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Emanuela Ceva & Nenad Stojanović

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# Exploring Electoral Discrimination Through an Ethics of Office Accountability

Emanuela Ceva and Nenad Stojanović

University of Geneva, Geneva, Switzerland

## ABSTRACT

Electoral discrimination (ED) in democratic settings occurs when majority voters, influenced by their personal, cultural, or religious biases, favour majority candidates, consequently diminishing support for minority candidates. We discuss ED's alignment with a normative ethics of voting grounded in office accountability, asking whether ED is compatible with the democratic mandate of voters. Our *normative* discussion shows that ED is compatible with the open terms of a voter's mandate. We recognise, however, that there are *empirically* grounded reasons not to overlook the negative repercussions of ED for minority candidates' political participation. We address these concerns by exploring how institutional design could mitigate the negative outcomes of ED, fostering critical reflection on the democratic electoral process.

## KEYWORDS

Democracy; elections; discrimination; office accountability; democratic innovations

## 1. Introduction

Michael, a white man, cannot help it: He does not like black people. 'Black guys counting my money! I hate it', he says. Michael's beliefs are informed by an essentialist understanding of identity and racial prejudice. He thinks that an average black person is less intelligent than an average white individual. And lazy as well. 'And it's probably not [their] fault, because laziness is a trait in blacks. It's not anything they can control'.<sup>1</sup> But Michael is also a citizen of a democratic polity. When elections come, he would never vote for a black candidate, even if the candidate belongs to his favourite political party.

Brenda, by contrast, despises racists. A white woman, she has several Afro-American friends and did not raise any issues when her daughter started dating one of them. But when election day comes, her preference, perhaps unconsciously but steadily, goes for white candidates only. Brenda is interested in politics and has a clear preference for the neo-liberal right-wing ideology. Based on her observations, she associates black politicians with leftist liberal positions. Hence, not voting for black candidates is Brenda's heuristic shortcut to pursue her political preferences.

**CONTACT** Nenad Stojanović  nenad.stojanovic@unige.ch

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Skin colour is one possible marker of *personal* identity, which becomes *politically* salient when it influences electoral behaviour. Cultural and religious traits may matter and intersect personal traits too. Imagine Alex, a Protestant male voter, who does not vote for Fatima, a Muslim woman wearing a scarf, both because he suffers from Islamophobia and because he is a misogynist who thinks that women are not fit for politics. Julie, on the other hand, does not vote for Fatima because she is persuaded that a liberal democracy should be secular, and she has read some studies showing that Muslim women tend to favour a stronger influence of religion in political affairs.

These fictional cases illustrate the many forms of a phenomenon often dubbed ‘electoral discrimination’ (ED) in the literature discussing the ethics and practice of democracy (Fisher et al., 2015; Martin & Blinder, 2021; Portmann & Stojanović, 2022; Street, 2014; Thrasher et al., 2017). They broadly reflect the basic distinction between two kinds of discrimination in the context of hiring decisions in labour market. Michael’s and Alex’s behaviours are instances of the so-called ‘taste-based discrimination’. The protagonists let their personal idiosyncrasies guide their electoral behaviour. Brenda’s and Julie’s refusal to vote for, respectively, black and Muslim candidates is an expression of ‘statistical discrimination’.<sup>2</sup> They use their knowledge of some traits characterising candidates as indicators of a statistical probability that those candidates will pursue a certain, more or less ideological, agenda if elected.

To generalise, ED manifests itself as a kind of biased voters’ behaviour. It occurs when majority voters give in to their biases and support by their vote majority candidates thus reducing electoral support for minority candidates. As the cases of Michael/Alex and Brenda/Julie suggest, such a tendency may stand on various grounds; it can be a response to candidates’ personal, cultural, or religious identity traits. And such a response might be the expression of an instinctive personal affective state (taste-based discrimination) as well as that of a cognitive shortcut to make decisions based on some partial predictions about candidates’ commitments (statistical discrimination).

We discuss ED from the perspective of a normative ethics of electoral voting (henceforth ‘ethics of voting’) grounded in office accountability. Our starting idea is that being a voter is one of the fundamental offices in democratic elections. By ‘office’ we refer to the constitutive components of an institution as made of interrelated roles, governed by rules, informed by a mandate, and occupied by human persons (Applbaum, 1999; Ceva & Ferretti, 2021a; Emmett, 1966). So understood, the institution of democratic elections is constituted by such offices as those of voters, candidates, and elected representatives. We discuss an ethics of voting based on what we will present as one of the basic duties of office: ‘office accountability’ (Ceva & Ferretti, 2021a, pp. 284–291; Ceva & Ferretti, 2021b, pp. 24–25). This is the officeholders’ duty to use their power of office in a way justifiable by reference to the terms of their mandate. On this ground, we ask whether ED is compatible with the terms of the power mandate associated with holding the office of a democratic electoral voter (henceforth ‘voter’). Our argument makes a qualified *normative* case against seeing ED as incompatible with such an ethics. We also recognise that there are *empirically* grounded reasons to minimise the negative byproducts of ED for minority candidates’ political participation.

We build our argument as follows. In §2, we present ED and frame it analytically from the perspective of an ethics voting. In §3, we discuss ‘voter’ as an office and how the power associated with that office should be used to fulfil the duty of office accountability.

In §4, we argue that ED, in either form of taste-based or statistical discrimination, is compatible with the open terms of a voter's mandate although it may be problematic in view of its negative byproducts. In §5, we conclude by picturing some directions that electoral system design may take to imagine institutional remedies for minimising such negative byproducts.

## 2. Electoral Discrimination

An increasing number of electoral studies have singled out a specific kind of bias in voters' behaviour across contemporary Western democracies. Empirical evidence across such studies shows that it is often sufficient, *ceteris paribus*, for a candidate to incur an electoral penalty (in the terms of reduced electoral support) that the candidate has a foreign-sounding name (e.g., Portmann & Stojanović, 2022) or belongs to a visible minority (e.g., Besco, 2020). This phenomenon goes under the name of 'electoral discrimination' (ED).

The conceptual core of ED points at those electoral contexts when majority voters' biases lead to reduced electoral support for minority candidates (or, in reverse, when their biases lead to enhanced electoral support for majority candidates). It is arduous to circumscribe the contours of such a conceptual core. The notion is the starting point in empirical analyses of ED. Yet, to the best of our knowledge, none of these analyses has provided an elaborated account of the specific type of bias underpinning ED.<sup>3</sup>

To a certain extent, this lacuna is due to a lack of general scholarly consensus on what *discrimination* is as such and what kind of biases can be relevant as discriminatory (see Altman, 2020; Shin, 2018). A rehearsal of this scholarly debate exceeds the scope of this article. However, we can identify the 'general character of discrimination' (Lippert-Rasmussen, 2006, p. 168; see Hellman, 2008; Thomsen, 2018) as consisting 'of acts, practices, or policies that impose a relative disadvantage on persons based on their membership in a salient social group' (Altman, 2020). This general account is useful because it allows us to flesh out the main aspects of the biases implicated in many scholarly references to ED.

To make this general account of discrimination more specific to the electoral context, we need to specify both the agent who has a bias underpinning a discriminatory action and the subject who suffers it. In broad brushes, the former is an individual who acts in a certain institutional setting (democratic elections); the latter is an individual who suffers of a penalising differential treatment by virtue of some of their features and/or (supposed) membership in a group (or groups) to the advantage of another individual with contrasting features and/or (supposedly) belonging to another group (or groups).

The first element to pinpoint is differential treatment: Voter *X*, in the act of voting, treats Candidate *A* *differently* from Candidate *B*. This element is necessary but insufficient to speak meaningfully of 'discrimination', because it is quite generic (see Lippert-Rasmussen, 2018). *Any* electoral behaviour (or any choice) is discriminatory in this generic sense, because to vote means to choose and, therefore, penalise those who are not chosen.

'Discrimination' needs something more than a reference to differential treatment. In the case of ED, this further element concerns the grounds of the electoral behaviour in question. The differential treatment ED implicates is predominantly explained by *A*'s

and *B*'s belonging to different socially salient groups. Which groups are socially salient is context-dependent, but, generally speaking, they are based on identity traits such as skin colour ('race'), ethnicity, religion, or gender. As our initial illustrations exemplify, Michael's and Brenda's preference for white candidates is not significantly informed by any substantial or consolidated detail concerning the candidates' competences and commitments. Their electoral choice, just like Alex's and Julie's choices against Fatima, are discriminatory, in this basic sense, insofar as they can be predominantly explained by reference to the candidates' minority group belonging (or the majority group belonging of the alternative candidates).

While potentially *anyone* can be the discriminator as well as the discriminated, ED is quite invariably indicative of some problematic majority/minority group dynamics. Most ethical discussions concur that discrimination is problematic only to the extent that an individual's differential treatment based on a given attribute *demeans* the affected individual (Hellman, 2008), which is typically something that members of majority groups perform upon minorities. True, there are acts of discrimination against members of majority groups as well. Yet, in Patrick Shin's (2018, p. 203) words, they 'can surely be morally wrong and impermissible, but such 'reverse' discrimination does not seem open to the morally full-throated objection that applies to race discrimination against members of minority groups [because it is] a judgment of inferiority that coincides with historic and prevailing patterns of racial injustice and subordination'. A demeaning action requires both an expression of the 'unequal moral worth of the persons in question' and that 'the person or entity adopting the policy or practice has sufficient power or status such that its actions can put others down' (Hellman, 2008, p. 42). In many elections only majority voters, because of their numbers, have sufficient power to 'put down' minority candidates. This power consists, for example, in crossing off their names from the ballot (in places where the electoral system allows such an action; see Portmann & Stojanović, 2022).

As anticipated, the candidates' minority group belonging might be the object of the often unreflected negative reactive attitude of some majority voters (Michael / Alex) who, for more or less idiosyncratic reasons, dislike (are adversely biased against) some of the candidates' identity trait qualifying their belonging to the relevant minority group. In this case, ED instantiates a form of taste-based discrimination. However, we can also have cases of ED where majority voters (Brenda / Julie) use candidates' minority group belonging, in low-information environments, as a heuristic short-cut to support or block someone who presumably will or will not be able to pursue a certain agenda in view of their life experience.<sup>4</sup> In this case, we can speak of statistical discrimination in the context of democratic elections.

We shall revisit both instances of ED in the next section. But before we do that, some more conceptual groundwork is necessary. It concerns the kind of disadvantage that ED imposes on those at whom it is directed. In the scholarly debate, such a disadvantage is taken 'to be determined relative to some appropriate comparison social group' (Altman, 2020). This posture is difficult to appreciate in the case of ED for several interesting reasons.

First, in elections, a single vote is hardly ever decisive. This makes the relationship between the voter (discriminator) and the candidate (discriminated) distinct with respect to many other cases of discrimination, for example when an employer refuses to hire female candidates on the ground of their being women. In the latter case, the

female candidate would *not* get the job because of the employer's discriminatory behaviour, whereas, in the former, the candidate can still be elected if they nonetheless get enough votes.<sup>5</sup>

In other words, the 'comparative disadvantage' that *X*'s electoral behaviour causes to *B* (compared to *A*) can be seen as minimal. Still, the condition that *X* has not voted for *B* because of *B*'s supposed belonging to a certain group fits the profile of a discriminatory behaviour following the general account we have presented earlier in the section. This characterisation qualifies ED for discussion within an ethics of voting, as expounded in the next section.<sup>6</sup>

Second, even if we assumed that *X*'s vote *was* decisive and that *thanks to it A* won against *B*, in a context in which voting is secret there is no practical possibility to make *X*'s behaviour public, let alone to unveil the exact motivations behind their electoral choice. Such empirical obstacles notwithstanding, *X*'s behaviour can still be analytically conceived as a form of discrimination. That a certain feature is difficult to ascertain empirically does not by itself make it any less analytically relevant for typifying a certain practice conceptually. Also, from a normative point of view, such a typification, while difficult to ascertain *ex post facto*, can be helpful to provide an *ex ante* ethical guidance for voters. As we will discuss later, such guidance concerns what justifiable uses voters may make of their power of office.

We should also notice that the exact connotation of the practice may depend on the range of options available to voters across electoral systems. In plurality/majority single-member district elections, with just two candidates running for office, ED manifests itself simply in *X*'s vote for *A* rather than for *B*. In more open plurality/majority elections, voters can support one candidate among a larger set (see the first round of legislative elections in France). In systems with open-list proportional representation (PR), voters can allocate preferential votes to many candidates, choosing from a very large set.

What matters is that, across all instances, *X*'s bias against *B*'s group belonging offers the *predominant* explanation of differential treatment. Voters ground their choice on multiple reasons, whose relative weight is hard to establish (see, e.g., see Achen & Bartels, 2016). Such reasons may be as diverse as (1) candidates' political ideology (e.g., right v. left) and/or party affiliation, (2) candidate characteristics (e.g., experience, charisma, eloquence and the ability to defend an argument in public, perceived competence), (3) issue salience in the specific election (e.g., economy, healthcare), and, crucially for our discussion, (4) candidates' group identity (race, ethnicity, gender, etc.). This multiplicity may make it difficult, *empirically*, to distinguish neatly ED from cases in which differential treatment is due to other factors. Yet, as already noticed, this difficulty is clearly insufficient to discard the possibility and importance of making the conceptual distinctions *analytically*.

The discussion thus far suggests how the analytical characterisation of ED is salient albeit complex for an ethics of voting. The normative appraisal of ED as an electoral practice is similarly salient and complex. For once, facing the threats of ED to citizens' chances of electoral success (see Beerbohm, 2012; Brennan, 2011), one may ask whether electoral voters have a duty to 'vote well', or perhaps 'to abstain rather than vote badly' (Brennan, 2011, p. 67; see also Maskivker, 2018, p. 409). Also, ED may be telling of – and, in fact, sanction or even cause – pernicious power dynamics of oppression and social exclusion of certain identity groups (Young, 2011).

Our discussions suggest that ED is not a brute fact of electoral behaviour. It is a potentially problematic occurrence which, as such, might be subject to critical scrutiny to assess its compatibility with the tenets of an ethics of voting. In what follows, we shed a specific light on such an inquiry.

### 3. Voters' Office and the Ethics of Office Accountability

In this section, we develop the concept of 'office' and explain why this approach leads us to consider accountability differently for voters than for candidates or representatives. We first discuss the open nature of mandates and then examine the duty of office accountability.

To assess whether ED aligns with an ethics of voting, we begin with the following idea: When ED occurs, the persons involved – the discriminator and the discriminated – are acting in their institutional capacities as a voter and as a candidate. To understand what ethical constraints should guide voters in their institutional capacity, we must focus on the institutional context in which this interaction takes place. In this case, that context is democratic voting in elections. This context establishes the normative order that defines the rights and duties each person has in their institutional role.

We use the term 'office' to refer to the roles constitutive of an institution. These roles are characterised by being interrelated, occupied by individuals (officeholders), and governed by rules with a mandate (Applbaum, 1999; Ceva & Ferretti, 2021a; Emmett, 1966). To understand the ethics of voting within a democratic electoral system from this institutional perspective, we need to consider both the procedural and human aspects of institutional action. Institutional action follows a set of impersonal procedural mechanisms and formal rules, such as the norms for drawing up electoral lists and the regulation of polling on election day. However, to fully understand the ethics of institutional action, we must also consider its human component. This requires analyzing the actions of citizens as the humans (officeholders) who occupy institutional roles (offices) in various capacities. As we will discuss later, in the context of democratic elections, these capacities include those of voters, candidates, and elected representatives. From the institutional perspective of an ethics of voting, the main focus is on the normative powers, rights, and duties that come with these offices and define their tasks.

For our discussion of the ED, we wish to draw attention to a particular set of such rights and duties that accrue to the office of voter in democratic elections. As occupants of this institutional role, citizens acquire the power to choose those who will govern them (Rehfeld, 2010, pp. 256–257) and, relatedly, to determine the political platform that will inform the making of collectively binding decisions (Lau, 2014; see also Beckman, 2017). People can make their voices heard even before the institution of voting is established. But voting in a democratic election is not the same as expressing one's liking or disliking of another person (who occupies the office of 'candidate'). Indeed, to vote in a democratic election is to activate a portion of someone's normative power which, when used jointly with others, can establish a candidate with the authority to make (alone or in concert with others) collectively binding decisions on their behalf. The establishment of this normative order requires a voting procedure that enables those who embody the office of a voter to act in that capacity. Such a procedure must, for example, define what counts as a valid



vote, how it can be cast, and what the implications of casting it are (Ceva & Ottonelli, 2022).

We have already mentioned that to understand democratic electoral voting as an institution informed by a particular ethics, we must focus on people's actions in their institutional capacities and the practical constraints that may apply to them. People's actions in an institutional capacity are (and must be) informed by the mandate that entrusts powers to various roles (Ceva & Ferretti, 2021a, pp. 280–282). In the context of democratic elections, mandates are not fixed parameters for individual action, nor can they be simply identified with a set of fixed purposes (such as the common good). In pluralistic and rapidly changing contexts, like those in contemporary Western democracies, institutional action is likely to have a variety of purposes. It is easy to imagine that there will be reasonable disagreement about these purposes at the interpersonal level. Therefore, it seems more accurate to describe mandates in this context as open outlines, providing a framework that accommodates a plurality of human purposes while respecting different exercises of human agency (for a discussion, see Destri, 2023).

To say that office mandates should not be viewed as mere sets of instructions requiring compliance does not mean or entails that voters are free to act however they wish in their institutional capacity. Rather, it means and entails that the exercise of power of office inherently involves a degree of discretion. This discretion should be understood as the freedom and responsibility to apply general guidelines to the specific circumstances in which institutional action occurs. Such discretion is necessary for institutional action to adapt to contingent events and contexts. Therefore, we can recognise that citizens participating in elections are free and responsible to adapt their voting criteria to the specific political priorities and programs available to them. (We will say more on the terms of a voter's mandate in the next section.)

So far, we have focused on two key features of offices: their being occupied by humans and governed by rules with a mandate. There is a third feature to consider: their interrelatedness. To say that offices are interrelated refers to the way power mandates are entrusted to them so that their joint enactment ensures the proper functioning of the institution, aligned with a shared underlying *raison d'être* (Ceva & Ferretti, 2021a, pp. 279–281). The open nature of institutional mandates requires those occupying these roles to actively engage in interpreting and enacting institutional action, as well as their role within it.

The relationship between institutional roles creates the structural foundation for the mutual commitment of officeholders to account for how they use their power in relation to the broader institutional framework. This idea gives substance to one of the fundamental duties of office: the duty of accountability, a general responsibility arising from shared institutional membership. In the electoral context, such duty concerns the rationale of citizens' electoral behaviour. Citizens who hold a role in elections should be prepared to justify how they use their power of office. In the next section, we critically examine the meaning and implications of this claim for assessing ED within the open terms of mandate discussed earlier. Before proceeding, however, we need to clarify the notion of accountability we are using in the context of democratic theory (see Philp, 2009). As we have noted, institutional action has an open texture, which makes this form of accountability unique for two key reasons.



First, a special feature of office accountability is its referent. The duty of office accountability requires that the rationale for someone's actions in their institutional capacity must be justifiable in with reference to the (open) terms of their mandate (Ceva & Ferretti, 2021a, pp. 285–286). Indeed, citizens' electoral behaviour can have various justifications, such as a general commitment to the public interest or support for a specific political agenda. However, for office accountability to be fulfilled, the justification for electoral behaviour must be accounted for with reference to the terms of the power mandate relevant for the different roles. Since mandates are open in this context, accountability is not just about answering for compliance with a fixed standard; it requires a degree of reflectivity. This is necessary for critical self-scrutiny and examination of the rationale behind one's actions, in light of one's interpretation of their mandate (e.g., 'Why did I vote that way? Did I exercise my voting right in a way I can explain based on my best understanding of the mandate I hold?').

Second, office accountability is characterised by its action-guiding nature. Unlike forms of accountability in the legal context, which are understood in terms of *ex post* answerability,<sup>7</sup> office accountability is central to an ethics of office that gives people *ex ante* guidance. Indeed, it encourages individuals to self-critically examine the grounds for their actions (Ceva & Ferretti, 2021a, pp. 290–291). In other words, office accountability compels anyone acting in their institutional capacity to reflect on how they should act. This action-guiding aspect is consistent with the open texture of institutional action. Therefore, in fulfilling their duty of office accountability, voters must consider what their power mandate requires of them and whether their actions align with that requirement.

Compare voters' duties of office with those of other public or quasi-public offices (e.g., employers in public administration). Some public offices are bound by legally and morally codified anti-discrimination norms and answerability mechanisms (*ex post* accountability). In contrast, the office of a voter involves broad discretion that democratic theory traditionally protects (e.g., secret ballot<sup>8</sup>, freedom of political choice; see Rehfeld, 2010). This difference – one that is not morally trivial – helps explain why direct legal or ethical constraints on taste-based discrimination are not similarly enforced in voting. This said, we want to emphasise that the lack of robust enforcement or codified constraints on voting does not imply endorsement of discriminatory practices but reflects the distinct normative and institutional role voting plays in a democracy, along with the responsible exercise of discretion it entails.

In the next section we want to use this clarification of the special referent and nature of office accountability to further analyse and assess the terms of voters' power mandate. The discussion will help explore whether the terms of such a mandate may justifiably include anti-discrimination constraints.

#### **4. Electoral Discrimination from the Perspective of an Ethics of Voting Grounded in Office Accountability**

Our earlier discussion has pinpointed that when people act in an institutional capacity, such as that of a voter, they should exercise their power of office reflectively with reference to their mandate (office accountability). We have also highlighted that, in the pluralistic and changing institutional context of democratic electoral voting, power mandates

are open; they cannot be univocally defined as oriented to the pursuit of a (pre)determined purpose (Destri, 2023). Therefore, the ethics of voting is importantly a matter of critical and reflective exercise of questioning, understanding, and possibly adapting the rationale of people's action in their institutional capacity to changing priorities and possible interpretations of the point and purpose of institutional action. This qualification is helpful to appreciate the complexities of the democratic institution of election and the practice of voting within it.

The understanding of the point and purpose of elections necessarily responds to the various normative substantive presuppositions concerning the nature of democratic institutions, in general, and that of democratic representation, in particular (see, e.g., Mansbridge, 2011). Elections have been presented, *inter alia*, as the *public* manifestation of the equal or mutual political authority of citizens (Booth Chapman, 2019; Ceva & Ottonelli, 2022) and their status as co-authors of collectively binding decisions (Beer-bohm, 2012); as the *public* expression of one's political identity (Brennan & Lomasky, 1993) and willingness to contribute on equal terms to the democratic process (Thompson, 2002); or as a *public* commitment to the realisation of the common good (Maskivker, 2018) or other political values (Christiano, 2006).

Central to many such characterisations is a normative commitment to publicity. The importance of such a commitment is visible if we analyse another fundamental office in elections, that of candidates. Candidates who run for elective office are bound by 'normative expectations regarding acceptable discourse [that] will act as a filter on what [they] are allowed to say' (Engelen & Nys, 2013, p. 496; see also Elster, 1998). Such expectations aim to make candidates show themselves public-spirited in campaign rallies. In actual politics, we are accustomed to the presence of, for example, xenophobic political discourse, pitched at protecting the (alleged) interests of some groups against others. Moreover, even in democratic theory, there is disagreement about the role of partisanship and whether political action should be restricted to the pursuit of public interests (see, e.g., White and Ypi, 2016). However, a certain commitment to publicity survives across these variations in the terms of a general expectation that candidates avoid overt discriminatory language or agendas. The commitment to publicity and anti-discrimination is substantive as well as strategic. Accordingly, some even see in hypocrisy a 'civilising force' and one of the most valuable side-effects of democratic elections (Elster, 1998, p. 111).

For example, it is hardly acceptable that a candidate publicly declares that she is running for office out of personal interest alone, or to actively penalise a certain group in society. Similarly, it would be surprising to hear a candidate say during their campaign that, once elected, he will gladly accept money from lobby groups and vote in parliament as such groups command. Such dispositions are typically considered as indicators of political corruption, as the decay of democratic institutions (Warren, 2004).

The expectations reasonably constraining the mandate of candidates acting in their institutional capacity are further heightened when it comes to another fundamental office in the context of elections: that of elected representatives. The terms of the power mandate of representatives standardly include limitations to their freedom of action grounded, *inter alia*, in anti-discrimination norms. Indeed, anti-discrimination norms have become so fundamental to the democratic office of an elected representative that they are normally enshrined in the constitution or in specific laws. For example,

when the constitution includes a norm against discrimination, if a majority of MPs adopts a law that obviously discriminates, say, a religious group, the Constitutional Court can veto such law on grounds of its non-conformity with a polity's grounding normative and legal principles.

The picture changes when it comes to the power mandate of citizens who act in their institutional capacity as voters. Unlike with elected representatives and electoral candidates, the terms of the power mandate of voters do not obviously include any anti-discriminatory restriction. It seems distinctively uncommon to think of including among the terms of the voters' mandate any normative prescription about their specific voting preferences. As Rehfeld (2010, p. 263) notes, '[w]hen 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'. This consideration does not necessarily (or at all) imply that the exercise of the role of a voter is a reckless, subjectivist, and unbound exercise.

Voters' power mandate is not a blank cheque. For example, selling one's vote is an objectionable voting behaviour to the extent that it implies the use of a power of public office to promote personal interests in such a way that corrupts the democratic process and its integrity (Ceva & Ferretti, 2021b; Thompson, 2018). Moreover, one may argue that in order to exercise their voting rights 'well', citizens should cast their vote reasonably (Quong, 2004), with an eye to the public interest or the common good (Brennan and Pettit 1990), and perhaps also 'with care, that is with sufficient information and knowledge, for the sake of society' (Maskivker, 2018, p. 420; Somin, 2014; but see Christiano, 2015). But none of these (or other) desiderata may have the status of a *necessary* condition for, or a duty binding on, the exercise of democratic citizens' right to vote (such that the violation of any of those conditions may limit the voter's conduct, as in the case of candidates and representatives).

When we take these specific considerations together with the earlier mentioned claims about the openness of power mandates, the concerns about ED's compatibility with an ethics of voting grounded in office accountability come in focus. And this focus suggests that ED is not per se an unthinkable electoral behaviour. It seems reasonable to maintain that ED falls in the remit of electoral voters' discretion (their free and responsible action, as discussed earlier).

When we look more closely at a voter's mandate, one key feature that emerges is that it primarily involves expressing one's views about a *person* in relation to a specific agenda. In other words, voters' decisions are fundamentally about choosing who is best suited to represent them and advance certain causes. As such, much of the enactment of a voter's mandate involves making judgments about candidates' identities and how well they align with the voter's priorities. This is especially true when voters view candidates' identity traits as a heuristic shortcut to understanding their commitments and ability to push forward a particular agenda. This reasoning suggests that ED, understood as a form of statistical discrimination, is not clearly outside the terms of a voter's mandate and, therefore, might not be objectionable from the perspective of an ethics of voting based on office accountability.

The reasoning thus far could hold even if voters, as the occupants of a role in public institutions, were to act in states where anti-discrimination provisions generally apply

across the board of public office, perhaps because they are enshrined in constitutional charters. In general, anti-discrimination norms are not blanket provisions preventing people from engaging in *any* sort of judgement of other people's identity traits. What counts as discriminatory is basing someone's judgement on identity traits *irrelevant* for the specific function that a person ought to perform or in relation to the specific context of an interaction. This is, for example, the rationale of anti-discrimination clauses preventing people's employment opportunities from being affected by someone's belonging to a certain gender or religious group. Our discussion, however, suggests that candidates' identity traits are not irrelevant for the enactment of a voters' mandate if this is understood as the free and responsible exercise of someone's judgement to choose the best person to put forward a certain agenda.

That said, we acknowledge a tension: even if certain identity traits correlate with competence or ideological stance (statistical discrimination), this does not automatically make it morally justified. However, we want to emphasise that our argument specifically concerns the open texture of the mandate and how it complicates the application of external moral constraints in the voting context. In other words, we are not simply endorsing statistical discrimination when the identity trait is relevant. Within the office of a voter, identity traits may reasonably be used as a heuristic, but whether this is morally permissible is a matter for debate and should be weighted against broader normative values.

The relevance of candidates' identity traits depends in part on their giving indirect information about people's commitments. Julie / Brenda in our initial examples could justify with reference to the open terms of their mandate using Fatima's belonging to a Muslim minority and black candidates' statistical propensity to support a liberal agenda as indicators of the unsuitability of these candidates to represent them. But, we can also refer in a similar vein to Michael's and Alex's antipathy for black and Muslim candidates as a ground for them to exercise their voters' mandate in keeping with office accountability. Indeed, candidates' identity traits can also be emotional drivers of voters' identification and empathy with some candidates.<sup>9</sup> Because voters must choose people who can represent them, the capacity to establish an affective connection with candidates seems relevant. We saw this happening during the Obama presidency campaign, where the capacity of the Afro-American community to connect with the identity trait of that particular candidate made an arguable difference in the outcome of the elections.

For voters to be able to identify themselves with a certain candidate, because perhaps they belong to the same group (and conversely to oppose candidates with whom such a connection cannot be established), seems to be an important feature for them to make the 'leap of faith' necessary to entrust someone with the power to represent them. Because trust relations can have both a cognitive and an affective component (see, for example, respectively Hawley, 2014; and McGeer & Pettit, 2011) both aspects of ED, understood as either statistical discrimination or taste-based discrimination, seem relevant for the enactment of voters' mandate in a way which does not apply to candidates and representatives. Because voters implicated in ED do nothing which falls obviously outside of the terms of their mandate, their behaviour per se can pass the test of office accountability. In this sense, we could *describe* their choice as discriminatory, without thereby implying the negative normative assessment of their behaviour as incompatible with a fundamental tenet of an ethics of voting in the context of democratic electoral competition.<sup>10</sup>

Having reached this conclusion opens up another set of questions. The lack of *normative* reasons to oppose ED qua incompatible with an ethics of voting grounded in office accountability is not per se sufficient to cancel the significance of the *empirical* evidence of ED's negative impact on minority candidates' political participation. To say that ED does not fall obviously outside of the terms of a voter's mandate means that the choices of voters (Michael/Alex, Brenda/Julie) implicated in such a practice can be vindicated according to office accountability and, therefore, are not wrong in the sense of violating a fundamental duty of office in the context of democratic elections.

However, this normative claim should not distract from reckoning with an important empirical byproduct of ED. Such a byproduct is revealed by the empirically solid evidence that, when people like Michael/Alex and Brenda/Julie are the majority, the political participation in democratic electoral competition is much harder for black candidates and Muslim veiled women. This empirically sustained consideration matters for the quality of citizens' active participation in the life of a democracy. Although ED may not be excluded from an ethics of voting by constraining voters' behaviour, electoral system design may nevertheless be reconsidered to minimise ED's negative byproducts in ways consistent with office accountability. This claim is the topic of our next section.

## 5. Electoral Discrimination and Institutional Design

The goal of this section is to discuss how far democratic institutional design can go – within the normative limits of democratic theory – to protect as much as possible candidates from the ED's penalising effects, without thereby sacrificing the prerogatives of voters from the perspective of office accountability. Throughout this discussion our aim is, therefore, exploratory rather than argumentative.

The interest in institutional design is justified in view of the institution-cantered approach to democracy within which our discussion is situated. Because institutions are rule-based interrelated structures of embodied roles, there is a continuity between institutional mechanisms (the object of institutional design) and the conduct of officeholders (the object of an ethics of office accountability). As seen in section 3, to see and assess how an institution works, we must look at the officeholders' conduct in their institutional capacity. But the reverse holds too: to address and correct the penalties deriving from voters' behaviour we can resort to institutional design knowing that the nature of an action performed in a given institutional capacity changes if we modify the institutional setting.

### 5.1. Institutional Filters

So, how far can we go? And how can we justify interfering with 'the right of voters to have an unconstrained choice set at election time' (Rehfeld, 2010, p. 258), to alleviate ED's penalising effects?

A possible way to address these questions is to say that the expression of people's will should pass through 'institutional filters'. In *Just Elections*, Dennis Thompson (2002, p. 91) attributes to Tocqueville the notion of institutional filters, and suggests that 'democracy may work better if voters are denied certain kinds of information ... that might distort their decision'.<sup>11</sup> An example of such a filter are the laws or practices

that prohibit the publication of the results of opinion polls in the days before the election. Is the right of voters to have an unconstrained choice set in elections endangered in countries where such laws or practices have been enacted? For Thompson (2002, p. 121; see also Elster, 2013, p. 23) the answer is negative. Jon Elster, by relying on Jeremy Bentham and John Hart Ely, is also in favour of such filters and argues for a ‘prudential design’ of institutions, based on three points (Elster, 2013, p. 18; our emphasis):

- (1) Institutions should be designed ‘to protect the active, intellectual and moral aptitude’ of those who make decisions, ‘in the sense of *removing* or *minimising* negative influences on these aptitudes’;
- (2) The negative influences are: self-interest, passion, *prejudice* and *bias*;
- (3) Secrecy (ex ante), publicity (ex post) and *ignorance* are the most important means for neutralising the negative influences.

Elster applies his approach to jury trials, voting in assemblies, but also to elections. With regard to the latter, he argues that ‘[t]o enhance the moral and the intellectual aptitude of the voters, they should ... be *shielded from passion and bias*’ (Elster, 2013, p. 23; our emphasis). For example, he proposes that there should be a requirement that electoral debates be broadcast on radio rather than on TV ‘to shield the voters from potentially distorting visual expressions’ (Elster, 2013, p. 23).

In this debate, we should also stress that at least some voters might actually *want* to have institutional filters that shield them from their own biases. Indeed, biases can be both overt and implicit. As an empirical matter, the latter might be more pervasive than the former (Greenwald et al., 2003). So, what could these filters be? A critical role in this debate, which is salient for our institution-centred discussion, is played by the choice of the electoral system, to which we turn in the next sub-section.

## 5.2. Electoral Systems

A possible way to counteract electoral voters’ adverse biases but without assuming or implying condemnation of their expressing their voting preferences may go in the direction of favoring electoral systems that restrict voters’ choice-set. So, for instance, closed-list PR seem preferable to free or open-list PR systems. Contrary to the latter, in closed-list PR systems (used, for example, in Argentina, Israel, Turkey) voters can cast votes *only for parties* and *not for specific candidates*. A less radical departure from a free or an excessively open-list PR would be to allow voters to cast only a *very limited number* of preferential votes (but at least one, as in the Netherlands) for specific candidates.

However, there are at least two potential issues with the use of closed-list PR systems. First, such systems concentrate the power to discriminate in the hands of party elites (‘gatekeepers’), who can prioritise candidates from the dominant ethnic majority, or men rather than women, by placing them in high positions on the party list, thereby increasing their chances of election.<sup>12</sup> Second, in ethnically divided societies, PR systems tend to incentivise the formation of mono-ethnic rather than multi-ethnic parties (Horowitz, 2003). In these contexts, a closed-list PR system would prevent voters from discriminating against individual candidates but still allow discrimination against parties – specifically, by enabling voters to support only parties that represent



their own ethnicity. This form of ‘ethnic bloc voting’ has been viewed as problematic for democracy (Lipset, 1959, p. 97). Indeed, under certain conditions, majoritarian systems are considered more conducive to the formation of multi-ethnic parties (Lublin, 2014; Stojanović, 2021, p. 164–167).

Paradoxically perhaps, in majoritarian elections it is easier (compared to PR systems) for voters to get to know the candidates. For example, using a survey experiment, Cunow et al. (2021) show that ‘subjects presented with many options learn less about candidates, are more likely to vote based on meaningless heuristics, and are more likely to commit voting errors, when compared with subjects who choose between only a few candidates’ We could see here a parallel with the rationale underpinning the use of anonymous applications in the labour market. The idea is that a minority applicant can avoid discrimination at an initial stage, so that she can at least have a chance to meet the decision-makers (the employer) and convince them that she is the best person for the job, independently of her name, religion, or skin colour.

In the UK, empirical evidence shows that Muslim candidates face electoral discrimination in local elections held in single or multi-member district according to majoritarian rules (Dancygier, 2014). They can win seats only if in their constituency there is a considerable number of co-ethnic Muslim voters. But notice that local elections in small towns are typically ‘low information elections:’ voters know little about the candidates competing in such elections (see Barth, 2016). The election of the mayor of London, on the other hand, is an example of a high information election also held by majoritarian rules. In such a context, in 2016 and again in 2021 and in 2024, a declared Muslim of Pakistani origin could be elected. The presidential elections in the US are another example of a high information contest. In such a context, in 2008 and 2012, a black candidate could be elected, even though African Americans make up only 13 percent of the US population (and possibly even less with regard to the electorate). These results are in striking contrast with the general pattern, according to which heavily white districts will elect white representatives ‘nearly all the time’ (Achen & Bartels, 2016, p. 313).<sup>13</sup>

Indeed, let us notice that the empirical reality is that certain democracies already intervene to correct the negative effects of ED (and/or of other causes of descriptive under-representation of minority groups) in a number of ways. Such institutional constraints are meant to shape or channel voter preferences but do not categorically forbid taste-based discrimination at the individual level, which remains in the remit of voters’ responsible exercises of discretion allowed by office accountability. Consider the following devices:

- *Affirmative action re-redistricting.* To correct the problem of ‘racial vote dilution’ the US Supreme Court has allowed the creation of ‘minority-majority’ electoral districts, in which a minority group (African Americans or Latinos) become a demographic and electoral majority (see, e.g., Altman, 1998);
- *Gender quotas.* To correct the under-representation of women in Parliament, that is possibly an effect of discriminations upstream, many democracies (i.e., Belgium and France in the early 2000s) have introduced a 50% gender quota on party lists (see, e.g., Murray, 2010);
- *Reserved seats.* To allow ethnic minorities a permanent representation in Parliament, many countries provide for reserved seats (see, e.g., Bird, 2014).



Our discussion in this section suggests that, despite the relative normative and empirical merits and limitations of any such device, what matters most in mitigating the penalising effects of electoral discrimination is not the choice of the electoral system itself, but the distinction between low- and high-information elections. Low-information elections can amplify both taste-based and statistical discrimination because voters rely on superficial cues. In contrast, high-information contexts can reduce both forms of discrimination by encouraging voters to consider the actual policy stances and competence of minority candidates. The significance of this suggestion becomes clear from the perspective of an ethics of electoral office accountability, as it highlights the normative importance of the factual grounds upon which voters form their preferences, which in turn allows them to justify the rationale of their behaviour in the voting booth. However, the choice of electoral system will always be contextual – in particular, the territorial distribution of groups plays a central role – and empirical studies should guide us in identifying which systems are more or less conducive to electoral discrimination (see, e.g., Lublin 2014, Norris, 2006).

## 6. Conclusion

The article has developed a two-pronged, normative and empirically sustained, discussion of the compatibility of ED with an ethics of voting grounded in office accountability. Our discussion has emphasised that, unlike candidates and elected officials, citizens who act in their institutional capacity as voters do not violate per se the requirements of office accountability if their vote expresses an adverse bias towards certain categories of candidates. We argued for this claim both when ED manifests itself as an instance of statistical and taste-based discrimination which are not per se incompatible with a fundamental tenet of an ethics of voting.

Our normative discussion does not justify ignoring the empirical reality that ED significantly harms minority candidates' political participation. While we have not provided a justification for directly limiting or preventing ED through constraints on voters' behaviour, a well-designed institutional framework can aim to reduce discriminatory outcomes and the harms they cause. Therefore, the final section of this article has briefly explored potential institutional choices, particularly regarding the electoral system design and the use of institutional filters.

The continuity we have brought to light between institutional mechanisms and the conduct of those who occupy an institutional role and act in that capacity allows us to highlight how to develop democratic institutional mechanisms that uphold office accountability may contribute to engaging citizens in a critical and reflective exercise of their voting powers. Such an engagement may, in its turn, reinforce the maintenance of an institutional context where citizens may question and revisit the boundaries of their power mandates and the exercise of the rights to political participation.

## Notes

1. The quoted sentences have been attributed to Donald Trump in a 1991 book (Kristof, 2016).
2. We take this distinction between taste-based and statistical discrimination – widely used in the economic behaviour literature (e.g., Neilson & Ying, 2016) – as indicating the salient features of two forms of ED relevant for the social fabric of contemporary Western

democracies, characterized by cleavages based on gender, race, and religious or cultural pluralism. We are agnostic about and open to the possibility of there being other forms of ED, which might be relevant for other diachronically or synchronically different social configurations. Therefore, our use of this distinction is not exposed to the critique, often made in the philosophical and theoretical debates on discrimination, of being a ‘simplistic dichotomy’ (Shin, 2018, p. 3; see Schauer, 2018).

3. The bias can but does not need to be a form of overt prejudice. It can be implicit but still discriminatory (Lai & Banaji, 2020; Payne et al., 2010; for a more critical assessment of this claim see Huddy & Feldman, 2009; Kalmoe & Piston, 2013).
4. For an empirical demonstration of the role of *ingroup favouritism* – as opposed to *outgroup hostility* – in the assessment of ED, see Portmann and Stojanović (2022).
5. Of course, a single decision of an employer against a given candidate is not constitutive of overall success of the candidate in the job market. What we want to underline, rather, is that in that instance the employer’s (discriminatory) decision does annihilates the candidate’s chance to get the specific job she has applied for.
6. To draw a parallel, we can also highlight that in the theories of justice it is common to acknowledge that individual behaviour can lead to injustice. Barry (2005, p. 18), for example, argues that ‘the aggregate effect of individual acts of injustice is very unlikely to be random ... [which] creates a systematically unjust distribution of rights, opportunities and resources’.
7. This form of accountability appears also in discussions of democratic elections that draw on a principle-agent understanding of institutional relations between voters and elected representative. For a discussion, see Achen and Bartels (2016).
8. Note that the secrecy of the vote does impact ex post accountability (i.e., practical detection), but from a purely normative perspective the question remains whether moral constraints should be imposed by an external authority (through formal regulation, though enforceability may be challenging) or internalized by voters as an act of self-restraint, regardless of secrecy.
9. An emotional connection between voters and candidates can be morally ‘positive’ (identification, empathy) or ‘negative’ (demeaning aversion). Given the voters’ open mandate, a democracy might still tolerate (even if not morally *endorse*) negative emotions as they are part of the complex human nature of relations in politics. Doing otherwise seems to offer an overly moralized view of politics, with worrisome patronizing attitudes towards citizens who would be judged on the basis of what they feel (while they might have not full control over it and, therefore, being reasonably subject to moral judgments).
10. We acknowledge that taste-based discrimination can be considered more morally troubling to the extent that it inherently involves demeaning attitudes. We believe that this moral concern is something that can be addressed via internal reflection (e.g. educating voters to problematise their electoral behaviour; promoting citizenship education programs; or via pre-voting deliberations) or institutional filters of the kind we discuss in section 5.
11. On this point, see also the literature on epistemic paternalism (Fricker, 2007) and on nudging (Thaler & Sunstein, 2008).
12. While our paper focuses on discrimination performed by voters, many studies highlight that the descriptive underrepresentation of women and ethnic minorities is also driven by discriminatory patterns among political gatekeepers – i.e., party selectors – both in majoritarian and PR electoral systems. For example, Norris and Lovenduski (1995) found that when women present themselves as candidates, party selectors tend to overlook them in favour of male candidates.
13. Consider, for example, that just 5 percent of the districts with white majorities elected African Americans in the 2014 US House of Representatives elections.

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## Notes on Contributors

**Emanuela Ceva** is Professor of Political Theory, University of Geneva, where she directs the Research Center for Corruption Studies. She specializes in the normative theory of institutions, with reference to issues of democracy, corruption, trust, and the political role of emotions. She has published in such journals as the *American Journal of Political Science* and the *Journal of Political Philosophy*. She is co-author of *Political Corruption. The Internal Enemy of Public Institutions* (Oxford University Press). E-mail: emanuela.ceva@unige.ch

**Nenad Stojanović** is an Associate Professor at the University of Geneva, a Senior Researcher at the Centre for Democracy Studies in Aarau, and the Director of the Swiss Research Centre on Democratic Innovations. His articles have appeared in journals such as the *Journal of Politics*, *Comparative Political Studies*, *Political Behavior*, *International Political Science Review*, *Journal of Common Market Studies*. He is the author of *Multilingual Democracy: Switzerland and Beyond* (ECPR Press 2021; 2nd edition 2025). E-mail: nenad.stojanovic@unige.ch

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