their votes are counted. In the second chambers of the US and Swiss parliaments every federal entity (each of the states and cantons) has the same number of representatives (two), irrespective of its population. This means that in the second chamber the votes of citizens of Wyoming (564,000 in 2010) have the same weight as the votes of citizens of California (37.2 million), or that a vote from the canton of Uri (36,000 in 2015) counts the same as a vote from the canton of Zurich (1.47 million).

The rules governing citizens’ representation in the second chambers of federal countries might be considered blatant examples of democratic *injustice* but not, by themselves, instances of *discrimination*. While some people may feel a certain pride in being, say, citizens of Zurich and not of Uri, their cantonal identity is not (if at all) as salient socially as being black or Muslim. (Also, notice that a citizen of Zurich is legally entitled to move his official residence to Uri anytime.) So, in the US context, Beitz (1989: 94) argues that white primaries or the exclusion of women from the franchise were “clearly objectionable” as they were experienced as “demeaning” by the victims of such exclusion, whereas “few [...] feel insulted or degraded by the patent inequality of representation in the U.S. Senate”. Possibly, citizens tend to see such arrangements as an acceptable price of federalism.

### *Racial vote dilution*

If anyone has the right to vote, and if all votes have equal weight, is there still room for discrimination against citizens *qua* voters? Possibly, if we turn our attention to the third component of the principle of political equality, that is, the idea that my vote should have an equal opportunity of effective *influence* as your vote. To see this, consider elections in single-member districts held under the first-past-the-post system (e.g., as used in Canada, the UK, the US). In such contexts, citizens have the right to vote and every vote has the same weight. And yet voters who support a political party or candidates who can obtain only a minority of ballots will lack parliamentary representation and, thus, their vote will hardly have any influence in the parliamentary decision-making process. This is not a problem *per se* but may become one – it has been known as the “problem of permanent minorities” in democratic theory (Williams 1998: 77) – if citizens’ voting patterns are more or less stable and systematic over time.

It is easy to imagine cases where the permanent electoral minority is a racial, ethnic or religious group. While it is difficult to see this fact, by itself, as an instance of discrimination, the charge of discrimination could be raised if, say, the borders of electoral districts were deliberately drawn in such a way as to permanently harm the effective influence of the minority vote.

Imagine a minority group A that is concentrated within the core area (e.g., the downtown of a large city) of a given territory where it constitutes 45 percent of the population of the whole territory. The majority group B occupies the surrounding areas (e.g., the suburban parts of that city) and has a population share of 55 percent. The electoral system obliges the authorities

to divide the territory into two electoral districts, each electing one representative to Parliament. How should the district lines be drawn? There is presumptive discrimination if authorities use morally objectionable criteria – such as race – for districting purposes. The term “racial vote dilution”, coined in the US, describes precisely districting schemes through which authorities intentionally drew the district lines to make sure that African-Americans and Latinos become a minority in each district. In a series of decisions the Supreme Court struck such districting schemes as discriminatory and obliged the authorities to concentrate minorities in a way to allow them to form (permanent) demographic *majorities* (Altman 1998). In other words, discriminatory gerrymandering was replaced by a form of affirmative-action re-districting producing the so-called “minority-majority districts” (cf. Chapter 33).

## Political parties

### *Legal bans of ethnic parties*

In some countries minorities tend to form their own parties. We can speak of direct discrimination if the constitution or electoral laws explicitly ban the formation of such parties (see Rosenblum 2007). The Venice Commission of the Council of Europe, for example, stresses that electoral law “must guarantee equality for persons belonging to national minorities, which includes prohibiting any discrimination against them” (Venice Commission 2003: 19; see also Lécuyer 2014). In particular, this implies that “the national minorities must be allowed to set up their parties”.

However, there are not so many examples of countries that have legally banned ethnic minority parties. The Venice Commission lists Albania, Bulgaria, Georgia and Turkey as countries that have “prohibit[ed] parties representing minorities” (Venice Commission 2000: 7). But this assertion is misleading. In reality, in these countries the electoral law does not target the parties of *specific* minorities. The Bulgarian constitution, for example, defines the ban as follows: “There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power” (Lublin 2014: 205).

Yet if a country is dominated by an ethnic majority, a ban on ethnic parties amounts *de facto* to the ban of ethnic *minority* parties and can be considered a case of legal and direct, albeit implicit, discrimination. In Albania, for example, the Albanians make up 98 percent of the population and do not have problems in forming parties that bear “Albanian” in their name. So the ban on ethnic parties *de facto* prohibits the Greek minority (0.9 percent) from forming their own ethnic party. Generally speaking, legal bans on ethnic and regional parties are found in Africa (Benin, Cape Verde, Ghana, Lesotho, Mali, Namibia, and Sao Tomé and Príncipe) and less so on other continents (Lublin 2014: 203).

Some party bans have been successfully challenged in courts. In 2001 the European Court of Human Rights declared in a 6-1 ruling (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*) that the Bulgarian government had violated Article 11 of the European Convention on Human Rights – “Everyone has the right to freedom of peaceful assembly and to freedom of association with others” – when it refused to register an ethnic Macedonian organization in 1991. Nonetheless, the Turkish minority in Bulgaria was able to circumvent the ban by forming the Movement for Rights and Freedoms, which has won seats in every election (9 percent on average) since 1991 (Lublin 2014: 205).

Taylor & Francis  
Not for Distribution

### ***Other cases of discrimination against ethnic minority parties***

There are a number of other ways by which countries can legally but implicitly discriminate against ethnic minorities by preventing them from setting up their own parties. The measures include registration and ballot-access requirements, as well as electoral thresholds. Such rules are typically applied to all parties but “can have a disproportionate [negative] impact on ethnoregional parties” (Lublin 2014: 209). Territorially dispersed (even if relatively large), as well as smaller (even if territorially concentrated) minorities are vulnerable to such rules.

Take Slovakia as an example (Lublin 2014: 214–215). Its Hungarian minority has a population share of 10 percent and is concentrated along the Slovak–Hungarian border. The initial electoral threshold of 3 percent, in 1990, was not an obstacle to the two Hungarian parties, which gained 9 percent of the seats. In 1998, the government of Vladimír Mečiar, a Slovak nationalist, required coalitions of two or more parties to gain at least 5 percent of the vote for *each* party in the alliance and to have at least 10,000 members. The Hungarian parties avoided the obstacle by merging into a single party that won 9 percent of the vote and 10 percent of seats in 1998. Nonetheless, as Lublin (2014: 218) remarks, “Slovakia demonstrated how governments can cloak attacks on minority parties in seemingly neutral electoral rules”.

That being said, it is not easy to establish whether a given legal provision hides an *intentional* attempt to discriminate against ethnic minorities (cf. Chapter 1). Electoral thresholds, in particular, are typically established with purposes that are not intentionally discriminating (such as avoiding excessive partisan fragmentation), even though they could still have discriminatory effects. So the final answer will necessarily be context-dependent and a matter of empirical inquiry. The electoral law in Turkey sets up an electoral threshold of 10 percent that makes it difficult for Kurdish parties to gain seats. But consider the Turkish citizens (including the Kurds from Turkey) in the canton of Geneva, Switzerland, who make up about 1 percent of the population (Stojanović 2013: 104). Does the electoral law, establishing a threshold of 7.5 percent for parties to enter the cantonal parliament, discriminate against the Turkish (or Kurdish) minority in Geneva? It is clearly difficult to sustain such a claim. There is no evidence that the authorities of Geneva had any intention of harming ethnic minorities, nor that the Turkish (or Kurdish) citizens have ever intended to form their own party. Hence, the analysis of the specific contexts of Turkey and Geneva allows us to claim that only the electoral law in Turkey is discriminatory.<sup>5</sup>

As a matter of fact, democracies can intervene if they realize that a given electoral threshold, deemed necessary to avoid excessive partisan fragmentation, has negative consequences upon minorities. For example, Germany has a general threshold of 5 percent, but it made an exception for the parties of the Danish minority in the region of Schleswig-Holstein, by lowering the threshold to 3 percent. In Italy, too, lower thresholds have been applied in the province of Alto Adige/South Tyrol, where two-thirds of the population speak German (Stojanović 2013: 273).

### ***Difficult cases***

A difficult case concerns ethnic party bans in countries where there is no clear ethnic majority. In such places, a general ethnic party ban could be justified for reasons of peace and stability, or indeed to preserve the democracy itself according to the precepts of “militant democracy” (see, e.g., Kirshner 2014). It does not necessarily conceal a preference for the dominant ethnic group because, by definition, no ethnicity is dominant. For example, a general ethnic party ban was declared in Bosnia and Herzegovina in early 1990, two years before the war. It was later declared unconstitutional by the Constitutional court, so the ethnic parties representing the

three main ethnic groups, none of which had a demographic majority, could be formed. They eventually won 75 percent of the vote in the November 1990 elections (Stojanović 2014).

## Candidates

The third kind of political actors who are potential victims of discrimination in politics are citizens *qua* candidates. Notice that by “candidates” I refer not only to citizens who actually run for office but also to *potential* candidates, or aspirants, who are *prevented* from standing for office. So in this section I will (a) examine the cases of direct discrimination in which the constitution or law prevents certain groups of citizens from running for office on grounds of their membership of socially salient groups. I will then (b) address the cases of legal but indirect discrimination. If neither problem subsists, however, we still face two discriminatory practices performed by (c) party selectors and (d) by citizens *qua* electors.

### *Direct discrimination against candidates*

The cases of legal and direct discrimination concern countries where certain categories of citizens are not allowed to run for office because of their ascriptive group identities. The examples in point are Bosnia and Herzegovina, and South Tyrol. In Bosnia, candidates who do not belong to any of the three “constitutive peoples” (Bosniaks, Croats, and Serbs) cannot run for the three-member Presidency and cannot be appointed to the second chamber of Parliament (the House of Peoples). The European Court of Human Rights – in *Sejdić and Finci v. Bosnia and Herzegovina* (2009) and *Zornić v. Bosnia and Herzegovina* (2014) – declared such practices as “discriminatory” and defended the right of Bosnian citizens belonging to the group of “Others” – such as Roma (Mr. Sejdić), Jews (Mr. Finci), or Bosnians (*sic*; Ms. Zornić) – to run for any political office of the country (Lécuyer 2014). A similar case in point is South Tyrol, where since 1980 the ethnic census data have been used to check whether candidates belong to one of the three recognized groups (German, Italian, or Ladino). A group of citizens – called “ethnic objectors” – refused any affiliation. As a consequence, the provincial authorities prevented the ethnic objectors from running for office (Stojanović 2013: 200–206).<sup>6</sup>

Notice, however, that in many countries not all enfranchised citizens have a right to run for specific political offices, although it appears *prima facie* inappropriate to consider such practices as cases of discrimination. Nobody would argue, I assume, that Barack Obama is discriminated against because after his two terms in office he is not allowed to run for a third time. Other countries restrict access to office by age (cf. Chapter 20). In France, only citizens who are over 24 years of age are eligible for the Senate. We do not consider this a form of discrimination as most citizens are expected to reach the age of 24 in their lives. In Rehfeld’s (2010: 249) words, “[reaching a certain age] is an acquirable trait that is purportedly necessary for the job”. There are borderline cases, however. For example, the age limit of 40, required to become a senator in Italy, appears far too excessive. Also, according to the US Constitution (Article 2.1), only “a natural born citizen” can hold the office of President or Vice-President. This provision discriminates against citizens who are not Americans at birth, but it appears less problematic than the political discrimination against ethnic minorities and of citizens without an ethnic affiliation in the consociational regimes of Bosnia or South Tyrol.

Taylor & Francis  
Not for Distribution

### ***Indirect discrimination against candidates***

The Constitution or laws can contain provisions that do not directly aim at preventing citizens belonging to minority groups from running for office, but that still produce similar effects. As an example, take the financial provisions in electoral laws.

If candidates are legally required to pay large sums of money – either to the state or to their parties – in order to participate in elections, this might hinder potential candidates from economically disadvantaged groups. Whether or not it amounts to an instance of indirect discrimination against socially salient groups is context-specific. This might be the case in places where there is a sufficiently strong correlation between socio-economic status and ethnicity, for example in the US, where African-Americans and Hispanics are generally less well-off than whites. But generally speaking, better educated and better-off people are over-represented in politics everywhere, as the systematic political under-representation of workers demonstrates (Mansbridge 2015). And even within economically disadvantaged ethnic minorities we will always find better-off individuals who can afford to run for office. Therefore, I do not think that, in most developed democracies, this kind of discrimination is problematic *per se*.

Of course, winning an election – especially at the national level – can be very costly even if there are no laws requiring candidates to pay large sums of money in advance (Cohen 2009). This might put more pressure upon economically disadvantaged ethnic minorities but does not amount to a form of indirect discrimination. Rehfeld (2010: 262), therefore, argues that an *equal* right to run for office entails not only that citizens must be allowed to run for office but also that “the citizen’s voter-exogenous probability of success in her run for office must be equal to any other citizen’s”. Among voter-exogenous factors we can mention financial resources, but also redistricting schemes and other special provisions, such as quotas, that favor some groups over others. Rehfeld excludes, thus, the idea that an equal chance to run for office entails any intervention within the realm of voter-*endogenous* factors: “When a voter is a racist, or sexist, or merely votes with an eye to his own good despite the harm it will cause the whole, it expresses the venality, ignorance, or simply unjustness of voters, but it is not an obvious violation of anyone’s right to run” (Rehfeld 2010: 263). He never uses the notion of discrimination to describe such patterns of voters’ behavior. And yet, I think, we ought to try to make sense of the idea that voters can discriminate against candidates. But before addressing that problem (§4.4), we shall discuss the discrimination happening at an earlier stage, when party members or party leaders are called upon to select aspirant candidates and allow them to run for office in the first place (§4.3).

### ***Discrimination against candidates by party selectors***

In most democracies all enfranchised citizens are allowed not only to vote but also to stand for any political office. Generally speaking, while citizens can certainly participate in elections as independent candidates, in most cases they can be elected only if they run on a party ballot. Hence, the role of individuals who select candidates within the parties becomes decisive. Empirical research in the UK and France has found out that selectors may perform three forms of discrimination against aspirants: direct, indirect and imputed discrimination (Norris and Lovenduski 1993; Childs 2008: 61; Murray 2010).<sup>7</sup>

- Direct discrimination reflects the racial, sexist and other forms of selectors’ prejudice, and takes place when selectors judge aspirants not as individuals but on the basis of characteristics seen as common to their group.



- Indirect discrimination refers to cases where the idea of what constitutes a “good politician” counts against aspirants coming from minority groups.
- Another form of indirect discrimination, also called “imputed discrimination”, is when selectors are not necessarily racists or sexists but exclude potential candidates from minority groups because they think that most voters will not support them. In other words, party selectors act on the basis of the perceived lack of electability of minority candidates and try to avoid losing votes. As one selector from the Labour Party in the UK told an Asian Labour candidate who had failed to receive support in the selection process: “Well, the reason I didn’t vote for you was because we [the Labour Party selectors] were worried that we might lose the vote” (Norris and Lovenduski 1993: 393).

It should be noted that imputed discrimination is probably more pronounced in majoritarian single-member district electoral systems than in multi-member districts and/or PR systems. A Venice Commission (2009) study thus affirms that “[b]oth the First-Past-the-Post system and the French Two-Round system tend to work against women”. Most European countries, apart from the UK and France, use PR or mixed electoral systems in national parliamentary elections. With regard to ethnic minorities, however, the empirical evidence is much more complex and there is not general scholarly consensus on the merits of PR over majoritarian systems (see, e.g., Moser 2008; Lublin 2014).

### ***Discrimination of minority candidates by electors***

Once a minority aspirant has passed the party gates and become a candidate, he or she might still face discrimination by citizens *qua* electors. Consider, for example, the Gallup surveys in the US revealing that a considerable number of respondents would not vote for a *generally competent* candidate from their *own* party if this candidate was a woman, a black or a Muslim. Consequently, many empirical studies have tried to measure this kind of voting behavior, by referring explicitly to the notion of discrimination (see, e.g., Highton 2004; Fisher *et al.* 2015; Street 2014).

At the theoretical level, however, it is far from evident that we can use the concept of discrimination to make sense of such voting patterns. Indeed, no recent work on discrimination in political philosophy or legal theory ever mentions electoral discrimination (e.g., Hellman and Moreau 2013; Lippert-Rasmussen 2014; Altman 2015). Here is a (non-exhaustive) list of reasons that might explain this reticence:

- The freedom of choice is an important principle in the theory and the practice of democracy. If political equality entails that citizens “have the right to be ruled by anyone they choose” (Rehfeld 2010: 256), then the very notion of discrimination does not fit well into this picture.
- It is very difficult to assess the kind of competence that candidates need to possess in order to access political office. It is actually controversial whether there should be *any* test of competence at all (should we be ruled only by people with college degrees?). In the job market the competence is typically seen as a morally permissible motive for employing Applicant A (more competent) instead of Applicant B (less competent) and, generally speaking, there is agreement on the kind of skills that applicants need to have in order to perform a specific job (cf. Chapter 25). So an employer acts in a discriminatory way if she systematically refuses to employ people belonging to minority groups even though they are objectively as competent as the successful applicants (or even more competent). So, if there

is no agreement on what constitutes competence in politics, it is much more difficult to raise the charge of discrimination – an “inherently comparative” concept (Altman 2015; see Lippert-Rasmussen 2014: 16)<sup>8</sup> – if a voter prefers Candidate A (belonging to the majority group) over Candidate B (belonging to a minority group).

- Even if we suppose, for the sake of argument, that all candidates can be ranked according to their political skills and competences, we still face at least two difficulties. The first difficulty is of an empirical nature: voters simply lack time, resources or interest to collect information on the skills and competences of individual candidates. This happens in contexts with few candidates competing for one seat – in single-member district systems – but becomes dramatic in open-list PR systems where voters can allocate preference votes to a limited number of candidates out of a slot comprising *hundreds* of candidates. The second difficulty is conceptual: even if there were an agreement on the competence-driven candidate ranking, and even if voters had all necessary information for assessing such competence, it is a core principle of democracy to allow voters to support candidates on the basis of their purely political and ideological preferences: I can openly opt for a less competent candidate and democratically justify that choice by the candidate’s proximity to my political views. In other words, I discriminate *between* but not *against* candidates.
- The secret ballot, while less clearly a requisite of democracy, is a widely accepted practice that is supported both by theoretical and practical considerations (to fight against corruption, in particular). Further, voting is an individual act and in a typical election no single vote will decide the outcome of the election. Therefore, while on a moral level one might argue that certain voters have a discriminatory voting behavior, no single voter can be accused of preventing anyone from being elected.

### ***Difficult cases***

Our debate over discrimination by citizens *qua* (potential or real) candidates in elections is not exhaustive. There are many difficult cases. Sometimes candidates can be prevented from running for office if they engage in hate speech or if they incite violence. This looks *prima facie* a legitimate restriction. But what if, in reality, it conceals attempts to block candidates from minority groups? In a 2003 ruling, for example, a divided Israeli Supreme Court voted 7–4 against the disqualification of a prominent Israeli–Arab politician, Ahmad Tibi, accused by the majority of the Knesset of supporting the second Intifada (Rosenblum 2007: 47–48).

Another difficult case is the electoral penalty suffered by less attractive politicians (see, e.g., Rosar *et al.* 2012). Less attractive people do not form a socially salient group. Hence, this kind of electoral penalty should be excluded from our account of discrimination. We do perceive such practices as unjust, however, and perhaps discriminatory in a more generic sense of the term (see Lippert-Rasmussen 2014: 34).

Finally, in many ethnically divided places people tend to vote only for candidates belonging to their own group. Is ethnic voting a form of discrimination? Is it discriminatory if people vote for candidates who resemble them? According to Rosenblum (2007) there is nothing wrong when people form ethnic parties and when they perform bloc (i.e. ethnic) voting. She considers them “key instruments” of political conflict and of political integration.

### **Conclusion**

In this chapter we have explored instances of political discrimination against voters, parties and candidates belonging to socially salient groups. We have seen that in many democracies each of

these core political actors have been subjected to direct or indirect, explicit or implicit forms of discrimination.

Conceptually, the most puzzling part concerns the cases in which the purported discriminators are citizens *qua* electors whereas the discriminatees are citizens *qua* candidates. In such cases, one could argue, there ought to be a legal right *not* to be prevented – for example, by means of fines or prison – from engaging in morally objectionable forms of discrimination. The reason is that the right of citizens to run for offices clashes with the right of citizens *qua* electors to vote for any party or candidate they wish.

## Notes

- 1 See the *International Covenant on Civil and Political Rights*, Article 2.1.
- 2 The Vatican is an exception. In Saudi Arabia women were allowed to vote for the first time in the municipal elections held in December 2015.
- 3 See the *Commonwealth Franchise Act* (Article 4, sub-section “Disqualification of coloured races”): “No aboriginal native of Australia Asia Africa or the Islands of the Pacific except New Zealand shall be entitled to have his [sic] name placed on the Electoral Roll [...]” Source: Museum of Australian Democracy (<http://www.foundingdocs.gov.au/scan-sid-164.html>; accessed 27 June 2016).
- 4 This amounts to indirect discrimination as the possession of ID is disproportionately lower among minorities and the poor. See “How voter ID laws are being used to disenfranchise minorities and the poor”, *The Atlantic*, 16 March 2012.
- 5 Recall that, being a form of structural discrimination, the Turkish electoral law is conceptually an instance of indirect discrimination but, as an empirical matter, it amounts to direct discrimination against Kurdish parties.
- 6 See the case of Alexander Langer – a member of the European Parliament from 1989 to 1995, where he chaired the Green Group – who in 1995 was denied the right to run for the office of mayor of the provincial capital Bolzano/Bozen.
- 7 To be sure, Norris and Lovenduski (1993) referred to direct versus indirect *prejudice* and not *discrimination* (albeit in their conclusion they state that women candidates “seem to experience some discrimination against them by Labour, but not Conservative, party members”, p. 406). Interestingly, however, subsequent studies on the same topic (e.g., Childs 2008) transformed the notion of prejudice into discrimination.
- 8 Not all theorists of discrimination agree with this approach. For a critique, see Réaume (2013).

## Bibliography

- Altman, A. 1998. “Race and Democracy: The Controversy over the Racial Vote Dilution.” *Philosophy & Public Affairs*. 27(3): 175–201.
- Altman, A. 2015. “Discrimination.” In E.N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy*, Fall 2015 edition. Available online: <http://plato.stanford.edu/archives/fall2015/entries/discrimination/>
- Bartolini, S. 2007. *The Political Mobilization of the European Left, 1860–1980. The Class Cleavage*. Cambridge: Cambridge University Press.
- Beckman, L. 2009. *The Frontiers of Democracy. The Right to Vote and Its Limits*. London: Palgrave Macmillan.
- Beitz, C. 1989. *Political Equality. An Essay in Democratic Theory*. Princeton: Princeton University Press.
- Childs, S. 2008. *Women and British Party Politics. Descriptive, Substantive and Symbolic Representation*. London: Routledge.
- Cohen, J. 2009. “Money, Politics, Political Equality.” In *Philosophy, Politics, Democracy. Selected Essays*. Cambridge, MA.: Harvard University Press. 268–303.
- Fisher, S.D., Heath, A.F., Sanders, D., and Sobolewska, M. 2015. “Candidate Ethnicity and Vote Choice in Britain.” *British Journal of Political Science*. 45(4): 883–905.

- Hellman, D. and Moreau, S. (eds). 2013. *Philosophical Foundations of Discrimination Law*. Oxford: Oxford University Press.
- Highton, B. 2004. "White Voters and African American Candidates for Congress." *Political Behavior*. 26(1): 1–25.
- Kirshner, A. 2014. *A Theory of Militant Democracy. The Ethics of Combatting Political Extremism*. New Haven: Yale University Press.
- Kousser, J.M. 1974. *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880–1910*. New Haven: Yale University Press.
- Lécuyer, Y. 2014. *Le droit à des élections libres*. Strasbourg: Editions du Conseil de l'Europe.
- Lippert-Rasmussen, K. 2014. *Born Free and Equal? A Philosophical Inquiry into the Nature of Discrimination*. Oxford: Oxford University Press.
- López-Guerra, C. 2014. *Democracy and Disenfranchisement. The Morality of Electoral Exclusions*. Oxford: Oxford University Press.
- Lublin, D. 2014. *Minority Rules. Electoral Systems, Decentralization, and Ethnoregional Party Success*. New York: Oxford University Press.
- Mansbridge, J. 2015. "Should Workers Represent Workers?" *Swiss Political Science Review*. 21(2): 261–270.
- Moser, R.G. 2008. "Electoral Systems and the Representation of Ethnic Minorities: Evidence from Russia." *Comparative Politics*. 40(3): 273–292.
- Murray, R. 2010. *Parties, Gender Quotas and Candidate Selection in France*. London: Palgrave Macmillan.
- Norris, P. and Lovenduski, J. 1993. "‘If Only More Candidates Came Forward’: Supply-Side Explanations of Candidate Selection in Britain." *British Journal of Political Science*. 23(3): 373–408.
- Réaume, D. 2013. "Dignity, Equality, and Comparison." In D. Hellman and S. Moreau (eds) *Philosophical Foundations of Discrimination Law*. Oxford: Oxford University Press. 7–27.
- Rehfeld, A. 2010. "On Quotas and Qualifications for Office." In I. Shapiro, S.C. Strokes, E. J. Wood and A.S. Kirshner (eds). *Political Representation*. Cambridge: Cambridge University Press. 236–268.
- Rosar, U., Klein, M. and Beckers, T. 2012. "Magic Mayors: Predicting Electoral Success from Candidates' Physical Attractiveness under the Conditions of a Presidential Electoral System." *German Politics*. 21(4): 372–391.
- Rosenblum, N.L. 2007. "Banning Parties: Religious and Ethnic Partisanship in Multicultural Democracies." *Law & Ethics of Human Rights*. 1(1): 17–75.
- Sher, R.K. 2011. *The Politics of Disenfranchisement. Why Is It So Hard to Vote in America?* Armonk and London: M. E. Sharpe.
- Stojanović, N. 2013. *Dialogue sur les quotas. Penser la représentation dans une démocratie multiculturelle*. Paris: Presses de Sciences Po. Italian ed. (2014) *Dialogo sulle quote*, Bologna: Il Mulino.
- Stojanović, N. 2014. "When Non-nationalist Voters Support Ethno-nationalist Parties: The 1990 Elections in Bosnia and Herzegovina as a Prisoner's Dilemma Game." *Southeast European and Black Sea Studies*. 14(4): 607–625.
- Street, A. 2014. "Representation Despite Discrimination: Minority Candidates in Germany." *Political Research Quarterly*. 67(2): 374–385.
- Venice Commission. 2000. *Electoral Law and National Minorities*. Strasbourg: Council of Europe.
- Venice Commission. 2003. *Code of Good Practice in Electoral Matters*. Opinion no. 190/2002, Strasbourg: Council of Europe.
- Venice Commission. 2009. *Report on the Impact of Electoral Systems on Women's Representation in Politics*. Study nr. 482/2008. Strasbourg: Council of Europe.
- Williams, M.S. 1998. *Voice, Trust, and Memory. Marginalized Groups and the Failings of Liberal Representation*. Princeton: Princeton University Press.